WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1941

ENROLLED

HOUSE BILL No. 323

(By Mr. Hudson and Mr. Casey)

PASSED March 5, 1941

In Effect Immediately after Passage
ENROLLED

House Bill No. 323

(By Mr. Hudson and Mr. Casey)

[Passed March 8, 1941; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, five and twelve, and to repeal section sixteen, chapter ninety-three, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, relating to the creation and organization of housing authorities for cities and counties; and to add to said chapter ninety-three, new sections to be numbered one-a, seven-a, seven-b, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, relating to housing projects for farmers of low income, to the area of operation of housing authorities, to contracts and powers of housing authorities, to the operations in such projects to persons of low income, and providing for the issuance and security of bonds and other obligations of housing authorities and remedies of the holders of such obligations.
Be it enacted by the Legislature of West Virginia:

That sections three, five and twelve, chapter ninety-three, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted; that section sixteen of said chapter be repealed; and that new sections to be known as and numbered one-a, seven-a, seven-b, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, and twenty-nine, be added thereto; all to read as follows:

Section 1-a. The following terms, wherever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Governing body" shall mean, in the case of a city, the council of the city, and in the case of a county, the commissioners of the county court.

(b) "Clerk" shall mean the clerk of the city or city recorder or the clerk of the county, as the case may be, or the officer charged with the duties customarily imposed on such clerk or recorder.
(c) "Area of Operation": (1) In the case of a housing authority of a city, shall include such city and the area within five miles from the territorial boundaries thereof, provided that the area of operation of a housing authority of any city shall not include any area which lies within the territorial boundaries of some other city; (2) in the case of a housing authority of a county shall include all of the county except that portion which lies within the territorial boundaries of any city.

(d) "Persons of low income" shall mean persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them without financial assistance to live in decent, safe and sanitary dwellings, without overcrowding; and the term "persons of low income" shall include "farmers of low income" as herein defined.

(e) "Farmers of low income" shall mean persons or families who at the time of their admission to occupancy in a dwelling of the authority: (1) Live under unsafe and insanitary housing conditions; (2) derive their principal income from operating or working upon a farm;
and (3) had an aggregate average annual net income for the three years preceding their admission that was less than the amount determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing.

(f) "Bonds" shall mean any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this act.

(g) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, or lessor demising to an authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal Government when it is a party to any contract with the authority.

Sec. 3. In each city and in each county there is hereby created a public body corporate and politic to be known as the "Housing Authority" of the city or county; Provided, however, That such authority shall not transact any business or exercise its powers hereunder until or
unless the governing body of the city or the county, as the
case may be, by proper resolution shall determine at any
time hereafter that there is need for an authority to func-
tion in such city or county: And, provided further, That
nothing contained herein shall be construed as creating
an additional housing authority in a city where a hous-
ing authority has been created pursuant to the provisions
of chapter ninety-three, acts of the Legislature of West
Virginia, second extraordinary session, one thousand nine
hundred thirty-three, but each such housing authority
created pursuant to said chapter ninety-three shall con-
tinue as a public body corporate and politic as though
created pursuant to this act and shall have the area of
operation defined in section one-a for a housing authority
of a city.

With respect to the provisions of other sections of this
act and their application to housing authorities of coun-
ties, the term "city" shall be construed as referring to a
county unless a different meaning clearly appears from
the context.

The determination as to whether or not there is such
need for an authority to function (a) may be made by the governing body on its own motion or (b) shall be made by the governing body upon the filing of a petition signed by twenty-five residents of the city or county, as the case may be, asserting that there is need for an authority to function in such city or county and requesting that the governing body so declare. The governing body shall adopt a resolution declaring that there is need for a housing authority in the city or county, as the case may be, if it shall find (a) that insanitary or unsafe inhabited dwelling accommodations exist in such city or county or (b) that there is a shortage of safe or sanitary dwelling accommodations in such city or county available to persons of low income at rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary the governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions
exist in such buildings which endanger life or property
by fire or other cause.

In any suit, action or proceeding involving the validity
or enforcement of or relating to any contract of the author-
ity, the authority shall be conclusively deemed to have
become established and authorized to transact business
and exercise its powers hereunder upon proof of the
adoption of a resolution by the governing body declar-
ing the need for the authority. Such resolution shall be
deemed sufficient if it declares that there is such need for
an authority and finds in substantially the foregoing terms
(no further detail being necessary) that either or both of
the above-enumerated conditions exist in the city or
county, as the case may be. A copy of such resolutions
duly certified by the clerk shall be admissible in evidence
in any suit, action or proceeding.

When the governing body of a city adopts a resolution
as aforesaid, it shall promptly notify the mayor of such
adoption. Upon receiving such notice, the mayor shall ap-
point five persons as commissioners of the authority cre-
ated for said city. When the governing body of a county
adopts a resolution as aforesaid, said body shall appoint
five persons as commissioners of the authority created
for said county. The commissioners who are first ap-
pointed shall be designated to serve for terms of one,
two, three, four and five years, respectively, from the date
of their appointment, but thereafter commissioners shall
be appointed as aforesaid for a term of office of five years
except that all vacancies shall be filled for the unexpired
term. No commissioner of an authority may be an officer
or employee of the city or county for which the author-
ity is created. A commissioner shall hold office until his
successor has been appointed and has qualified, unless
sooner removed according to this act. A certificate of
the appointment or reappointment of any commissioner
shall be filed with the clerk and such certificate shall be
conclusive evidence of the due and proper appointment
of such commissioner. A commissioner shall receive no
compensation for his services, but he shall be entitled to
the necessary expenses, including traveling expenses, in-
curred in the discharge of his duties.

For inefficiency or neglect of duty or misconduct in of-
a commissioner of an authority may be removed by the mayor (or in the case of an authority for a county, by the governing body of such county), but a commissioner shall be removed only after he shall have been given a copy of the charges at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk. The powers of each authority shall be vested in the commissioners, thereof in office from time to time.

Sec. 5. As soon as possible after the establishment of an authority the commissioners shall organize for the transaction of business by choosing from among their number a chairman and a vice-chairman and by adopting by-laws and rules and regulations suitable to the purposes of this act. Three commissioners shall constitute a quorum for the purpose of organizing the authority and conducting the business thereof. The commissioners shall, from time to time, select and appoint such officers and
employees, including engineering, architectural and legal assistants, as they may require for the performance of their duties, and shall prescribe the duties and compensation of each officer and employee.

Sec. 7-a. A housing authority, in addition to its other powers, shall have power (notwithstanding anything to the contrary contained in this act or in any other provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

Sec. 7-b. Any two or more authorities may join or cooperate with one another in the exercise of any or all of their powers for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects located within the area of operation of any one or more such authorities.

Sec. 12. At least once a year, an authority shall file with the mayor (or with the governing body in the case of a
housing authority of a county) a report of its activities for the preceding year, and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this act.

Section sixteen is hereby repealed.

Sec. 20. It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the city or county. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available moneys, revenues, income and receipts of the authority from whatever sources derived) will be sufficient; to pay, as the same become due the principal and interest on the bonds of the authority;
to meet the cost of, and to provide for, maintaining and 
operating the projects (including the cost of any insur-
ance) and the administrative expenses of the authority;
and to create (during not less than six years immediately 
succeeding its issuance of any bonds) a reserve sufficient 
to meet the largest principal and interest payments which 
will be due on such bonds in any one year thereafter and 
to maintain such reserve.

Sec. 21. In the operation or management of housing 
projects an authority shall at all times observe the follow-
ing duties with respect to rentals and tenant selection:
(a) It may rent or lease the dwelling accommodations 
therein only to persons of low income and at rentals within 
the financial reach of such persons; (b) it may rent or 
lease to a tenant dwelling accommodations consisting of 
the number of rooms (but no greater number) which it 
deems necessary to provide safe and sanitary accommo-
dations to the proposed occupants thereof, without over-
crowding; and (c) it shall not accept any person or per-
sons (other than farmers of low income, as herein defined) 
as tenants in any housing project if the person or persons
who would occupy the dwelling accommodations have an aggregate annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons, except that in the case of such person or persons with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this or the preceding section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this or the preceding section.

Sec. 22. An authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes. An authority shall also have power to issue or
exchange refunding bonds for the purpose of paying, retiring, extending or renewing bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable from income and revenues of the authority and from grants or contributions from the federal government or other source. Such income and revenues securing the bonds may be: Exclusively the income and revenues of the housing project financed in whole or in part with the proceeds of such bonds; exclusively the income and revenues of certain designated housing projects, whether or not they are financed in whole or in part with the proceeds of such bonds; or the income and revenues of the authority generally. Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing project, projects or other property of the authority.

Sec. 23. Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time
or times, bear interest at such rate or rates, not ex-
ceeding six per cent per annum, be in such denomina-
tion or denominations, be in such form, either coupon
or registered, carry such conversion or registration
privileges, have such rank or priority, be executed in,
such manner, be payable in such medium of payment,
at such place or places, and be subject to such terms of
redemption (with or without premium) as such resolu-
tion, its trust indenture or mortgage may provide.
The bonds shall be sold at not less than par at pub-
lic sale held after notice published once at least five
days prior to such sale in a newspaper having a general
circulation in the city or county and in a financial news-
paper published in the city of New York, New York;
Provided, however, That such bonds may be sold to the
federal government at private sale at not less than par
and, in the event less than all of the bonds authorized
in connection with any project or projects are sold to
the federal government, the balance of such bonds may
be sold at private sale at not less than par at an in-
terest cost to the authority of not to exceed the inter-
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25 est cost to the authority of the portion of the bonds
26 sold to the federal government.
27 In case any of the commissioners or officers of the
28 authority whose signatures appear on any bonds or
29 coupons shall cease to be such commissioners or officers
30 before the delivery of such bonds, such signatures shall,
31 nevertheless, be valid and sufficient for all purposes,
32 the same as if they had remained in office until such
33 delivery. Any provisions of any law to the contrary not-
34 withstanding, any bonds issued pursuant to this act shall
35 be negotiable.
36 In any suit, action or proceedings involving the validity
37 or enforceability of any bond of an authority or the
38 security therefor, any such bond reciting in substance
39 that it has been issued by the authority to aid in financ-
40 ing a housing project to provide dwelling accommoda-
41 tions for persons of low income shall be conclusively
42 deemed to have been issued for a housing project of
43 such character, and said project shall be conclusively
44 deemed to have been planned, located and constructed
in accordance with the purposes and provisions of this act.

Sec. 24. In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, and authority, in addition to its other powers shall have power:

To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

To mortgage all or any part of its real or personal property, then owned or thereafter acquired.

To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it.
To covenant as to the bonds to be issued and as to the issuance of such bonds or otherwise, and as to the issuance of such bonds in escrow or otherwise and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

To covenant (subject to the limitations contained in this act) as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or
abrogated, the amount of bonds the holders of which
must consent thereto and the manner in which such con-
sent may be given.

To covenant as to use of any or all of its real or personal
property; and to covenant as to the maintenance of its
real and personal property, the replacement thereof, the
insurance to be carried thereon and the use and disposi-
tion of insurance moneys.

To covenant as to the rights, liabilities, powers and
duties arising upon the breach by it of any covenant, con-
dition, or obligation; and to covenant and prescribe as to
events of default and terms and conditions upon which
any or all of its bonds or obligations shall become or may
be declared due before maturity, and as to the terms and
conditions upon which such declaration and its conse-
quences may be waived.

To vest in a trustee or trustees or the holders of bonds
or any proportion of them the right to enforce the pay-
ment of the bonds or any covenants securing or relating
to the bonds; to vest in a trustee or trustees the right, in
the event of a default by said authority, to take possession
and (so long as the authority shall continue in default) to retain such possession and to use, operate and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustees; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.
Sec. 25. An obligee of an authority shall have the right
in addition to all other rights which may be conferred on
such obligee, subject only to any contractual restrictions
binding upon such obligee:

By mandamus, suit, action or proceeding at law or in
equity to compel said authority and the commissioners,
officers, agents or employees thereof to perform each and
every term, provision and covenant contained in any
contract of said authority with or for the benefit of such
obligee, and to require the carrying out of any or all such
covenants and agreements of said authority and the ful-
fillment of all duties imposed upon said authority by this
act.

By suit, action or proceeding in equity, to enjoin any
acts or things which may be unlawful, or the violation of
any of the rights of such obligee of said authority.

Sec. 26. An authority shall have power by its resolu-
tion, trust indenture, mortgage, lease or other contract
to confer upon any obligee holding or representing a
specified amount in bonds, or holding a lease, the right
(in addition to all rights that may otherwise be con-
ferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

To cause possession of any housing project or any part thereof to be surrendered to any such obligee, which possession may be retained by such bondholder or trustee so long as the authority shall continue in default.

To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and (so long as the authority shall continue in default) operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct.

To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust.
Sec. 27. Housing authorities created for counties are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income. In connection with such projects, such housing authorities may enter into such leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of this act. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority.

Sec. 28. The owner of any farm operated, or worked upon, by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a
county requesting that it provide for a safe and sanitary
dwelling or dwellings for occupancy by such farmers of
low income. Such applications shall be received and ex-
amined by housing authorities in connection with the
formulation of projects or programs to provide housing
for farmers of low income.

Sec. 29. Notwithstanding any other evidence of legisla-
tive intent, it is hereby declared to be the controlling leg-
islative intent that if any provision of this act, or the ap-
plication thereof to any person or circumstances, is held
invalid, the remainder of the act and the application of
such provision to persons or circumstances other than
those as to which it is held invalid, shall not be affected
thereby.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

C. H. M. Kour
Chairman Senate Committee

Leon Rice
Chairman House Committee

Originated in the House of Delegates

Takes effect Thirty days from passage.

C. Hale Watkins
Clerk of the Senate

C. H. Wills
Clerk of the House of Delegates

Byron B. Randolph
President of the Senate

Malcolm P. Arnold
Speaker House of Delegates

The within approved this the 14th day of March, 1941.

Matthew Neely
Governor.

Filed in the office of the Secretary of State of West Virginia, MAR 17 1941

Wm. S. O'Brien,
Secretary of State