

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1941



## ENROLLED

HOUSE BILL No. 323

(By Mr. Hudson and Mr. Casey)



PASSED March 8 1941

In Effect Ninety days from 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session, one thousand nine hundred thirty-three, be amended and reenacted; that section sixteen of said chapter be repealed; and that new sections to be known as and numbered one-a, seven-a, seven-b, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six,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  
2 referred to in this act, shall have the following respective  
3 meanings, unless a different meaning clearly appears from  
4 the context:

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

8 (b) "Clerk" shall mean the clerk of the city or city  
9 recorder or the clerk of the county, as the case may be,  
10 or the officer charged with the duties customarily imposed  
11 on such clerk or recorder.

12 (c) "Area of Operation": (1) In the case of a housing  
13 authority of a city, shall include such city and the area  
14 within five miles from the territorial boundaries thereof,  
15 provided that the area of operation of a housing author-  
16 ity of any city shall not include any area which lies  
17 within the territorial boundaries of some other city; (2)  
18 in the case of a housing authority of a county shall in-  
19 clude all of the county except that portion which lies  
20 within the territorial boundaries of any city.

21 (d) "Persons of low income" shall mean persons or  
22 families who lack the amount of income which is neces-  
23 sary (as determined by the authority undertaking the  
24 housing project) to enable them without financial assist-  
25 ance to live in decent, safe and sanitary dwellings, with-  
26 out overcrowding; and the term "persons of low income"  
27 shall include "farmers of low income" as herein defined.

28 (e) "Farmers of low income" shall mean persons or  
29 families who at the time of their admission to occupancy  
30 in a dwelling of the authority: (1) Live under unsafe  
31 and insanitary housing conditions; (2) derive their prin-  
32 cipal income from operating or working upon a farm;

33 and (3) had an aggregate average annual net income for  
34 the three years preceding their admission that was less  
35 than the amount determined by the authority to be  
36 necessary, within its area of operation, to enable them,  
37 without financial assistance, to obtain decent, safe and  
38 sanitary housing.

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

42 (g) "Obligee of the authority" or "obligee" shall in-  
43 clude any bondholder, trustee or trustees for any bond-  
44 holders, or lessor demising to an authority property used  
45 in connection with a housing project, or any assignee or  
46 assignees of such lessor's interest or any part thereof, and  
47 the Federal Government when it is a party to any con-  
48 tract with the authority.

Sec. 3. In each city and in each county there is hereby  
2 created a public body corporate and politic to be known  
3 as the "Housing Authority" of the city or county; *Pro-*  
4 *vided, however,* That such authority shall not transact  
5 any business or exercise its powers hereunder until or

6 unless the governing body of the city or the county, as the  
7 case may be, by proper resolution shall determine at any  
8 time hereafter that there is need for an authority to func-  
9 tion in such city or county: *And, provided further,* That  
10 nothing contained herein shall be construed as creating  
11 an additional housing authority in a city where a hous-  
12 ing authority has been created pursuant to the provisions  
13 of chapter ninety-three, acts of the Legislature of West  
14 Virginia, second extraordinary session, one thousand nine  
15 hundred thirty-three, but each such housing authority  
16 created pursuant to said chapter ninety-three shall con-  
17 tinue as a public body corporate and politic as though  
18 created pursuant to this act and shall have the area of  
19 operation defined in section one-a for a housing authority  
20 of a city.

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

26 The determination as to whether or not there is such

27 need for an authority to function (a) may be made by  
28 the governing body on its own motion or (b) shall be  
29 made by the governing body upon the filing of a peti-  
30 tion signed by twenty-five residents of the city or county,  
31 as the case may be, asserting that there is need for an  
32 authority to function in such city or county and request-  
33 ing that the governing body so declare. The governing  
34 body shall adopt a resolution declaring that there is need  
35 for a housing authority in the city or county, as the case  
36 may be, if it shall find (a) that insanitary or unsafe in-  
37 habited dwelling accommodations exist in such city or  
38 county or (b) that there is a shortage of safe or san-  
39 itary dwelling accommodations in such city or county  
40 available to persons of low income at rentals they can  
41 afford. In determining whether dwelling accommoda-  
42 tions are unsafe or insanitary the governing body may  
43 take into consideration the degree of overcrowding, the  
44 percentage of land coverage, the light, air, space and ac-  
45 cess available to the inhabitants of such dwelling accom-  
46 modations, the size and arrangement of the rooms, the  
47 sanitary facilities, and the extent to which conditions

48 exist in such buildings which endanger life or property  
49 by fire or other cause.

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

64 When the governing body of a city adopts a resolution  
65 as aforesaid, it shall promptly notify the mayor of such  
66 adoption. Upon receiving such notice, the mayor shall ap-  
67 point five persons as commissioners of the authority cre-  
68 ated for said city. When the governing body of a county



69 adopts a resolution as aforesaid, said body shall appoint  
70 five persons as commissioners of the authority created  
71 for said county. The commissioners who are first ap-  
72 pointed shall be designated to serve for terms of one,  
73 two, three, four and five years, respectively, from the date  
74 of their appointment, but thereafter commissioners shall  
75 be appointed as aforesaid for a term of office of five years  
76 except that all vacancies shall be filled for the unexpired  
77 term. No commisisoner of an authority may be an officer  
78 or employee of the city or county for which the author-  
79 ity is created. A commissioner shall hold office until his  
80 successor has been appointed and has qualified, unless  
81 sooner removed according to this act. A certificate of  
82 the appointment or reappointment of any commissioner  
83 shall be filed with the clerk and such certificate shall be  
84 conclusive evidence of the due and proper appointment  
85 of such commissioner. A commissioner shall receive no  
86 compensation for his services, but he shall be entitled to  
87 the necessary expenses, including traveling expenses, in-  
88 curred in the discharge of his duties.

89 For inefficiency or neglect of duty or misconduct in of-

90 fice, a commissioner of an authority may be removed by  
91 the mayor (or in the case of an authority for a county,  
92 by the governing body of such county), but a commis-  
93 sioner shall be removed only after he shall have been  
94 given a copy of the charges at least ten days prior to  
95 the hearing thereon and had an opportunity to be heard  
96 in person or by counsel. In the event of the removal of  
97 any commissioner, a record of the proceedings, together  
98 with the charges and findings thereon, shall be filed in  
99 the office of the clerk. The powers of each authority shall  
100 be vested in the commissioners, thereof in office from  
101 time to time.

Sec. 5. As soon as possible after the establishment of  
2 an authority the commissioners shall organize for the  
3 transaction of business by choosing from among their  
4 number a chairman and a vice-chairman and by adopting  
5 by-laws and rules and regulations suitable to the pur-  
6 poses of this act. Three commissioners shall constitute a  
7 quorum for the purpose of organizing the authority and  
8 conducting the business thereof. The commissioners shall,  
9 from time to time, select and appoint such officers and

10 employees, including engineering, architectural and legal  
11 assistants, as they may require for the performance of  
12 their duties, and shall prescribe the duties and compen-  
13 sation of each officer and employee.

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

Sec. 7-b. Any two or more authorities may join or co-  
2 operate with one another in the exercise of any or all of  
3 their powers for the purpose of financing, planning, un-  
4 dertaking, constructing or operating a housing project or  
5 projects located within the area of operation of any one  
6 or more such authorities.

Sec. 12. At least once a year, an authority shall file with  
2 the mayor (or with the governing body in the case of a

3 housing authority of a county) a report of its activities for  
4 the preceding year, and shall make recommendations with  
5 reference to such additional legislation or other action as  
6 it deems necessary in order to carry out the purposes of  
7 this act.

8 Section sixteen is hereby repealed.

Sec. 20. It is hereby declared to be the policy of this  
2 state that each housing authority shall manage and oper-  
3 ate its housing projects in an efficient manner so as to  
4 enable it to fix the rentals for dwelling accommodations  
5 at the lowest possible rates consistent with its providing  
6 decent, safe and sanitary dwelling accommodations, and  
7 that no housing authority shall construct or operate any  
8 such project for profit, or as a source of revenue to the city  
9 or county. To this end an authority shall fix the rentals  
10 for dwellings in its projects at no higher rates than it shall  
11 find to be necessary in order to produce revenues which  
12 (together with all other available moneys, revenues, in-  
13 come and receipts of the authority from whatever sources  
14 derived) will be sufficient; to pay, as the same become due  
15 the principal and interest on the bonds of the authority;

16 to meet the cost of, and to provide for, maintaining and  
17 operating the projects (including the cost of any insur-  
18 ance) and the administrative expenses of the authority;  
19 and to create (during not less than six years immediately  
20 succeeding its issuance of any bonds) a reserve sufficient  
21 to meet the largest principal and interest payments which  
22 will be due on such bonds in any one year thereafter and  
23 to maintain such reserve.

Sec. 21. In the operation or management of housing  
2 projects an authority shall at all times observe the follow-  
3 ing duties with respect to rentals and tenant selection:  
4 (a) It may rent or lease the dwelling accommodations  
5 therein only to persons of low income and at rentals within  
6 the financial reach of such persons; (b) it may rent or  
7 lease to a tenant dwelling accommodations consisting of  
8 the number of rooms (but no greater number) which it  
9 deems necessary to provide safe and sanitary accommo-  
10 dations to the proposed occupants thereof, without over-  
11 crowding; and (c) it shall not accept any person or per-  
12 sons (other than farmers of low income, as herein defined)  
13 as tenants in any housing project if the person or persons

14 who would occupy the dwelling accommodations have  
15 an aggregate annual net income in excess of five times  
16 the annual rental of the quarters to be furnished such  
17 person or persons, except that in the case of such person  
18 or persons with three or more minor dependents, such  
19 ratio shall not exceed six to one; in computing the rental  
20 for this purpose of selecting tenants, there shall be in-  
21 cluded in the rental the average annual cost (as deter-  
22 mined by the authority) to occupants of heat, water, elec-  
23 tricity, gas, cooking range and other necessary services or  
24 facilities, whether or not the charge for such services and  
25 facilities is in fact included in the rental.

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

Sec. 22. An authority shall have power to issue bonds  
2 from time to time in its discretion, for any of its corporate  
3 purposes. An authority shall also have power to issue or

4 exchange refunding bonds for the purpose of paying, re-  
5 tiring, extending or renewing bonds previously issued by  
6 it. An authority may issue such types of bonds as it may  
7 determine, including (without limiting the generality of  
8 the foregoing) bonds on which the principal and interest  
9 are payable from income and revenues of the authority  
10 and from grants or contributions from the federal gov-  
11 ernment or other source. Such income and revenues  
12 securing the bonds may be: Exclusively the income  
13 and revenues of the housing project financed in whole or  
14 in part with the proceeds of such bonds; exclusively the  
15 income and revenues of certain designated housing pro-  
16 jects, whether or not they are financed in whole or in  
17 part with the proceeds of such bonds; or the income and  
18 revenues of the authority generally. Any such bonds  
19 may be additionally secured by a pledge of any income  
20 or revenues of the authority, or a mortgage of any hous-  
21 ing project, projects or other property of the authority.

Sec. 23. Bonds of an authority shall be authorized by  
2 its resolution and may be issued in one or more series  
3 and shall bear such date or dates, mature at such time

4 or times, bear interest at such rate or rates, not ex-  
5 ceeding six per cent per annum, be in such denomina-  
6 tion or denominations, be in such form, either coupon  
7 or registered, carry such conversion or registration  
8 privileges, have such rank or priority, be executed in  
9 such manner, be payable in such medium of payment,  
10 at such place or places, and be subject to such terms of  
11 redemption (with or without premium) as such resolu-  
12 tion, its trust indenture or mortgage may provide.

13     The bonds shall be sold at not less than par at pub-  
14 lic sale held after notice published once at least five  
15 days prior to such sale in a newspaper having a general  
16 circulation in the city or county and in a financial news-  
17 paper published in the city of New York, New York;  
18 *Provided, however,* That such bonds may be sold to the  
19 federal government at private sale at not less than par  
20 and, in the event less than all of the bonds authorized  
21 in connection with any project or projects are sold to  
22 the federal government, the balance of such bonds may  
23 be sold at private sale at not less than par at an in-  
24 terest cost to the authority of not to exceed the inter-



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

45 in accordance with the purposes and provisions of this  
46 act.

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

6 To pledge all or any part of its gross or net rents, fees  
7 or revenues to which its right then exists or may there-  
8 after come into existence.

9 To mortgage all or any part of its real or personal prop-  
10 erty, then owned or thereafter acquired.

11 To covenant against pledging all or any part of its  
12 rents, fees and revenues, or against mortgaging all or any  
13 part of its real or personal property, to which its right or  
14 title then exists or may thereafter come into existence or  
15 against permitting or suffering any lien on such revenues  
16 or property; to covenant with respect to limitations on its  
17 right to sell, lease or otherwise dispose of any housing proj-  
18 ect or any part thereof; and to covenant as to what other, or  
19 additional debts or obligations may be incurred by it.

20 To covenant as to the bonds to be issued and as to  
21 the issuance of such bonds or otherwise, and as to the  
22 issuance of such bonds in escrow or otherwise and as to  
23 the use and disposition of the proceeds thereof; to provide  
24 for the replacement of lost, destroyed or mutilated bonds;  
25 to covenant against extending the time for the payment  
26 of its bonds or interest thereon; and to redeem the bonds,  
27 and to covenant for their redemption and to provide the  
28 terms and conditions thereof.

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

39 To prescribe the procedure, if any, by which the terms  
40 of any contract with bondholders may be amended or

41 abrogated, the amount of bonds the holders of which  
42 must consent thereto and the manner in which such con-  
43 sent may be given.

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

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

57 To vest in a trustee or trustees or the holders of bonds  
58 or any proportion of them the right to enforce the pay-  
59 ment of the bonds or any covenants securing or relating  
60 to the bonds; to vest in a trustee or trustees the right, in  
61 the event of a default by said authority, to take possession

62 and (so long as the authority shall continue in default)  
63 to retain such possession and to use, operate and manage  
64 any housing project or part thereof, and to collect the  
65 rents and revenues arising therefrom and to dispose of  
66 such moneys in accordance with the agreement of the  
67 authority with said trustees; to provide for the powers  
68 and duties of a trustee or trustees and to limit the liabili-  
69 ties thereof; and to provide the terms and conditions upon  
70 which the trustee or trustees or the holders of bonds or  
71 any proportion of them may enforce any covenant or  
72 rights securing or relating to the bonds.

73 To exercise all or any part or combination of the powers  
74 herein granted; to make covenants other than and in addi-  
75 tion to the covenants herein expressly authorized, of like  
76 or different character; to make such covenants and to do  
77 any and all such acts and things as may be necessary or  
78 convenient or desirable in order to secure its bonds, or,  
79 in the absolute discretion of said authority, as will tend  
80 to make the bonds more marketable notwithstanding that  
81 such covenants, acts or things may not be enumerated  
82 herein.

Sec. 25. An obligee of an authority shall have the right

2 in addition to all other rights which may be conferred on  
3 such obligee, subject only to any contractual restrictions  
4 binding upon such obligee;

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

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

Sec. 26. An authority shall have power by its resolu-

2 tion, trust indenture, mortgage, lease or other contract  
3 to confer upon any obligee holding or representing a  
4 specified amount in bonds, or holding a lease, the right  
5 (in addition to all rights that may otherwise be con-

6 ferred), upon the happening of an event of default as de-  
7 fined in such resolution or instrument, by suit, action or  
8 proceeding in any court of competent jurisdiction:

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

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

24 To require said authority and the commissioners thereof  
25 to account as if it and they were the trustees of an express  
26 trust.

Sec. 27. Housing authorities created for counties are  
2 specifically empowered and authorized to borrow money,  
3 accept grants and exercise their other powers to provide  
4 housing for farmers of low income. In connection with  
5 such projects, such housing authorities may enter into  
6 such leases or purchase agreements, accept such convey-  
7 ances and rent or sell dwellings forming part of such proj-  
8 ects to or for farmers of low income, as such housing au-  
9 thority deems necessary in order to assure the achievement  
10 of the objectives of this act. Such leases, agreements or  
11 conveyances may include such covenants as the housing  
12 authority deems appropriate regarding such dwellings and  
13 the tracts of land described in any such instrument, which  
14 covenants shall be deemed to run with the land where  
15 the housing authority deems it necessary and the parties  
16 to such instrument so stipulate. Nothing contained in this  
17 section shall be construed as limiting any other powers  
18 of any housing authority.

Sec. 28. The owner of any farm operated, or worked upon,  
2 by farmers of low income in need of safe and sanitary hous-  
3 ing may file an application with a housing authority of a



4 county requesting that it provide for a safe and sanitary  
5 dwelling or dwellings for occupancy by such farmers of  
6 low income. Such applications shall be received and ex-  
7 amined by housing authorities in connection with the  
8 formulation of projects or programs to provide housing  
9 for farmers of low income.

Sec. 29. Notwithstanding any other evidence of legisla-  
2 tive intent, it is hereby declared to be the controlling leg-  
3 islative intent that if any provision of this act, or the ap-  
4 plication thereof to any person or circumstances, is held  
5 invalid, the remainder of the act and the application of  
6 such provision to persons or circumstances other than  
7 those as to which it is held invalid, shall not be affected  
8 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 ninety days from passage.

C. Hale Walker

Clerk of the Senate

J. R. Cluff

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 14

day of March, 1941.

Matthew M. Neely  
Governor.

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

Wm. S. O'BRIEN,  
Secretary of State