

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

SENATE BILL No. 135

(By Mr. Hardesty)



PASSED March 8, 1947

In Effect ninety days from Passage



135

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Senate Bill No. 135

(By MR. HARDESTY)

[Passed March 8, 1947; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, five, seven and eight, chapter ninety-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-nine, and to further amend said chapter by adding thereto a new section, designated two-a, all relating to combined municipal waterworks and sewerage systems, so as to provide for the acquisition, construction, extension and improvement of combined waterworks and sewerage systems and to issue revenue bonds in connection therewith, and providing that said chapter ninety-eight and all amendments thereto be designated article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one.

Be it enacted by the Legislature of West Virginia:

That chapter ninety-eight, acts of the Legislature of West

Virginia, regular session, one thousand nine hundred thirty-nine, and all amendments thereto, is hereby designated article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, and that sections two, three, four, five, seven and eight of said article and chapter be amended and reenacted, and that a new section, numbered two-a, be added thereto, all to read as follows:

Section 2. *General Powers.*—Any municipality may acquire or construct and thereafter maintain and operate a combined waterworks and sewerage system either within or partly without the corporate limits thereof under the provisions of this act and any municipality owning and operating either a waterworks or a sewerage system, but not both, may acquire or construct the waterworks or sewerage system which it does not then own and operate and in either of such cases such municipality may provide by ordinance that when such waterworks or sewerage system, or both, shall have been acquired or constructed same shall thereafter be owned, maintained and operated as a combined undertaking under the provisions of this act and any municipality owning and op-

15 erating a waterworks and sewerage system may by ordi-
16 nance combine same into a single undertaking. Any
17 municipality combining its waterworks and sewerage
18 system under the provisions of this act or pursuant to the
19 provisions of any other law may thereafter construct
20 extensions and improvements thereto under the provi-
21 sions of this act.

Sec. 2a. *Eminent Domain.*—For the purpose of con-
2 structing, extending or improving any combined water-
3 works and sewerage system under the provisions of this
4 act, or any property necessary or appropriate in connec-
5 tion therewith, any municipality shall have the right of
6 eminent domain, as provided by chapter fifty-four of the
7 code of West Virginia, one thousand nine hundred thirty-
8 one, as now or hereafter amended.

Sec. 3. *Issuance of Bonds.*—Whenever a waterworks
2 and sewerage system is included in a combined water-
3 works and sewerage system under this act and there are
4 unpaid and outstanding revenue bonds or any other ob-
5 ligations or securities previously issued which are pay-
6 able solely from the revenues of such waterworks or such

7 sewerage system or any part thereof, such outstanding
8 bonds, obligations or securities may be refunded by the
9 issue and exchange therefor of revenue bonds to be issued
10 under the provisions of this act with the consent of all
11 of the respective holders of such outstanding bonds, obli-
12 gations or securities. For the purpose of defraying the
13 cost of acquiring or constructing any such waterworks
14 or sewerage systems, or both, and for the purpose of
15 paying the cost of constructing any extensions or im-
16 provements to any such combined waterworks and sewer-
17 age system any such municipality may issue revenue
18 bonds under the provisions of this act. All such bonds
19 may be authorized, issued and sold pursuant to ordinance
20 in installments at different times, or an entire issue or
21 series may be sold at one time. Such bonds shall bear
22 interest at a rate not to exceed six per cent per annum
23 payable semi-annually and shall mature within the period
24 of usefulness of the project involved, to be determined
25 by the governing body and in any event not more than
26 forty years. Such bonds may be in such denomination or
27 denominations, may be in such form, either coupon or

28 registered, may carry such registration and conversion
29 privileges, may be executed in such manner, may be pay-
30 able in such medium of payment, at such place or places,
31 may be subject to such terms of redemption, with or with-
32 out a premium, may be declared to become due before the
33 maturity date thereof, may provide for the replacement of
34 mutilated, destroyed, stolen, or lost bonds, may be authen-
35 ticated in such manner and upon compliance with such
36 conditions, and may contain such other terms and cove-
37 nants, as may be provided by ordinance of the governing
38 body of the municipality. Notwithstanding the form or
39 tenor thereof, and in the absence of an express recital on
40 the face thereof that the bond is non-negotiable, all such
41 bonds shall at all times be, and shall be treated as, nego-
42 tiable instruments for all purposes. Such bonds shall be
43 sold in such manner as the governing body shall deter-
44 mine and if issued to bear interest at the rate of six per
45 cent per annum shall be sold for not less than par and
46 accrued interest. If any such bonds shall be issued to bear
47 interest at a rate of less than six per cent per annum, the
48 minimum price at which they may be sold shall be such

49 that the interest cost to such municipality of the proceeds
50 of such bonds shall not exceed six per cent per annum
51 computed to maturity according to the standard table of
52 bond values. In case any officer whose signature appears
53 on such bonds or coupons attached thereto shall cease to be
54 such officer before the delivery of the bonds to the pur-
55 chaser, such signature shall nevertheless be valid and
56 sufficient for all purposes, with the same effect as if he
57 had remained in office until the delivery of the bonds.
58 Such bonds shall have all the qualities of negotiable in-
59 struments under the law of this state. Whenever any out-
60 standing obligations or securities previously issued which
61 are payable solely from the revenues of any waterworks
62 or sewerage system included in a combined waterworks
63 and sewerage system under this act are refunded, such
64 outstanding obligations or securities shall be surrendered
65 and exchanged for revenue bonds of such combined
66 waterworks and sewerage system of a total principal
67 amount which shall not be more and may be less than the
68 principal amount of the obligations or securities ex-
69 changed and interest thereon to the date of exchange.

70 Provision may be made that each bond to be exchanged
71 for refunding bonds shall be kept intact and shall not be
72 cancelled or destroyed until the refunding bonds, and in-
73 terest thereon, have been finally paid and discharged, but
74 shall be stamped with a legend to the effect that such bond
75 has been refunded pursuant to this act.

Sec. 4. *Ordinance.*—The governing body of any mu-
2 nicipality availing itself of the provisions of this act
3 shall adopt an ordinance describing in a general way the
4 contemplated project. If it is intended to include in the
5 combined waterworks and sewerage system any exist-
6 ing waterworks or any existing sewerage system, such
7 ordinance shall determine that it be so included in such
8 combined system and shall describe in a general way
9 such existing waterworks or sewerage system to be in-
10 cluded in the combined waterworks and sewerage sys-
11 tem. Such ordinance shall state the means provided
12 for refunding any obligation unpaid and outstanding pay-
13 able solely from the revenue of any such waterworks
14 or sewerage system. Such ordinance shall determine the
15 period of usefulness of the contemplated project. If it

16 is intended to acquire or construct a combined water-
17 works and sewerage system or any part thereof, or to
18 extend and improve any such existing combined water-
19 works and sewerage system, the ordinance shall de-
20 scribe in a general way the works or property or system
21 to be acquired or constructed, or the extensions or im-
22 provements to be made. Such ordinance shall fix the
23 amount of revenue bonds proposed to be issued, the in-
24 terest rate or rates, and any other details in connection
25 with such bonds deemed advisable.

Sec. 5. *Publication of Ordinance; Posting; Petition for*
2 *Referendum; Election.*—After the ordinance for any proj-
2 ect under this act has been adopted and approved, it
3 shall be published once in a newspaper published and
4 having a general circulation in the municipality under-
5 taking such project, or, if there be no such newspaper,
6 then by posting such ordinance in at least three public
7 places in such municipality. If no petition is filed with
8 the clerk of the governing body as hereinafter provided,
9 within ten days after the publication or posting of such
10 ordinance, then after the expiration of such ten-day pe-

11 riod such ordinance shall be in full force and effect, but
12 if within such period of ten days a petition is filed with
13 the clerk of such municipality signed by fifteen per cent
14 of the number of voters voting at the last preceding gen-
15 eral municipal election, asking that the question of ac-
16 quiring, constructing, extending or improving or com-
17 bining such waterworks and sewerage systems as pro-
18 vided in such ordinance and the issuance of revenue
19 bonds in connection therewith, be submitted to the legal
20 voters of the municipality, the governing body of such
21 municipality shall call a special election in the manner
22 provided by law to vote upon such question. If it appears
23 upon the canvass of the election by the governing body
24 that a majority of the voters voting upon such question
25 at such election voted in favor thereof then such ordin-
26 ance shall be in full force and effect, but if a majority
27 of the votes cast are unfavorable, then such municipality
28 shall proceed no further under such ordinance.

Sec. 7. *Powers of Municipality to Make Regulations
and Rates; Change in Rates.*—The governing body of any
municipality availing itself of this act shall have power

4 to make, enact and enforce all needful rules and regula-
5 tions for the operation, management and maintenance
6 of the combined waterworks and sewerage system of such
7 municipality and for the use thereof, and shall also have
8 power to make, enact and enforce all needful rules and
9 regulations and ordinances for the care and protection
10 of any such system, which may be conducive to the
11 preservation of the public health, comfort and conven-
12 ience and to rendering the water supply of such munici-
13 pality pure and the sewerage harmless in so far as it
14 is reasonably possible so to do, and any such municipality
15 shall have power and it is hereby authorized to charge
16 the inhabitants thereof during the period that said bonds
17 are outstanding a reasonable compensation for the use
18 and service of such combined waterworks and sewerage
19 system and to establish charges or rates for such purpose.
20 Separate rates may be fixed for the water and sewer
21 services respectively or single rates for the combined
22 water and sewer services. Such charges or rates, whether
23 separate or combined, shall be sufficient at all times to
24 pay the cost of operation and maintenance of the com-

25 bined waterworks and sewerage system, provide an
26 adequate reserve fund, an adequate depreciation fund
27 and pay the principal of and interest upon all revenue
28 bonds issued under this act. Charges or rates shall be
29 established, revised and maintained by ordinance and
30 become payable as the governing body may determine
31 by ordinance, and such rates shall be changed from time
32 to time as needful, consistently with the provisions of
33 this act.

34 Such charges or rates whenever delinquent, as pro-
35 vided by ordinance of the municipality, shall be liens for
36 the amount thereof upon the real property served, and
37 the municipality shall have the power from time to time
38 to enforce such lien in a civil action to recover the money
39 due for such services rendered plus a reasonable attor-
40 ney's fee.

Sec. 8. *Liens; Enforcement; Receivership.*—There shall
2 be and there is hereby created a statutory mortgage lien
3 upon such combined waterworks and sewerage system
4 which shall exist in favor of the holder of bonds hereby
5 authorized to be issued, and each of them, and to and in

6 favor of the holder of the coupons attached to said bonds,
7 and such combined waterworks and sewerage system
8 shall remain subject to such statutory mortgage lien
9 until payment in full of the principal and interest of said
10 bonds. Any holder of bonds issued under the provisions
11 hereof, or of any coupons representing interest accrued
12 thereon, may, either at law or in equity, enforce the statu-
13 tory mortgage lien hereby conferred, and may, by proper
14 suit, compel the performance of the duties of the offi-
15 cials of the issuing municipality set forth herein. If there
16 be default in the payment of the principal of or interest
17 upon any of said bonds, any court having jurisdiction in
18 any proper action may appoint a receiver to administer
19 said combined waterworks and sewerage system on be-
20 half of the municipality with power to charge and col-
21 lect rates sufficient to provide for the payment of said
22 bonds and interest thereon, and for the payment of the
23 operating expenses and to apply the income and reve-
24 nues in conformity herewith and the ordinance provid-
25 ing for the issuance of such bonds.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest L. McMer
Chairman Senate Committee

R. S. Matthews
Chairman House Committee

Originated in the Senate

Takes effect ninety days from passage.

Howard Myers
Clerk of the Senate

J. W. Rip
Clerk of the House of Delegates

Arnold M. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 13
day of March, 1947.

Oliver Modder
Governor.



Filed in the Office of the Secretary of State
of West Virginia

MAR 13 1947
WM. S. CANTON,
SECRETARY OF STATE