WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 234

(By Mr. FOESENBARGER)

PASSED MARCH 1, 1971

In Effect NINETY DAYS FROM PASSAGE

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-10-71
AN ACT to amend and reenact section thirteen, article thirteenth, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article sixteen of said chapter eight by adding thereto a new section, designated section four-a; and to amend and reenact sections eight and seventeen of said article sixteen, relating to the rendering of essential or special municipal services and charges therefor and the jurisdiction of the public service commission with respect thereto; relating to municipal public works and revenue bond financing thereof; setting forth certain legislative findings with respect to motor vehicle parking facilities, the
development of commerce and business and the availability of property for charitable use; authorizing any municipality to lease as lessor space in or on a municipally owned motor vehicle parking facility for any business, commercial or charitable use; authorizing any municipality to lease as lessor or sell space over a municipally owned motor vehicle parking facility for any business, commercial or charitable use; authorizing any municipality to erect or construct any pedestrian viaduct, ramp, bridge or other pedestrian facility leading to and from a municipally owned motor vehicle parking facility and relating to payment therefor when connected to a privately owned building or other structure; relating to property taxation in connection with the foregoing; relating to the right of eminent domain for municipal public works generally and specifically in connection with motor vehicle parking facilities and business, commercial or charitable uses in connection therewith; relating to sinking funds, the sinking fund commission and the purchase of outstanding bonds, all in connection with municipal public works; and authorizing the transfer of the
net revenues from any municipal public works to the general fund or any special fund of the municipality and the expenditure thereof for any purpose for which such general or special fund may be expended.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article sixteen of said chapter eight be amended by adding thereto a new section, designated section four-a; and that sections eight and seventeen of said article sixteen be amended and reenacted, all to read as follows:

ARTICLE 13. TAXATION AND FINANCE.

§8-13-13. Special charges for municipal services.

1 Notwithstanding any charter provisions to the contrary, every municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the
collection and disposal of garbage, refuse, waste, ashes, trash and any other similar matter, shall have plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of such service, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such service reasonable rates, fees and charges to be collected in the manner specified in the ordinance:

Provided, That any sewerage and sewage disposal service and any service incident to the collection and disposal of garbage, refuse, waste, ashes, trash and any other similar matter shall be subject to the provisions of chapter twenty-four of this code. The municipality shall not, however, have a lien on any property as security for payments due under such ordinance. Notwithstanding the provisions of section four, article eleven of this chapter, any ordinance enacted or substantially amended under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall
be such municipality. In the event thirty percent of the qualified voters of the municipality by petition duly signed by them in their own handwriting and filed with the recorder of the municipality within fifteen days after the expiration of such publication protest against such ordinance as enacted or amended, the ordinance shall not become effective until it shall be ratified by a majority of the legal votes cast thereon by the qualified voters of such municipality at a regular municipal election or special municipal election, as the governing body shall direct. Voting thereon shall not take place until after notice of such submission shall have been given by publication as above provided for the publication of the ordinance after it is adopted or substantially amended. The powers and authority hereby granted to municipalities and to the governing bodies thereof are in addition and supplemental to the powers and authority named in any charters thereof. Notwithstanding any other provisions of this section, in the event rates, fees and charges herein provided for shall be imposed by the
governing body of any municipality for the purpose of replacing and in amounts approximately sufficient to replace in its general fund such amounts as shall be appropriated to be paid out of ad valorem taxes upon property within the municipality pursuant to an election duly called and held under the constitution and laws of the state to authorize the issuance and sale of general obligation bonds of the municipality for public improvement purposes, in the call for which election it shall be stated that the governing body of the municipality proposes to impose rates, fees and charges in specified amounts under this section for the use of one or more of the services above specified, which shall be related to the public improvement proposed to be made with the proceeds of the bonds, no notice, publication of notice, or referendum or election or other condition or prerequisite to the imposition of such rates, fees and charges shall be required or necessary other than the legal requirements for issuance and sale of such general obligation bonds.
ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-4a. Additional special provisions as to motor vehicle parking facilities.

1 (a) The Legislature hereby finds that the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the streets of many municipalities in this state; that the lack of adequate planning and supervision of the location of parking facilities, the parking of motor vehicles of all kinds and the lack of adequate parking facilities for motor vehicles of all kinds substantially impede the free circulation of traffic in, through and from many municipalities in this state, impede the rapid and effective fighting of fires and disposition of police officers therein, contribute to the location and relocation of commercial and business enterprises outside of urban areas and retard the development of commerce and business within many municipalities in this state, thereby giving rise to urban blight and adversely affecting or threatening to adversely affect the tax base of such municipalities; that
such parking crisis can be reduced by such municipalities providing adequate motor vehicle parking facilities strategically located there; that providing properly located terminal space for motor vehicles is a public responsibility; that fostering the development of commerce and business within municipalities, with the increased tax revenues resulting therefrom, is a public purpose; that fostering the availability of property for charitable use is a public purpose; that the closer the proximity between municipally owned motor vehicle parking facilities and commercial and business establishments the greater the development of commerce and business and the greater the level of revenue produced by such motor vehicle parking facilities; that the erection or construction of pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities leading to and from motor vehicle parking facilities so as to facilitate the movement of pedestrians to and from such motor vehicle parking facilities fosters the development of commerce and business and increases the level of revenue produced by such motor vehicle parking facilities; that the
leasing, particularly on a long term basis, and the selling of space for commercial or business use in connection with a municipally owned motor vehicle parking facility will aid the development of commerce and business, increase the level of revenue produced by such motor vehicle parking facility and maintain and increase the tax base of such municipalities; that in many instances the authority for the leasing of space as provided for in this section would assist in financing the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of any such motor vehicle parking facility; that the enactment of this section is for the general welfare of the public and is a public necessity; and that the means and measures authorized in this section are, as a matter of public policy, for the public purposes of such municipalities. This section is enacted in view of these findings and shall be liberally construed in the light thereof.

(b) The governing body or bodies, in its or their discretion, may provide by ordinance or ordinances:
(1) For the leasing by the board as lessor of space in or on a municipal public works which is a motor vehicle parking facility for any business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time and upon such other terms and conditions as such body or bodies or the board may agree to. In connection with the leasing of any such space, the board may agree to provide in or on such motor vehicle parking facility such structures, accommodations or improvements as may be necessary for such business, commercial or charitable use or such space may be leased upon condition that the lessee shall provide the same in or on the space so leased.

(2) For the leasing by the board as lessor or the selling of air space over a municipal public works which is a motor vehicle parking facility for any business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time in the case of a lease and upon such other terms and conditions as such body or bodies or the board may
agree to. Any lease or deed of sale of such air space may contain provisions (i) authorizing the use of such areas of the underlying motor vehicle parking facility as are essential for ingress and egress to and from such air space, (ii) relating to the support of any building or other structure to be erected in such air space, and (iii) relating to the connection of essential public or private utilities to any building or other structure in such air space.

(3) For the erection or construction by the board of any pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility leading to and from a municipal public works which is a motor vehicle parking facility; and any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility shall, for all purposes of this article, be considered to be a part of a municipal public works which is a motor vehicle parking facility with like effect as if the term “municipal public works” were expressly defined in section one of this article to include pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities: Provided, That any cost incurred by any
municipality or municipalities in erecting or constructing
any such pedestrian viaduct, ramp, bridge, tunnel or
other pedestrian facility which connects a munici-
pal public works which is a motor vehicle parking
facility with a privately owned building or buildings or
other privately owned structure or structures shall be
paid for by the owner or owners of such building or
buildings or such other structure or structures.

Any such lease may be privately negotiated without
any public notice or advertising, and any such sale may
be a public sale pursuant to the provisions of section
eighteen, article twelve of this chapter or such sale may
be privately negotiated, notwithstanding the provisions
of said section eighteen.

(c) The proceeds received from any lease, sale or
payment as provided in this section shall be deemed
revenue of the works and used as provided in section
seventeen of this article.

(d) Notwithstanding the fact that any motor vehicle
parking facility subject to the provisions of this article
is municipally owned and the fact that a lease or sale
under the provisions of subdivision (1) or subdivision (2), subsection (b) of this section is for a public purpose as declared in subsection (a) of this section, any leasehold interest under said subdivision (1), and any building, structure, accommodation or improvement erected, made or operated in any air space leased or sold under said subdivision (2) shall be subject to all property taxes, which shall be assessed and imposed against the lessee or grantee, as the case may be, unless the use of such leasehold interest, building, structure, accommodation or improvement is otherwise exempt from property taxation under the provisions of section nine, article three, chapter eleven of this code.

§8-16-8. Right of eminent domain.

1. Every such municipality shall have plenary power and authority to condemn any such municipal public works to be acquired, and any land, rights, easements, right-of-ways, franchises and other property, real or personal, deemed necessary, appropriate, useful or convenient for, and incidental to, the construction, reconstruction or establishment of any such works and space for business.
commercial or charitable use in connection therewith, or for the improvement, renovation, extension, enlargement, increase or equipment thereof or thereto, and in connection therewith shall have and may exercise all the rights, power, authority and privileges of eminent domain granted to municipalities under the laws relating thereto. Title to property shall be taken in the name of the municipality or jointly in the names of the participating municipalities. Proceedings for such appropriation of property shall be under and pursuant to chapter fifty-four of this code: Provided, That any such municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from funds provided under the authority of this article; and in any proceedings to condemn, such orders may be made as may be just to any such municipality and to the owners of the property to be condemned; and an understanding or other security may be required securing such owners against any loss or damage which may be sustained by reason of the failure of any such municipality to accept and pay for the
property, but such undertaking or security shall impose
no liability upon any such municipality, except such as
may be paid from the funds provided under the au-

thority of this article.

In the event of acquisition by purchase, the board may
obtain and exercise an option from the owners of said
property for the purchase thereof, and may enter into a
contract for the purchase thereof, and such purchase may
be made upon such terms and conditions, and in such
manner as the board may deem proper: Provided, how-
ever, That the exercise of such option, or the contract for
such purchase, or such purchase shall in no event create
any obligation of any such municipality, or create any
debt, liability or claim, except such as may be discharged
or paid from the funds provided under the authority of
this article.

In the event of the acquisition of any works already
constructed by purchase or condemnation, the board at
or before the time of the adoption of any ordinance de-
scribed in section seven hereof, shall cause to be deter-
mined what reconstruction, improvement, renovation,
extension, enlargement, increase, equipment or repair (including replacements) will be necessary, in order that such works and space for business, commercial or charitable use in connection therewith, if any, may be effective for their purpose, and an estimate of the cost thereof shall be included in the estimate of the cost required by section seven hereof, and the same shall be made upon the acquisition of the works and as a part of the cost thereof: Provided further, That no municipality or municipalities shall, under the authority conferred by this article, condemn any existing privately owned works (other than motor vehicle parking facilities) in operation at the date of the condemnation.

§8-16-17. Sinking fund; sinking fund commission; transfer of funds; purchase of outstanding bonds.

Before the issuance of any such bonds, the governing body or bodies shall, by ordinance or ordinances, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said
works, and shall set aside and pledge a sufficient amount
of the net revenues of the works hereby defined to mean
the revenues of the works remaining after the payment
of the reasonable expenses of repair (including replace-
ments), maintenance and operation, such amount to be
paid by the board into the sinking fund at intervals, to
be determined by ordinance or ordinances adopted prior
to the issuance of the bonds, for (a) the interest upon
such bonds as such interest shall fall due; (b) the neces-
sary fiscal agency charges for paying bonds and interest;
(c) the payment of the bonds as they fall due, or if all
bonds mature at one time, the proper maintenance of a
sinking fund sufficient for the payment thereof at such
time; and (d) a margin for safety and for the payment
of premium upon bonds retired by call or purchase as
herein provided, which margin, together with unused
surplus of such margin carried forward from the pre-
ceding year, shall equal ten percent of all other amounts
so required to be paid into the sinking fund. Such re-
quired payments shall constitute a first charge upon all
the net revenues of the works. Prior to the issuance of
the bonds, the board may, by ordinance or ordinances, be
given the right to use or direct the trustee or the state
sinking fund commission to use such sinking fund, or
any part thereof, in the purchase of any of the outstanding
bonds payable therefrom, at the market prices thereof,
but not exceeding the price, if any, at which the
same shall in the same year be payable or redeemable,
and all bonds redeemed or purchased shall forthwith be
cancelled, and shall not again be issued. After the pay-
ments into the sinking fund as herein required and after
reserving an amount deemed by the board sufficient
for repair (including replacements), maintenance and
operation for an ensuing period of not less than twelve
months and for depreciation, the board may at any time
in its discretion transfer all or any part of the balance
of the net revenues into the sinking fund or into a fund
for improvement, renovation, extension, enlargement, in-
crease or equipment for or to the works, or the governing
body or bodies may, notwithstanding the provisions of
section twenty, article thirteen of this chapter, transfer
all or any part of the balance of the net revenues to the
general or any special fund of the municipality or munici-
50 pitalities and use such revenues for any purpose for
51 which such general or special fund may be expended.
52 All amounts for the sinking fund and interest, as and
53 when set apart for the payment of same, shall be remitted
54 to the state sinking fund commission at such periods as
55 shall be designated in the ordinance or ordinances, but
56 in any event at least thirty days previous to the time
57 interest or principal payments become due, to be retained
58 and paid out by said commission consistent with the pro-
59 visions of this article and the ordinance or ordinances
60 pursuant to which such bonds have been issued. The
61 state sinking fund commission is hereby authorized to
62 act as fiscal agent for the administration of such sinking
63 fund under any ordinance or ordinances passed or adopted
64 pursuant to the provisions of this article and shall invest
65 all sinking funds as provided by general law.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 9th day of March, 1971.

[Signature]
Governor