

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 234

(By Mr. POFFENBARGER)

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

234

ENROLLED
Senate Bill No. 234

(By MR. POFFENBARGER)

[Passed March 1, 1971; in effect ninety days from passage.]

AN ACT to amend and reenact section thirteen, article thirteen, 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 con-
2 trary, every municipality which furnishes any essential
3 or special municipal service, including, but not limited
4 to, police and fire protection, parking facilities on the
5 streets or otherwise, parks and recreational facilities,
6 street cleaning, street lighting, street maintenance and
7 improvement, sewerage and sewage disposal, and the

8 collection and disposal of garbage, refuse, waste, ashes,
9 trash and any other similar matter, shall have plenary
10 power and authority to provide by ordinance for the
11 installation, continuance, maintenance or improvement
12 of such service, to make reasonable regulations with
13 respect thereto, and to impose by ordinance upon the
14 users of such service reasonable rates, fees and charges
15 to be collected in the manner specified in the ordinance:
16 *Provided*, That any sewerage and sewage disposal serv-
17 ice and any service incident to the collection and disposal
18 of garbage, refuse, waste, ashes, trash and any other
19 similar matter shall be subject to the provisions of chap-
20 ter twenty-four of this code. The municipality shall
21 not, however, have a lien on any property as security
22 for payments due under such ordinance. Notwithstand-
23 ing the provisions of section four, article eleven of this
24 chapter, any ordinance enacted or substantially amended
25 under the provisions of this section shall be published
26 as a Class II legal advertisement in compliance with
27 the provisions of article three, chapter fifty-nine of this
28 code, and the publication area for such publication shall

29 be such municipality. In the event thirty percent of the
30 qualified voters of the municipality by petition duly
31 signed by them in their own handwriting and filed with
32 the recorder of the municipality within fifteen days after
33 the expiration of such publication protest against such
34 ordinance as enacted or amended, the ordinance shall
35 not become effective until it shall be ratified by a ma-
36 jority of the legal votes cast thereon by the qualified
37 voters of such municipality at a regular municipal elec-
38 tion or special municipal election, as the governing body
39 shall direct. Voting thereon shall not take place until
40 after notice of such submission shall have been given
41 by publication as above provided for the publication
42 of the ordinance after it is adopted or substantially
43 amended. The powers and authority hereby granted to
44 municipalities and to the governing bodies thereof are
45 in addition and supplemental to the powers and author-
46 ity named in any charters thereof. Notwithstanding any
47 other provisions of this section, in the event rates, fees
48 and charges herein provided for shall be imposed by the

49 governing body of any municipality for the purpose of
50 replacing and in amounts approximately sufficient to
51 replace in its general fund such amounts as shall be
52 appropriated to be paid out of ad valorem taxes upon
53 property within the municipality pursuant to an election
54 duly called and held under the constitution and laws
55 of the state to authorize the issuance and sale of general
56 obligation bonds of the municipality for public improve-
57 ment purposes, in the call for which election it shall
58 be stated that the governing body of the municipality
59 proposes to impose rates, fees and charges in specified
60 amounts under this section for the use of one or more
61 of the services above specified, which shall be related
62 to the public improvement proposed to be made with
63 the proceeds of the bonds, no notice, publication of
64 notice, or referendum or election or other condition or
65 prerequisite to the imposition of such rates, fees and
66 charges shall be required or necessary other than the
67 legal requirements for issuance and sale of such general
68 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 in-
2 creased use by the public of motor vehicles of all kinds
3 has caused serious traffic congestion on the streets of
4 many municipalities in this state; that the lack of ade-
5 quate planning and supervision of the location of park-
6 ing facilities, the parking of motor vehicles of all kinds
7 and the lack of adequate parking facilities for motor
8 vehicles of all kinds substantially impede the free cir-
9 culation of traffic in, through and from many munici-
10 palities in this state, impede the rapid and effective fight-
11 ing of fires and disposition of police officers therein, con-
12 tribute to the location and relocation of commercial and
13 business enterprises outside of urban areas and retard
14 the development of commerce and business within many
15 municipalities in this state, thereby giving rise to urban
16 blight and adversely affecting or threatening to ad-
17 versely affect the tax base of such municipalities; that

18 such parking crisis can be reduced by such municipalities
19 providing adequate motor vehicle parking facilities stra-
20 tegically located there; that providing properly located
21 terminal space for motor vehicles is a public responsi-
22 bility; that fostering the development of commerce and
23 business within municipalities, with the increased tax
24 revenues resulting therefrom, is a public purpose; that
25 fostering the availability of property for charitable use
26 is a public purpose; that the closer the proximity be-
27 tween municipally owned motor vehicle parking facili-
28 ties and commercial and business establishments the
29 greater the development of commerce and business and
30 the greater the level of revenue produced by such motor
31 vehicle parking facilities; that the erection or construc-
32 tion of pedestrian viaducts, ramps, bridges, tunnels or
33 other pedestrian facilities leading to and from motor
34 vehicle parking facilities so as to facilitate the move-
35 ment of pedestrians to and from such motor vehicle
36 parking facilities fosters the development of commerce
37 and business and increases the level of revenue pro-
38 duced by such motor vehicle parking facilities; that the

39 leasing, particularly on a long term basis, and the selling
40 of space for commercial or business use in connection
41 with a municipally owned motor vehicle parking facility
42 will aid the development of commerce and business, in-
43 crease the level of revenue produced by such motor vehicle
44 parking facility and maintain and increase the tax base
45 of such municipalities; that in many instances the au-
46 thority for the leasing of space as provided for in this
47 section would assist in financing the construction, re-
48 construction, establishment, acquisition, improvement,
49 renovation, extension, enlargement, increase, equipment
50 or repair (including replacements) of any such motor
51 vehicle parking facility; that the enactment of this sec-
52 tion is for the general welfare of the public and is a
53 public necessity; and that the means and measures au-
54 thorized in this section are, as a matter of public policy,
55 for the public purposes of such municipalities. This sec-
56 tion is enacted in view of these findings and shall be
57 liberally construed in the light thereof.

58 (b) The governing body or bodies, in its or their dis-
59 cretion, may provide by ordinance or ordinances:

60 (1) For the leasing by the board as lessor of space in
61 or on a municipal public works which is a motor vehicle
62 parking facility for any business, commercial or chari-
63 table use to such person, for such fair and adequate
64 consideration, for such period or periods of time and
65 upon such other terms and conditions as such body or
66 bodies or the board may agree to. In connection with
67 the leasing of any such space, the board may agree to
68 provide in or on such motor vehicle parking facility
69 such structures, accommodations or improvements as
70 may be necessary for such business, commercial or
71 charitable use or such space may be leased upon con-
72 dition that the lessee shall provide the same in or on
73 the space so leased.

74 (2) For the leasing by the board as lessor or the sell-
75 ing of air space over a municipal public works which
76 is a motor vehicle parking facility for any business, com-
77 mercial or charitable use to such person, for such fair
78 and adequate consideration, for such period or periods
79 of time in the case of a lease and upon such other terms
80 and conditions as such body or bodies or the board may

81 agree to. Any lease or deed of sale of such air space
82 may contain provisions (i) authorizing the use of such
83 areas of the underlying motor vehicle parking facility
84 as are essential for ingress and egress to and from such
85 air space, (ii) relating to the support of any building
86 or other structure to be erected in such air space, and
87 (iii) relating to the connection of essential public or
88 private utilities to any building or other structure in
89 such air space.

90 (3) For the erection or construction by the board of
91 any pedestrian viaduct, ramp, bridge, tunnel or other
92 pedestrian facility leading to and from a municipal public
93 works which is a motor vehicle parking facility; and any
94 such pedestrian viaduct, ramp, bridge, tunnel or other
95 pedestrian facility shall, for all purposes of this article,
96 be considered to be a part of a municipal public works
97 which is a motor vehicle parking facility with like effect
98 as if the term "municipal public works" were expressly
99 defined in section one of this article to include pedestrian
100 viaducts, ramps, bridges, tunnels or other pedestrian
101 facilities: *Provided*, That any cost incurred by any

102 municipality or municipalities in erecting or constructing
103 any such pedestrian viaduct, ramp, bridge, tunnel or
104 other pedestrian facility which connects a munici-
105 pal public works which is a motor vehicle parking
106 facility with a privately owned building or buildings or
107 other privately owned structure or structures shall be
108 paid for by the owner or owners of such building or
109 buildings or such other structure or structures.

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

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

120 (d) Notwithstanding the fact that any motor vehicle
121 parking facility subject to the provisions of this article
122 is municipally owned and the fact that a lease or sale

123 under the provisions of subdivision (1) or subdivision
124 (2), subsection (b) of this section is for a public pur-
125 pose as declared in subsection (a) of this section, any
126 leasehold interest under said subdivision (1), and any
127 building, structure, accommodation or improvement erect-
128 ed, made or operated in any air space leased or sold
129 under said subdivision (2) shall be subject to all property
130 taxes, which shall be assessed and imposed against the
131 lessee or grantee, as the case may be, unless the use of
132 such leasehold interest, building, structure, accommoda-
133 tion or improvement is otherwise exempt from property
134 taxation under the provisions of section nine, article
135 three, chapter eleven of this code.

§8-16-8. Right of eminent domain.

1 Every such municipality shall have plenary power and
2 authority to condemn any such municipal public works
3 to be acquired, and any land, rights, easements, right-of-
4 ways, franchises and other property, real or personal,
5 deemed necessary, appropriate, useful or convenient for,
6 and incidental to, the construction, reconstruction or
7 establishment of any such works and space for business.

8 commercial or charitable use in connection therewith,
9 or for the improvement, renovation, extension, enlarge-
10 ment, increase or equipment thereof or thereto, and in
11 connection therewith shall have and may exercise all the
12 rights, power, authority and privileges of eminent domain
13 granted to municipalities under the laws relating thereto.
14 Title to property shall be taken in the name of the
15 municipality or jointly in the names of the participating
16 municipalities. Proceedings for such appropriation of
17 property shall be under and pursuant to chapter fifty-four
18 of this code: *Provided*, That any such municipality shall
19 be under no obligation to accept and pay for any property
20 condemned, and shall in no event pay for any property
21 condemned or purchased, except from funds provided
22 under the authority of this article; and in any proceedings
23 to condemn, such orders may be made as may be just to
24 any such municipality and to the owners of the property
25 to be condemned; and an understanding or other security
26 may be required securing such owners against any loss
27 or damage which may be sustained by reason of the
28 failure of any such municipality to accept and pay for the

29 property, but such undertaking or security shall impose
30 no liability upon any such municipality, except such as
31 may be paid from the funds provided under the au-
32 thority of this article.

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

45 In the event of the acquisition of any works already
46 constructed by purchase or condemnation, the board at
47 or before the time of the adoption of any ordinance de-
48 scribed in section seven hereof, shall cause to be deter-
49 mined what reconstruction, improvement, renovation,

50 extension, enlargement, increase, equipment or repair
51 (including replacements) will be necessary, in order that
52 such works and space for business, commercial or chari-
53 table use in connection therewith, if any, may be effec-
54 tive for their purpose, and an estimate of the cost thereof
55 shall be included in the estimate of the cost required by
56 section seven hereof, and the same shall be made upon
57 the acquisition of the works and as a part of the cost
58 thereof: *Provided further*, That no municipality or mu-
59 nicipalities shall, under the authority conferred by this
60 article, condemn any existing privately owned works
61 (other than motor vehicle parking facilities) in operation
62 at the date of the condemnation.

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

1 Before the issuance of any such bonds, the governing
2 body or bodies shall, by ordinance or ordinances, provide
3 for a sinking fund for the payment of the bonds and the
4 interest thereon, and the payment of the charges of bank-
5 ing institutions or trust companies for making payment of
6 such bonds and interest, out of the net revenues of said

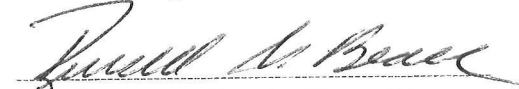
7 works, and shall set aside and pledge a sufficient amount
8 of the net revenues of the works hereby defined to mean
9 the revenues of the works remaining after the payment
10 of the reasonable expenses of repair (including replace-
11 ments), maintenance and operation, such amount to be
12 paid by the board into the sinking fund at intervals, to
13 be determined by ordinance or ordinances adopted prior
14 to the issuance of the bonds, for (a) the interest upon
15 such bonds as such interest shall fall due; (b) the neces-
16 sary fiscal agency charges for paying bonds and interest;
17 (c) the payment of the bonds as they fall due, or if all
18 bonds mature at one time, the proper maintenance of a
19 sinking fund sufficient for the payment thereof at such
20 time; and (d) a margin for safety and for the payment
21 of premium upon bonds retired by call or purchase as
22 herein provided, which margin, together with unused
23 surplus of such margin carried forward from the pre-
24 ceding year, shall equal ten percent of all other amounts
25 so required to be paid into the sinking fund. Such re-
26 quired payments shall constitute a first charge upon all
27 the net revenues of the works. Prior to the issuance of

28 the bonds, the board may, by ordinance or ordinances, be
29 given the right to use or direct the trustee or the state
30 sinking fund commission to use such sinking fund, or
31 any part thereof, in the purchase of any of the outstand-
32 ing bonds payable therefrom, at the market prices there-
33 of, but not exceeding the price, if any, at which the
34 same shall in the same year be payable or redeemable,
35 and all bonds redeemed or purchased shall forthwith be
36 cancelled, and shall not again be issued. After the pay-
37 ments into the sinking fund as herein required and after
38 reserving an amount deemed by the board sufficient
39 for repair (including replacements), maintenance and
40 operation for an ensuing period of not less than twelve
41 months and for depreciation, the board may at any time
42 in its discretion transfer all or any part of the balance
43 of the net revenues into the sinking fund or into a fund
44 for improvement, renovation, extension, enlargement, in-
45 crease or equipment for or to the works, or the governing
46 body or bodies may, notwithstanding the provisions of
47 section twenty, article thirteen of this chapter, transfer
48 all or any part of the balance of the net revenues to the

49 general or any special fund of the municipality or mu-
50 nicipalities 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.

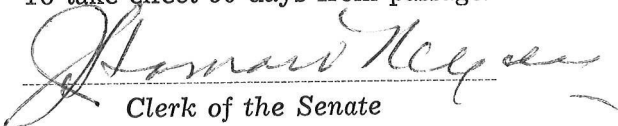
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

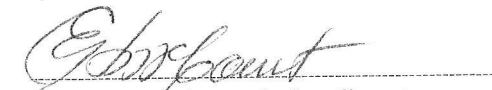

Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

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


Governor

PRESENTED TO THE
GOVERNOR

Date 3/5/71

Time 1:38 p.m.