

SENATE, No. 2224

STATE OF NEW JERSEY

INTRODUCED APRIL 19, 1971

By Senators WALLWORK, MATTURRI, WALDOR
and GIULIANO

Referred to Committee on Agriculture, Conservation
and Natural Resources

AN ACT to amend "An act concerning the Passaic Valley Sewerage Commissioners and the sanitation facilities constructed or to be constructed by it, providing for the issuance of bonds and other obligations for financing such facilities, and prescribing powers and duties of said commissioners and of municipalities with respect thereto, and supplementing chapter 14 of Title 58 of the Revised Statutes," approved August 19, 1953, (P. L. 1953, c. 388).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 2 of P. L. 1953, c. 388 (C. 58:14-34.11) is amended
2 to read as follows:

3 2. As used in this act, unless a different meaning clearly appears
4 from the context:

5 (a) "Original act" shall mean chapter 14 of Title 58 of the
6 Revised Statutes (section 58:14-1, et seq.) and the acts continued
7 thereby and the acts heretofore adopted amendatory thereof or
8 supplemental thereto;

9 (b) "Commissioners" shall mean the Passaic Valley Sewerage
10 Commissioners, the body politic and corporate of the State of New
11 Jersey appointed, organized, created and existing pursuant to the
12 original act;

13 (c) "Sewerage system" shall mean the Passaic Valley intercept-
14 ing sewer together with its branches and appurtenances and all
15 plants, structures and other real and tangible personal property
16 acquired, constructed or operated by the commissioners and such
17 other plants, structures and other real and tangible personal prop-

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

18 erty as may be acquired or constructed by the commissioners pur-
19 suant to this act;

20 (d) "Municipality" shall mean any city of any class, any
21 borough, village, town, township, or any other municipality other
22 than a county or a school district;

23 (e) "Contracting municipality" shall mean any municipality
24 entitled to rights in and use of the sewerage system by virtue of
25 contributions heretofore made by it to the commissioners toward
26 the costs of construction of the sewerage system pursuant to the
27 provisions of the original act and any contract heretofore made
28 between the commissioners and one or more municipalities with
29 respect to such construction and contributions;

30 (f) "Governing body" shall mean the commission, council, board
31 or body, by whatever name it may be known, having charge of the
32 finances of a municipality;

33 (g) "Project" shall mean any [alteration, addition] or [modifi-
34 cation to the trunk sewer,] *all sewers, conduits, pipe lines, mains,*
35 *pumping and ventilating stations, sewage or other water-borne*
36 *waste treatment or disposal systems, plants, works or apparatus,*
37 [treatment works, dispersal field pumping station, structures,
38 equipment and appurtenances located southerly and easterly of
39 Wilson avenue and Avenue P in the city of Newark, New Jersey,
40 which alteration, addition or modification is] *connections or out-*
41 *falls* deemed by the [commissioner] *commissioners* to be necessary
42 or desirable [and comprises only rehabilitation of the dispersal
43 field, rehabilitation and modernization] *as part of the* [sedimenta-
44 tion basins, construction of new grit chambers, bar racks and fine
45 screens, rehabilitation or modernization or electrification of the
46 pumping station and] *sewerage system, including* equipment
47 [with] or [without installation of additional pump units or direct-
48 connected Diesel pump units or electrical substations, construction
49 of] *appurtenances thereof and any real or tangible personal prop-*
50 *erty* necessary [enclosing buildings, and miscellaneous repairs and
51 reconstruction necessary in connection with the foregoing.] *or*
52 *desirable therefor and including also all improvements necessary to*
53 *relieve or prevent pollution of the Passaic river and Newark bay;*
54 (h) "Bonds" shall mean bonds or other obligations of the com-
55 missioners issued pursuant to this act; and
56 (i) "System revenues" shall mean the moneys paid or required
57 to be paid by any contracting municipality or any other user of the
58 sewerage system to the commissioners on account of the cost of
59 maintenance, repair and operation of the sewerage system.

1 2. Section 5 of P. L. 1953, c. 388 (C. 58:14-34.14) is amended to
2 read as follows:

3 5. (a) For the purpose of raising funds to pay the cost of any of
4 the projects, as defined in section 1 of this act, [or such projects as
5 may be required by law,] or any part of said projects, the com-
6 missioners shall have power from time to time to authorize and
7 provide for the issuance of its bonds pursuant to this act. Such
8 bonds shall be authorized by and be issued pursuant to a resolu-
9 tion or resolutions (in this act sometimes referred to as "bond
10 resolution") of the commissioners which shall (1) describe the
11 project or projects in brief and general terms sufficient for
12 reasonable identification, and (2) state the amount of bonds au-
13 thorized thereby *for or with respect to said project or projects.*
14 There shall be included in such cost of such project or projects
15 such amounts as the commissioners shall deem necessary or
16 advisable to provide for the cost of issuance of bonds[,] and of
17 financial, legal[,] and accounting services and advice, for *discount*
18 *on bonds, for engineering, inspection[,] and professional costs, and*
19 *for all such other expenses as may be necessary and incident to the*
20 *financing, acquisition, construction and completion of such project*
21 *or projects and the placing of the same in operation, and also such*
22 *provision or reserves for working capital, operating, maintenance*
23 *or replacement expenses, or payment or security of principal of or*
24 *interest on any bonds or notes of the commissioners during or after*
25 *such financing, acquisition, construction and completion as the com-*
26 *missioners may determine to be necessary or advisable.*

27 (b) After adoption of a bond resolution, the commissioners shall
28 (1) cause copy thereof, certified by its secretary, and a notice of the
29 date, time and place of the hearing hereinafter mentioned to be
30 mailed to the governing body of each contracting municipality; (2)
31 cause such notice to be published at least once in a newspaper of
32 general circulation published in the city of Newark, New Jersey;
33 and (3) not sooner than 30 days after such publication and after
34 such mailing, hold a public hearing in the Passaic Valley Sewerage
35 District on said bond resolution at which any contracting mu-
36 nicipality may appear in person or by agent or attorney and be
37 heard with respect thereto. Said bond resolution shall take effect
38 on the thirtieth day after the conclusion of such public hearing
39 unless prior to such thirtieth day the governing bodies of contract-
40 ing municipalities shall have caused to be filed with the secretary
41 of the commissioners copies, certified by their respective clerks of
42 resolutions adopted by such governing bodies respectively objecting

43 to said bond resolution and it shall appear that the contracting
44 municipalities on behalf of which such objecting resolutions were
45 adopted [contributed] paid 25% or more of the total [flow into]
46 amount of moneys received by the [system, exclusive of excess flow
47 and flow contributed because of lease arrangements,] commis-
48 sioners, exclusive of moneys received because of lease arrange-
49 ments or because of surcharges or default payments, from [the]
50 contracting municipalities during the calendar year ending on the
51 last day of December next preceding the date of such public hearing.

52 (c) Upon the taking effect of a bond resolution, the commis-
53 sioners shall have power to incur indebtedness, borrow money and
54 issue its bonds for the purpose or respective purposes described
55 therein. Such bonds shall be authorized by the bond resolution and
56 may be issued in one or more series and shall bear such date or
57 dates, mature at such time or times not exceeding 40 years from the
58 date thereof, bear interest at such rate or rates [not exceeding 6%
59 per annum] and payable at such times, be in such denomination or
60 denominations, be in such form[,] either coupon or registered,
61 carry such conversion or registration privileges, have such rank or
62 priority, be executed in such manner, be payable from such sources
63 in such medium of payment at such place or places within or without
64 the State, and be subject to such terms of redemption (with or
65 without premium) as the bond resolution may provide or as may be
66 determined by the commissioners in such other manner as the bond
67 resolution may authorize.

68 (d) Bonds of the commissioners shall be sold by the commis-
69 sioners at public sale not less than 6 nor more than 40 days after
70 notice of such sale has been published at least once in a newspaper
71 published in the city of Newark and in a financial newspaper
72 published and circulating in New York City, which shall state the
73 terms of sale as determined by the commissioners. The bonds of
74 each issue sold by the commissioners shall be [sold at such a price
75 that] offered at such public sale by the commissioners on the basis
76 of the interest cost to maturity of the money received for [any]
77 such issue [of bonds] (computed according to standard tables of
78 bond values) [shall not exceed 6% per annum] and at such public
79 sale, unless all proposals for the bonds are rejected, shall be
80 awarded upon the proposal offering the lowest such interest cost.

81 (e) After adoption of a bond resolution, the commissioners, in
82 anticipation of the issuance of bonds, shall have power to incur in-
83 debtedness, borrow money and issue negotiable notes. Any such
84 note shall be designated "bond anticipation note" and shall contain

85 a recital that it is issued in anticipation of the issuance of bonds.
 86 Such notes may be issued for a period of not exceeding 1 year and
 87 may be renewed from time to time for periods of not exceeding 1
 88 year, but all such notes, including renewals thereof, shall mature
 89 and be paid not more than 5 years from the date of the original
 90 notes. Such notes may be sold at public or private sale, bear interest
 91 at such rate or rates, be in such denomination or denominations, be
 92 in such form, have such rank or priority, be executed in such
 93 manner, and be payable at such place or places within or without
 94 the State as a resolution of the commissioners may provide. Bond
 95 anticipation notes may be sold at private sale pursuant to resolu-
 96 tion of the commissioners, or by its treasurer expressly designated
 97 by resolution to sell such notes. The treasurer making any such
 98 sale shall report in writing to the commissioners at the next meeting
 99 thereof as to the principal amount, interest rate, and maturities of
 100 the notes sold, the price obtained and the name of the purchaser.

1 3. Section 7 of P. L. 1953, c. 388 (C. 58:14-34.16) is amended to
 2 read as follows:

3 7. Any provision of any law to the contrary notwithstanding, any
 4 bond or other obligation issued pursuant to this act shall be fully
 5 negotiable within the meaning and for all purposes of the
 6 **[negotiable instruments law]** uniform commercial code of the State,
 7 and each holder or owner of such a bond or other obligation, or of
 8 any coupon appurtenant thereto, by accepting such bond or coupon
 9 shall be conclusively deemed to have agreed that such bond, obliga-
 10 tion or coupon is and shall be fully negotiable within the meaning
 11 and for all purposes of said **[negotiable instruments law]** uniform
 12 commercial code.

1 4. Section 11 of P. L. 1953, c. 388 (C. 58:14-34.20) is amended
 2 to read as follows:

3 11. **[(a)]** For all purposes of the original act, and of any con-
 4 tract made or hereafter made thereunder or for the purposes
 5 thereof, the cost and expense of maintenance, repair and operation
 6 of the sewerage system for any year **[(as herein referred to and**
 7 **described)]** shall be apportioned annually among the contracting
 8 municipalities and other users thereof in proportion to the amount
 9 of sewage by them respectively delivered and discharged into the
 10 sewerage system and, except as provided in subsequent paragraphs
 11 of this section, **]** shall be deemed to include, and shall include, in
 12 addition to all other items heretofore included, all interest becom-
 13 ing due prior to the end of such year on bonds or other obligations
 14 of the commissioners issued pursuant to this act, plus the principal

15 *or redemption premium* of any such bonds or obligations becoming
16 due~~], recalled for redemption,]~~ prior to the end of such year, ~~[and~~
17 ~~redemption premium (if any)]~~ plus such sums as the commis-
18 sioners may determine or by the terms of any contract be required
19 to set aside during such year as a reserve for payment or security
20 of principal of or interest on any such bonds or obligations or be
21 by the terms of any contract required to set aside during such year
22 as a reserve for any other purpose. The contracting municipalities
23 and other users of the sewerage system are hereby authorized and
24 directed to do and perform any and all acts and things necessary,
25 convenient or desirable to pay to the commissioners annually the
26 total cost and expense (as herein referred to and described) of
27 maintenance, repair and operation of the sewerage system appor-
28 tioned as above provided. If any payment on account of the cost
29 and expense (as herein referred to and described) of maintenance,
30 repair and operation of the sewerage system, or any part thereof,
31 due to the commissioners under the original act or any such
32 contract from a contracting municipality or other user shall remain
33 unpaid for 30 days after the commissioners have notified such
34 contracting municipality or other user by mail of the amount due
35 and the due date, such contracting municipality or other user shall
36 be charged with and shall pay to the commissioners interest on the
37 amount unpaid from thirty days after such notice of the commis-
38 sioners was mailed until paid, at the rate of ~~6%~~ per annum. Every
39 obligation assumed by or imposed upon any contracting mu-
40 nicipality or other user by the original act or any such contract or
41 this act shall be enforceable by the commissioners by appropriate
42 action, suit or proceeding, and the commissioners may have and
43 pursue any and all remedies provided by law for the enforcement
44 of such obligation.

45 ~~[(b)~~ The provisions of paragraph (a) of this section 11 shall not
46 apply in the case of any contracting municipality which (1) at or
47 before the end of the public hearing on a bond resolution provided
48 for by paragraph (b) of section 5 files a written declaration or
49 intention with the commissioners stating that said contracting mu-
50 nicipality intends itself to finance all or any part of its share of the
51 cost of any project or any part thereof to the financing of which
52 said bond resolution relates, (2) prior to the publication of the
53 notice of sale of bonds provided for in paragraph (d) of section 5
54 enters into an agreement relating to such bonds with the commis-
55 sioners establishing a just and equitable formula pursuant to which
56 annual adjustments shall be made in amounts due to the commis-

57 sioners on account of the issuance of such bonds and to such con-
58 tracting municipality on account of the payment of said share, as
59 hereinafter determined, in the event of and as a result of any in-
60 crease or decrease in the proportionate share of such contracting
61 municipality in the cost and expense of maintenance, repair and
62 operation of the sewerage system and (3) pays said share, as here-
63 inafter determined, to the commissioners not later than thirty days
64 after the commissioners shall have sold the bonds, as provided in
65 paragraph (e) of section five, for the purpose of financing any
66 project. Any contracting municipality which does not file a declara-
67 tion of intention with, or does not pay its share to, the commis-
68 sioners in accordance with the foregoing provision, shall be subject
69 to the provisions of paragraph (a) of this section but shall not be
70 barred from filing a declaration of intention with regard to any
71 subsequent project.】

72 【(c) The share of any contracting municipality filing such a
73 declaration of intention shall be determined and apportioned, for
74 purposes of computing the payment to be made to the commis-
75 sioners as provided in paragraph (b) of this section, on the basis
76 of its proportionate share of the cost and expense of such main-
77 tenance, repair and operation for the year next preceding the year
78 of adoption of the bond resolution. The share of any contracting
79 municipality filing such declaration of intention and making such
80 payment shall thereafter be determined and apportioned in the
81 same manner and mode of procedure by which its share of any other
82 cost and expense of maintenance, repair and operation of the
83 sewerage system was determined in and for any year prior to the
84 adoption of the bond resolution under the terms of the original act
85 and any contract between such contracting municipality and the
86 commissioners made thereunder or for the purpose of the original
87 act, and the share of such a contracting municipality shall be in-
88 creased or decreased only if its proportionate share of any other
89 cost and expense of maintenance, repair and operation of the sewer-
90 age system is increased or decreased (as the case may be) under
91 the original act and any such contract between such contracting
92 municipality and the commissioners made thereunder or for the
93 purposes of the original act by reason of the amount of sewage
94 actually delivered or discharged into the sewerage system. The
95 obligation of any contracting municipality to pay its share as stated
96 in a declaration of intention and its obligation to pay any addi-
97 tional amount shall be enforceable in the same manner as any other
98 obligation assumed by or imposed upon any contracting munic-

99 ipality by the original act or any contract made thereunder or for
100 the purpose of the original act, or by this act.】

101 【(d) Any contracting municipality filing a written declaration
102 of intention with the commissioners under the provisions of para-
103 graph (b) of this section 12 may finance its share of the cost of the
104 project by the issuance of notes, bonds or other obligations in the
105 manner or mode of procedure provided by the local bond law con-
106 stituting sections 40:1-1 to 40:1-88, inclusive, of the local bond law,
107 but without regard to and notwithstanding any limitations on the
108 amount or percentage of indebtedness which any municipality may
109 incur under said local bond law or any other law of the State.】

1 5. Section 15 of P. L. 1953, c. 388 (C. 58:14-34.24) is amended
2 to read as follows:

3 15. The State of New Jersey does hereby pledge to and covenant
4 and agree with the holders of any bonds that the State will not
5 limit or alter the rights hereby vested in the commissioners to
6 acquire, construct, maintain, reconstruct and operate the sewerage
7 system and to fulfill the terms of any agreement made with the
8 holders of such bonds or other obligations, and will not in any way
9 impair the rights or remedies of such holders, and will not modify
10 in any way the exemptions from taxation provided for in this act,
11 until the bonds, together with interest thereon, with interest on any
12 unpaid installments of interest, and all costs and expenses in con-
13 nection with any action or proceeding by or on behalf of such
14 holders, are fully met and discharged; *provided that such pledge*
15 *to and covenant and agreement with the holders of any bonds issued*
16 *on or after January 1, 1971 does not prohibit authorization here-*
17 *after for the commissioners, notwithstanding any other provision*
18 *of this act or of the original act or acts amendatory thereof or*
19 *supplemental thereto, to apportion the cost and expense of main-*
20 *tenance, repair and operation of the sewerage system (as in section*
21 *11 hereof referred to and described) among the contracting mu-*
22 *nicipalities and other users thereof, upon any basis or bases in*
23 *addition to or other than the proportion of the amount of sewage by*
24 *them delivered and discharged into the sewerage system.*

1 6. This act shall take effect immediately.

STATEMENT

The bill is introduced for the purpose of amending P. L. 1953, c. 388 with respect to various technical points concerning financing matters. The amendments were suggested to the Pasasic Valley Sewerage Commissioners by the commissioners' financial advisor

and bond counsel to facilitate and aid in financing through the issuance of revenue bonds projects mandated by the State Department of Environmental Protection and the courts.

The definition of "project" is amended to provide clear statutory authorization for the commissioners to comply with an order of the court mandating certain projects and the financing thereof. *Department of Health vs. Passaic Valley Sewerage Commission*, 100 N. J. Super. 540, 242 A. 2d 675 (1968), affirmed 105 N. J. Super. 565, 253 A. 2d 577 (1969).

The commissioners are authorized by the amendment of section 5, paragraph (a) to finance, by bonding, necessary financial reserves rather than requiring heavy taxing for such reserves. The necessity for a governmental agency issuing revenue bonds to establish and maintain such reserves is based on the expectations of the purchasers of such bonds, and the commissioners would be at a disadvantage in marketing bonds and notes if no provision could be made to fund satisfactory reserves. The revision of paragraph (b) is recommended to avoid legal problems implicit in the difficulty of making entirely accurate flow measurements, and the difficulty of legally ascertaining "excess flows." Paragraph (c) includes authority for the commissioners to make certain determinations in resolutions supplementary to the bond resolution, in the manner provided in the bond resolution, so that financial determinations, which ought to be made at the time of sale of bonds or pursuant to the best bid for bonds, will not have been previously fixed by the bond resolution. Paragraph (d) includes a power for the commissioners to reject all bids at a bond sale if the best bid is determined by the commissioners not to be reasonable. Paragraph (e) provides the alternative of issuing bond anticipation notes which have the advantage of allowing the commissioners to reduce the amount of interest cost during the period of construction of a project and permitting the commissioners a degree of flexibility in choosing a favorable bond market.

The deletion of paragraphs (b), (c) and (d) from section 11 is provided pursuant to the recommendations of the commissioners' financial advisers, nationally prominent investment bankers, who have advised the commissioners that the deleted paragraphs would require a needlessly complicated bond sale by introducing an element of uncertainty as to the amount of bonds to be sold by the commissioners until the time of the public hearing. It is their further opinion that bidders would consider the dependence of the commissioners' financing on the borrowing capacity of third parties

to be a negative factor affecting the interest costs proposed by such bidders.

The statutory covenant of the State (in section 15) is amended to provide expressly that legislation implementing equitable rate distribution, or other basis of apportioning costs among the contracting municipalities, shall not be prohibited by the statutory covenant and shall therefore not be subject to attack as an unconstitutional impairment of contract.