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# Private Acts of 1935 Chapter 371

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Sincerely,

The University of Tennessee  
County Technical Assistance Service  
226 Anne Dallas Dudley Boulevard, Suite 400  
Nashville, Tennessee 37219  
615.532.3555 phone  
615.532.3699 fax  
[www.ctas.tennessee.edu](http://www.ctas.tennessee.edu)

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# Private Acts of 1935 Chapter 371

**SECTION 1.** That the territory and the inhabitants thereof within the following described boundaries in Hamilton County, Tennessee, to wit, beginning:

At a point on the east bank of Chickamauga Creek, the same being at or near the southeast corner of the bridge on the Lee Highway and across Chickamauga Creek; thence with the meanderings of Chickamauga Creek in a southerly [sic] direction to A. S. Rosenwig's east line; thence northwardly with the said Rosenwig's east line to the Luke Lea south boundary line; thence with Lea's south line eastwardly to the said Lea's east line; thence northwardly along his east line to his north line to where the said Lea corners with Mrs. Ruth Martin; thence continuing northwardly on Mrs. Martin's east line to where it joins the Marion Wofford property; thence westwardly to the rear of the said Marion Wofford property; thence northwardly again to Mrs. Ruth Martin's property line; thence eastwardly to the Davidson public road; thence northwardly along this road to Mrs. Ruth Martin's north boundary line; thence running northwardly on this line to J. F. Bork's east line; thence northwardly on Bork's east line to the Brainerd road and across said road north along the east lines of E. F. Erp and Dennis Corbly to Cobleigh's north line; thence westwardly on Cobleigh's said north line to Mrs. Cobleigh's east line; thence south on the said Mrs. Cobleigh's line to H. G. Ney's property; thence westwardly along the said Ney's north line to the Hickory Valley road; thence south on said road to Joe W. Clift's property line; thence west along the north boundary line of the said J. W. Clift property to the property line of Mrs. J. E. Conner; thence northwardly to the Dupree place; thence westwardly on the south line of the Dupree place to the Lee Highway; thence westwardly along said highway to the Western & Atlantic Railway; thence northwardly along said railway to the north line of tract No. 26 owned by Frank Spurlock; thence west along the north line of said tract No. 26 to the Chickamauga road; thence southwardly along said road to the north line of Corley & Baisden; thence westwardly along said Corley & Baisden line to the section line; thence with said section line to Chickamauga Creek; thence southwardly with the meanderings of Chickamauga Creek to the Lee Highway Bridge, the point of beginning; be, and the same are hereby created and incorporated as the "East Brainerd Taxing District" for the purpose of constructing and maintaining a system of waterworks.

**SECTION 2.** That the officers of said taxing district shall consist of three commissioners and a Treasurer. Said Commissioners and their successors in office shall constitute, and the same are hereby declared to be, a Board of Commissioners of East Brainerd Taxing District, and by that name shall sue and be sued, plead and be impleaded, and have continual succession for the purposes contained in this Act. The first Board of Commissioners of said East Brainerd Taxing District shall be A. S. Rosensweig, O. L. Blackurel, and D. B. Vance, and they shall serve until the first Monday in June, 1939, and until the election and qualification of their successors. On the First Tuesday in May, 1939, a Board of Commissioners shall be elected to serve as Commissioners for said taxing district for four years from the first Monday in June, 1939, and until the election and qualification of their successors; and every four years after the First Monday in May, 1939, the Board of Commissioners shall be elected for said taxing district.

At all elections under this Act all bona fide citizens twenty-one years of age and over, who shall have resided in said taxing district for sixty days next preceding the election, and all non-resident freeholders within said taxing district twenty-one years of age and over, who shall have been such freeholders for 60 days next preceding the election, shall be qualified voters of said taxing district; *provided* they have complied with the general laws of the State in reference to the qualifications of voters.

It shall be the duty of the Board of Election Commissioners or other authority empowered to hold elections in Hamilton County, Tennessee, to hold all elections under this Act at some convenient place or places in said taxing district, after having given ten days' previous notice by written or printed advertisement posted in at least three public places in said taxing district and by at least two notices in some newspaper published in Chattanooga, stating the time and place or places of such election.

The three persons receiving the highest number of votes at an election for the Board of Commissioners under this Act shall be declared elected for the term, and receive certificate of election from the officer or officers holding the election.

In the event of a tie vote for any one of said Board, the Board of Commissioners then in office shall cast a vote for one of these persons so tied and elect him.

Said Board of Commissioners and any other officer of said taxing district shall, before entering upon his duties, take and subscribe an oath to honestly and faithfully discharge their duties as such officers.

**SECTION 3.** That the Board of Commissioners of said taxing district shall hold a regular meeting as soon as convenient after this Act becomes effective for the transaction of general business; and its regular meetings for business shall be on the third Tuesday in April, July, October and January of each year. And special meetings may be held at any time on call of a majority Board or of the President of the Board.

Said Board shall elect one of its members President of the Board.

In the event of the resignation, death or mental or physical disability of any one of said Board, the other two shall elect his successor to serve until after the next election.

Said commissioners shall serve without compensation.

**SECTION 4.** That the treasurer of said taxing district shall be elected by said Board of Commissioners, or a majority thereof, to serve for four years, and his successor will be elected every four years. He shall collect all bills due the corporation and receive all taxes and other funds belonging to it, and shall be the only officer of the corporation receiving pay for services. His compensation shall be fixed by said Board of Commissioners not to exceed Three Hundred and Fifty (\$350.00) Dollars per year. He shall give proper bond, to be approved by the Board of Commissioners, with surety for faithful discharge of his duties, the amount of the bond to be fixed by said Board at not less than the largest amount of money that may be in his hands at any one time. He shall pay out money only as authorized by said Board or a majority thereof.

**SECTION 5.** That said Board of Commissioners, or a majority thereof, shall have power to make all proper rules and by-laws and pass resolutions not conflicting with the constitution and laws of the State of Tennessee (Tennessee\*) to carry out the purposes of this Act, but for no other purpose. Said Board is authorized to acquire by contract or condemnation as now provided by law right of way, and construct, establish, operate and maintain a system of waterworks to extend along or near the Brainerd road from the west end of said taxing district to the east end thereof, and along any and all other highways within said district, with power to construct lateral branches within said taxing district. Said Board is authorized to purchase, rent or lease a suitable location, either within or beyond the limits (limits\*) of said taxing district, for the erection and maintenance of any necessary reservoirs or standpipes for the storage of water.

Said Board shall provide for proper wells, water mains, pumps, and standpipes, and the procuring and purchasing of water to supply the same.

**SECTION 6.** That the East Brainerd Taxing District be and it is hereby authorized to borrow money and issue bonds therefor in the aggregate amount of \$40,000 for the purpose of providing funds for the acquisition and construction of a waterworks system in the East Brainerd Taxing District.

**SECTION 7.** That said bonds shall bear interest at no more than 6% per annum, payable semi-annually, both principal and interest to be payable at such place or places in the East Brainerd Taxing District or elsewhere as may be designated by resolution of the Board of Commissioners of the East Brainerd Taxing District.

**SECTION 8.** That said bonds may be issued in one or more series, shall mature at such time or times not exceeding thirty years from their respective dates and shall be in such form and amount and shall be sold at public or private sale in such manner and for such prices as the Board of Commissioners of the East Brainerd Taxing District may determine, but in no event shall the said bonds be sold for less than par. The proceeds derived from the sale of said bonds shall be paid to the Treasurer of the said District to the credit of a fund to be designated as the "Waterworks Construction Fund" and shall be used exclusively for the purposes above recited.

**SECTION 9.** That said bonds shall not be issued until and unless authorized by a resolution of the Board of Commissioners of the East Brainerd Taxing District at any regular or called meeting of said body.

**SECTION 10.** That the credit of the East Brainerd Taxing District shall be and the same is hereby irrevocably pledged to the payment of interest and principal of said bonds. There is hereby levied a tax of 100 cents on the \$100 valuation upon all the taxable property in the East Brainerd Taxing District for the year 1935 and each succeeding year thereafter until the principal and interest of said bonds shall have been paid in full. Such tax shall be collected by the Trustee of Hamilton County and all real and personal property in said District shall be assessed for the purpose of such tax pursuant to the relevant provisions of Title V Code of Tennessee, 1932. The proceeds from the collection of such tax shall be paid by the Trustee of Hamilton County to the Treasurer of the said District for the sole purpose of paying the principal and interest of said bonds.

The Trustee of Hamilton County shall execute a bond, with approval sureties satisfactory to the Board of Commissioners or a majority thereof of the said District, equal in amount to the taxes to be collected by him for the use and benefit of said district for the ensuing year, conditioned on the collection of and accounting to the Treasurer of said District for all taxes, penalties, forfeitures and other funds and moneys of whatever nature collected by him, or which ought to be collected by him during his term of office of two years for the use and benefit of said District, and conditioned (conditioned\*) further upon the faithful performance and discharge of all the duties of his office in that behalf. Such bond shall be payable to the Treasurer of the said District.

**SECTION 11.** That the Board of Commissioners of the East Brainerd Taxing District shall have power under this Act to fix and collect rates or charges for the services rendered by such waterworks system and, as additional security for the payment of bonds issued pursuant to this Act by said Board of Commissioners, to pledge to the punctual payment of said bonds and interest thereon an amount of the revenues of such waterworks system (including) [sic] improvements, betterments or extensions thereto thereafter constructed or acquired) or of any part of such waterworks systems, sufficient to pay said bonds and interest thereon, or any part thereof, as the same shall become due, and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenues.

**SECTION 12.** That any resolution or resolutions authorizing the issuance of bonds under this Act may contain covenants as to (a) the purpose or purposes to which the proceeds of sale of said bonds may be applied and the use and disposition thereof, (b) the use and disposition of the revenue of the waterworks system for which said bonds are to be issued, including the creation and maintenance of reserves, (c) the issuance of other or additional bonds payable from the revenue of said waterworks system, (d) the operation and maintenance of such waterworks system, (e) the insurance to be carried thereon and the use and disposition of insurance moneys, (f) books of account and the inspection and audit thereof.

**SECTION 13.** That the Board of Commissioners of the said District may, in its discretion, provide that the owner or holder of any such bonds may register the same both as to principal and interest, or as to principal or interest, under such regulations as said Board of Commissioners may provide.

**SECTION 14.** That said bonds shall have all the qualities of negotiable instruments under the Uniform Negotiable Instrument Law and shall not be subject to taxation by the State of Tennessee or any political subdivision thereof.

**SECTION 15.** That in addition to all other rights and all other remedies any holder or holders of any bond or bonds, issued pursuant to this Act, of the East Brainerd Taxing District (District\*), including a trustee for bondholders, shall have the right, subject to any contractual limitations binding upon such bondholders or trustee, and subject to the prior or superior rights of others:

1. By *mandamus* or other suit, action or proceeding, at law or in equity, to enforce his rights against such District and the Board of Commissioners of such District, including the right to require such District and such Board of Commissioners to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of, the revenues produced by such rates or charges, and to require such District and such Board to carry out any other covenants and agreements with such bondholder and to perform its and their duties under this Act.
2. By action or suit in equity to require such District to act as if it were the trustee of an express trust for such bondholder.
3. By action or suit in equity to enjoin any acts or things which may be unlawful or a violation of the rights of such bondholder.
4. By suit, action or proceeding in Chancery Court, in the event of a default in the payment of the interest on or principal of any of said bonds which default shall continue for a period in excess of sixty days, to obtain the appointment of a receiver of the enterprise in which the District is engaged or any part or parts thereof, who may enter and take possession of such enterprise of (or\*) any part or parts thereof, including all property lands, property rights, easements and other adjuncts of the waterworks system which the District shall be operating and such receiver may operate and maintain the system, and fix and collect and receive all revenues thereafter arising therefrom in the same manner as such District or Board itself might do, and shall deposit all such moneys in a separate account or accounts and apply the same in accordance with the obligations of such District as the court shall direct.

**SECTION 16.** That the Board of Commissioners of said District operating a waterworks systems pursuant to this Act shall prescribe and collect reasonable rates or charges for the service rendered by such system. The rates or charges prescribed shall be such as will produce, together with the sum raised by the tax levied by this Act which is actually on hand and must be applied to the payment of the interest on and principal of the bonds issued hereunder, revenue at least sufficient (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise encumbered, including reserves therefor, and (b) to provide for all expenses of operation and maintenance of such waterworks system, including reserves therefor.

**SECTION 17.** That a majority of said Board of Commissioners of said taxing district shall be necessary to make any order or pass any measure.

**SECTION 18.** That nothing in this Act shall be construed to give said taxing district or Board of Commissioners thereof power over schools or roads or effect or abridge the police power of (or\*) other

powers or duties of the county or State with respect to persons or property within said taxing district.

**SECTION 19.** That said Board of Commissioners shall have the right to dispose of said waterworks after the same has been established by lease or sale; *provided, however,* that all bonds issued under the provisions of this Act, and interest thereon, and interest on any installments of interest then due and unpaid, shall have been paid in full, or payment provided for in a manner satisfactory to the holders of eight-five [sic] per centum in amount of the bonds then outstanding.

**SECTION 20.** That the East Brainerd Taxing District created under the provisions of this Act shall succeed to all rights, choses in action, franchises, easements and all real and personal property and interests therein owned, possessed or held by the East Brainerd Taxing District created or purported to have been created under the provisions of Chapter 539, Private Acts of Tennessee, 1931 and shall be subrogated to and be bound by all contracts or other obligations entered into by that District; and the District created by this Act shall perform the duties imposed by such contracts or other obligations in the place and stead of the District created or purported to have been created under said Chapter 539, and such contracts or other obligations shall inure to the benefit of the District created under this Act.

**SECTION 21.** That all laws and parts of laws in conflict with this Act be and the same are hereby repealed.

**SECTION 22.** That should any part or parts of this Act be declared unconstitutional or invalid for any reason this shall not invalidate any other part.

**SECTION 23.** That this Act take effect from and after its passage, the public welfare requiring it.

Passed: April 11, 1935.

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