

Rec.
May 31

121

ENROLLED BILL

(EXTRAORDINARY SESSION, 1933)

House Bill No. 121

(By Mr. Craig)

Passed May 26, 1933

In Effect from Passage

Passage

Takes effect

Originated in the

Clerk House of Delegates

Clerk

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Chairman Senate Committee

Chairman House Committee

ENROLLED BILL

(H. B. No. 121)

[Passed May 26, 1933: in effect from passage.]

AN ACT to authorize the municipal corporation of Follansbee to purchase, acquire, extend, operate, maintain and improve the existing waterworks systems located in said city of Follansbee and defray the cost of such purchase, acquisition, extensions and improvements by issuing bonds secured by and payable from the revenues of such systems.

Be it enacted by the Legislature of West Virginia:

Section 1. That the municipal corporation of Follansbee may
2 purchase, acquire and operate the waterworks systems of the
3 Follansbee water and light company, construct betterments and
4 improvements to said waterworks system, after purchase and
5 acquisition, as in this act provided.

Sec. 2. This act shall be construed as cumulative authority
2 for the purchase and operation of the waterworks system of the
3 Follansbee water and light company, or for the construction of

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4 betterments and improvements thereto and shall not be con-
5 strued to repeal any existing laws with respect thereof. The
6 term "waterworks" as used in this act shall be construed to
7 mean and include a waterworks system in its entirety or any in-
8 tegral part thereof, including mains, hydrants, meters, valves,
9 standpipes, storage tanks, pumping stations, intakes, wells, im-
10 pounding reservoirs or purification plants. The term "govern-
11 ing body" as used in this act shall be construed to mean the
12 legally constituted governing body of the municipality.

Sec. 3. Whenever the municipality shall determine to pur-
2 chase and acquire the waterworks system of the Follansbee water
3 and light company, under the provisions of its franchise that
4 now exists between it and the Follansbee water and light com-
5 pany, it shall cause an estimate to be made of the cost thereof,
6 according to the terms of the franchise now existing between said
7 city of Follansbee and the Follansbee water and light company,
8 and shall, by ordinance, provide for the issuance of revenue
9 bonds under the provisions of this act, which ordinance shall
10 set forth a brief description of the contemplated improvement,
11 the estimated cost thereof, the amount, rate of interest, time and
12 place of payment and other details in connection with the

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James D. Byrd

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13 issuance of the bonds. Such bonds shall be in such form and
14 shall be negotiated in such manner and upon such terms as the
15 governing board of such city or town may by ordinance specify.
16 All such bonds shall be exempt from taxation by the state of
17 West Virginia or any county or municipality therein. Such
18 bonds shall bear interest at not more than six per cent per
19 annum, payable semi-annually, and shall be payable at such
20 times and place not exceeding thirty-four years from their date
21 as shall be prescribed in the ordinance providing for their
22 issuance. Such ordinance shall also declare that a statutory
23 mortgage lien shall exist upon the property so to be acquired or
24 constructed, fix a minimum rate or rates for water to be col-
25 lected prior to the payment of all of said bonds, and shall pledge
26 the revenues derived from the waterworks system for the pur-
27 pose of paying such bonds and interest thereon, which pledge
28 shall definitely fix and determine the amount of revenues which
29 shall be necessary to be set apart and applied to the payment
30 of the principal of and interest on the bonds, and the propor-
31 tion of the balance of such revenues and income which are to be
32 set aside as a proper and adequate depreciation account, and the
33 remainder shall be set aside for the reasonable and proper oper-

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34 ation thereof. The rates to be charged for the services from
35 such waterworks shall be sufficient to provide for the payment
36 of interest upon all bonds and to create a sinking fund to pay
37 the principal thereof as and when the same become due, and to
38 provide for the operation and maintenance of the system, and to
39 provide an adequate depreciation fund.

Sec. 4. After such ordinance shall have been adopted same
2 shall be published once in a newspaper published in such munici-
3 pality, or if there be no newspaper so published, then such ordi-
4 nance shall be posted in at least three public places therein, with
5 a notice to all persons concerned, stating that said ordinance
6 has been adopted, and that the municipality contemplates the
7 issuance of the bonds described in the ordinance, and that any
8 person interested may appear before the governing body, upon
9 a certain date which shall not be less than ten days subsequent
10 to the publication or posting of such ordinance and notice, and
11 present protests. At such hearing all objections and suggestions
12 shall be heard and the governing body shall take such action as
13 it shall deem proper in the premises: *Provided, however,* That
14 if at such hearing written protest is filed by thirty per cent or
15 more of the owners of real estate situate in said municipality,

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16 then the governing body of said municipality shall not take
17 further action unless four-fifths of the qualified members of said
18 governing body assent thereto.

Sec. 5. Bonds herein provided for shall be issued in such
2 amounts as may be necessary to provide sufficient funds to pay
3 all costs of purchase or acquisition, including engineering, legal
4 and other expenses, together with interest to date six months
5 subsequent to the estimated date of completion. Bonds issued
6 under the provisions of this act are hereby declared to be nego-
7 tiable instruments, and shall be executed by the proper legally
8 constituted authorities of the municipality and be sealed with the
9 corporate seal of the municipality, and in case any of the officers
10 whose signatures appear on the bonds or coupons shall cease
11 to be such officers before delivery of such bonds, such signa-
12 tures shall nevertheless be valid and sufficient for all purposes
13 the same as if they had remained in office until such delivery.
14 Said bonds shall not be negotiated at a price lower than a price
15 which computed to maturity upon standard tables of bond values
16 will show a net return of six per cent per annum to the pur-
17 chaser upon the amount paid therefor.

Sec. 6. Bonds issued under the provisions of this act shall be

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2 payable solely from the revenues derived from such water-
3 works systems, and such bonds shall not in any event constitute
4 an indebtedness of such municipality within the meaning of the
5 constitutional provisions or limitations, and it shall be plainly
6 stated on the face of each bond that the same has been issued
7 under the provisions of this act, and that it does not consti-
8 tute an indebtedness of such municipality within any consti-
9 tutional or statutory limitation.

Sec. 7. There shall be and there is hereby created a statutory
2 mortgage lien upon the waterworks system so purchased or ac-
3 quired from the proceeds of bonds hereby authorized to be
4 issued, which shall exist in favor of the holder of said bonds and
5 each of them, and to and in favor of the holder of the coupons
6 attached to said bonds, and such waterworks system shall re-
7 main subject to such statutory mortgage lien until payment in
8 full of the principal and interest of said bonds. Any holder
9 of bonds issued under the provisions of this act or of any cou-
10 pons representing interest accrued thereon, may, either at law
11 or in equity, enforce the statutory mortgage lien hereby con-
12 ferred, and may, by proper suit, compel the performance of the
13 duties of the officials of the issuing municipality set forth in this

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14 act. If there be default in the payment of the principal of
15 and/or interest upon any of said bonds, any court having juris-
16 diction in any proper action may appoint a receiver to ad-
17 minister said waterworks system on behalf of the municipality
18 with power to charge and collect rates sufficient to provide for
19 the payment of said bonds and interest thereon, and for the
20 payment of the operating expenses and to apply the income and
21 revenues in conformity with this act and the ordinance provid-
22 ing for the issuance of such bonds.

Sec. 8. If any surplus shall be accumulated in the operating
2 and maintenance fund which shall be in excess of the cost of
3 maintaining and operating the plant during the remainder of
4 the fiscal year then current, and the cost of maintaining and
5 operating the said plant during the fiscal year then next ensuing,
6 then any such excess may be transferred to either the depreci-
7 ation account or to the bond and interest redemption account,
8 and if any surplus shall be accumulated in the depreciation ac-
9 count over and above that which the municipality shall find
10 may be necessary for the probable replacements which may be
11 needed during the then present fiscal year, and the next en-
12 suing fiscal year, such excess may be transferred to the bond and

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13 interest redemption account, and if surplus shall exist in the
14 bonds and interest redemption account same shall be applied
15 insofar as possible in the purchase or retirement of outstanding
16 revenue bonds payable from such account.

Sec. 9. Whenever the municipality shall own and operate a
2 waterworks system, whether constructed under the provisions of
3 this act or not, and shall desire to construct improvements and
4 betterments thereto, it may issue revenue bonds under the pro-
5 visions of this act to pay for same, and the procedure therefor, in-
6 cluding the fixing of rates and the computation of the amount
7 thereof, shall be the same as in this act provided for the issuance
8 of bonds for purchase or acquisition of a waterworks system in a
9 municipality which has not heretofore owned and operated a
10 waterworks system: *Provided, however,* That in the ordinance
11 declaring the intention to issue the bonds and providing details
12 in connection therewith, the governing body shall provide, find
13 and declare in addition to the other requirements set out in this
14 act, the value of the then existing system and the value of the
15 property proposed to be constructed, and the revenues derived
16 from the entire system when the contemplated betterments and
17 improvements are completed, shall be divided according to such

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18 values and so much of the revenue as is in proportion to the
19 value of such betterments and improvements as against the value
20 of the previous existing plant as so determined, shall be set
21 aside and used solely and only for the purpose of paying the
22 revenue bonds issued for such betterments, together with costs
23 of the operation and the depreciation thereof, and such reve-
24 nue shall be deemed to be income derived exclusively from such
25 betterments and improvements.

Sec. 10. The municipality when issuing bonds under the pro-
2 visions of this act shall thereafter, so long as any of such bonds
3 remain outstanding, operate and maintain its waterworks as
4 hereinafter provided and shall charge, collect and account for
5 revenues therefrom as will be sufficient to pay all operating
6 costs, provide a depreciation fund, retire the bonds and pay
7 the interest requirements of the bonds as the same become due.
8 The ordinance pursuant to which any such bonds are issued shall
9 pledge the revenues derived from the waterworks to the pur-
10 poses aforesaid and shall definitely fix and determine the amount
11 of revenues which shall be necessary and set apart in a special
12 fund for the bond requirements. The amounts as and when
13 so set apart into said special fund for the bond requirements

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[Signature]

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14 shall be remitted to the state sinking fund commission to be re-
15 tained and paid out by said commission consistent with the pro-
16 visions of this act and the ordinance pursuant to which such
17 bonds have been issued. The bonds hereby authorized shall be
18 issued in such amounts as may be determined necessary to pro-
19 vide funds for the purpose for which they are authorized, and
20 in determining the amount of bonds to be issued it shall be proper
21 to include interest on the bonds for a period not beyond six
22-23 months from the estimated construction period for the im-
24 provement. If the proceeds of bonds because of error or other-
25 wise shall be less than the cost of the property or improvement
26 for which authorized, additional bonds may be issued to provide
27 the amount of such deficit and such additional bonds shall be
28 deemed to be of the same issue and shall be entitled to payment
29 from the same fund without preference or priority over the
30 bonds first authorized and issued. If the proceeds of bonds shall
31 exceed the cost of the property or improvement, the surplus shall
32 be converted into the fund for the retirement of the bonds and
33 payment of the interest thereon.

See. 11. Any holder of any of the bonds issued under the pro-
2 visions of this act or of any coupons representing interest accrued

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3 thereon, may, either at law or in equity, by proper suit, compel
4 the performance of the duties of the governing body of the
5 municipality having bonds outstanding under the provisions
6 of this act as such duties are imposed by this act or by the
7 ordinance pursuant to which such bonds were issued. If there
8 be default in the payment of the principal of and/or interest
9 upon any of such bonds, any court having jurisdiction in any
10 proper action shall appoint a receiver to administer said water-
11 works system on behalf of the municipality with power to
12 charge and collect rates sufficient to provide for the retirement
13 of the bonds and pay the interest thereon, and for the payment
14 of the operating expenses, and such receiver shall apply the
15 income and revenues in conformity with this act and the ordi-
16 nance pursuant to which ~~such~~ such bonds have been issued.

Sec. 12. This act shall, without reference to any other statute
2 be deemed full authority for the raising of revenue for the pur-
3 pose and acquisition, improvement, equipment, maintenance,
4 operation and repair of the works herein provided for and for
5 the issuance and sale of the bonds by this act authorized, and
6 shall be construed as an additional and alternative method
7 therefor and for the financing thereof, and no petition or elec-

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tion or other or further proceeding in respect to the raising of
revenue for the purchase or acquisition of the works or to the
issuance or sale of bonds under this act and no publication of
any resolution, ordinance, notice or proceeding relating to such
raising of revenue for the purchase or acquisition or to the
issuance or sale of such bonds shall be required except such as
are prescribed by this act, any provisions of other statutes of
the state to the contrary notwithstanding: *Provided, however,*
That all functions, powers and duties of the state department of
health shall remain unaffected by this act: *Provided further,*
That nothing herein contained shall in any manner change, alter
or modify the terms of the franchise now existing between the
Follansbee water and light company and the city of Follans-
bee.

Sec. 13. This act being necessary for the public health, safety
and welfare it shall be liberally construed to effectuate the pur-
poses thereof.

Sec. 14. The sections and provisions of this act are separable
and are not matters of mutual essential inducement, and it is the
intention to confer the whole or any part of the powers herein
provided for, and if any of the sections or provisions or parts

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5 thereof is for any reason illegal, it is the intention that the re-
6 maining sections and provisions or parts thereof shall remain in
7 full force and effect.

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Chairman Senate Committee.

Wm. M. Hunter
 Speaker of the House of Delegates.

Geo. S. Hall
 Clerk of the House of Delegates.

Wm. M. Hunter
 President of the Senate.

Wm. M. Hunter
 Clerk of the Senate.

The within is.....

this.....day of....., 1933.

.....
 Governor.

Filed in the office of the Secretary of State
 of West Virginia. JUN 7 1933
 Wm. S. O'BRIEN,
 Secretary of State