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# ENROLLED BILL

(EXTRAORDINARY SESSION, 1933)

House Bill No. 31

(By Mr. Smith & Harrison)

Passed May 11, 1933

In Effect from Passage

Originated in the... passage  
House... Takes effect...  
Clerk of the House of Delegates.

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*James A. Smith*  
Chairman Senate Committee.

*James A. Smith*  
Chairman House Committee.

## ENROLLED BILL

(H. B. No. 31)

[Passed May 11, 1933; in effect from passage.]

AN ACT to authorize municipal corporations to establish, construct, acquire, extend, operate, maintain and improve waterworks systems and defray the cost of such construction, 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 any municipal corporation in the state of West Virginia may purchase, construct and operate a waterworks system or construct betterments and improvements to its waterworks system as in this act provided.

Sec. 2. This act shall be construed as cumulative authority for the purchase or construction and operation of a waterworks system or for the construction of betterments and improvements thereto, and shall not be construed to repeal any

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5 existing laws with respect thereof. The term "waterworks"  
6 as used in this act shall be construed to mean and include a  
7 waterworks system in its entirety or any integral part thereof,  
8 including mains, hydrants, meters, valves, standpipes, stor-  
9 age tanks, pumping stations, intakes, wells, impounding reser-  
10 voirs or purification plants. The term "municipality" as used  
11 in this act shall be construed to mean any municipal corpora-  
12 tion, incorporated city, town or village in the state of West  
13 Virginia. The term "governing body" as used in this act shall  
14 be construed to mean the legally constituted governing body  
15 of the municipality.

Sec. 3. Whenever the municipality shall determine to pur-  
2 chase, improve or construct a waterworks system under the  
3 provisions of this act, it shall cause an estimate to be made  
4 of the cost thereof, and shall, by ordinance, provide for the  
5 issuance of revenue bonds under the provisions of this act,  
6 which ordinance shall set forth a brief description of the con-  
7 templated improvement, the estimated cost thereof, the amount,  
8 rate of interest, time and place of payment and other details  
9 in connection with the issuance of the bonds. Such bonds shall  
10 be in such form and shall be negotiated in such manner and

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3

11 upon such terms as the governing body of such city or town  
12 may by ordinance specify. All such bonds shall be exempt from  
13 taxation by the state of West Virginia or any county or munici-  
14 palty therein. Such bonds shall bear interest at not more than  
15 six per cent per annum, payable semi-annually, and shall be  
16 payable at such times and place not exceeding thirty-four years  
17 from their date as shall be prescribed in the ordinance pro-  
18 viding for their issuance. Such ordinance shall also declare  
19 that a statutory mortgage lien shall exist upon the property  
20 so to be acquired or constructed, fix a minimum rate or rates  
21 for water to be collected prior to the payment of all of said  
22 bonds, and shall pledge the revenues derived from the water-  
23 works system for the purpose of paying such bonds and in-  
24 terest thereon, which pledge shall definitely fix and determine  
25 the amount of revenues which shall be necessary to be set  
26 apart and applied to the payment of the principal of, and in-  
27 terest on the bonds and the proportion of the balance of such  
28 revenues and income which are to be set aside as a proper  
29 and adequate depreciation account, and the remainder shall  
30 be set aside for the reasonable and proper operation thereof.  
31 The rates to be charged for the services from such waterworks

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32 shall be sufficient to provide for the payment of interest upon  
33 all bonds and to create a sinking fund to pay the principal  
34 thereof as and when the same become due, and to provide for  
35 the operation and maintenance of the system, and to provide  
36 an adequate depreciation fund.

Sec. 4. After such ordinance shall have been adopted same  
2 shall be published once each week for two successive weeks in  
3 two newspapers of opposite political faith published in such  
4 municipality, or in one newspaper if only one political faith is  
5 represented by newspapers in the said municipality, or if there  
6 be no newspaper so published, then such ordinance shall be  
7 posted in at least three public places therein, with a notice to  
8 all persons concerned, stating that said ordinance has been  
9 adopted, and that the municipality contemplates the issuance  
10 of the bonds described in the ordinance, and that any person  
11 interested may appear before the governing body, upon a cer-  
12 tain date which shall not be less than ten days subsequent to the  
13 publication or posting of such ordinance and notice, and present  
14 protests. At such hearing all objections and suggestions shall  
15 be heard and the governing body shall take such action as it  
16 shall deem proper in the premises: *Provided, however,* That if

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17 at such hearing written protest is filed by thirty per cent or  
18 more of the owners of real estate situate in said municipality,  
19 then the governing body of said municipality shall not take  
20 further action unless four-fifths of the qualified members of said  
21 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 construction or acquisition, including engineering,  
4 legal and other expenses, together with interest to a date six  
5 months subsequent to the estimated date of completion. Bonds  
6 issued under the provisions of this act are hereby declared  
7 to be negotiable instruments, and same shall be executed by the  
8 proper legally constituted authorities of the municipality and  
9 be sealed with the corporate seal of the municipality, and in  
10 case any of the officers whose signatures appear on the bonds  
11 or coupons shall cease to be such officers before delivery of such  
12 bonds, such signatures shall nevertheless be valid and sufficient  
13 for all purposes the same as if they had remained in office  
14 until such delivery. Said bonds shall not be negotiated at a  
15 price lower than a price which computed to maturity upon  
16 standard tables of bond values will show a net return of six

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*A. H. Jones*

*Chairman Senate Committee.*

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*Chairman House Committee.*

17 per cent per annum to the purchaser upon the amount paid  
18 therefor.

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

Sec. 7. There shall be and there is hereby created a statu-  
2 tory mortgage lien upon the waterworks system so acquired or  
3-8 constructed from the proceeds of bonds hereby authorized to be  
9 issued, which shall exist in favor of the holder of said bonds and  
10 each of them, and to and in favor of the holder of the coupons  
11 attached to said bonds, and such waterworks system shall re-  
12 main subject to such statutory mortgage lien until payment in  
13 full of the principal and interest of said bonds. Any holder  
14 of bonds issued under the provisions of this act or of any  
15 coupons representing interest accrued thereon, may, either at

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16 law or in equity, enforce the statutory mortgage lien hereby  
17 conferred, and may, by proper suit, compel the performance  
18 of the duties of the officials of the issuing municipality set  
19 forth in this act. If there be default in the payment of the  
20 principal of and/or interest upon any of said bonds, any court  
21 having jurisdiction in any proper action may appoint a re-  
22 ceiver to administer said waterworks system on behalf of the  
23 municipality with power to charge and collect rates sufficient  
24 to provide for the payment of said bonds and interest thereon,  
25 and for the payment of the operating expenses and to apply  
26 the income and revenues in conformity with this act and the  
27 ordinance providing for the issuance of such bonds.

Sec. 8. Rates for water fixed precedent to the issuance of  
2 bonds shall not be reduced until all of said bonds shall have  
3 been fully paid, and may, whenever necessary, be increased in  
4 amounts sufficient to provide for the payment of such bonds,  
5 both principal and interest, and to provide proper funds for the  
6 depreciation account and operation and maintenance charges.  
7 If any surplus shall be accumulated in the operating and main-  
8 tenance fund which shall be in excess of the cost of maintaining  
9 and operating the plant during the remainder of the fiscal year



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*Chairman Senate Committee.*

*James L. Smith*

*Chairman House Committee.*

10 then current, and the cost of maintaining and operating the  
11 said plant during the fiscal year then next ensuing, then any  
12 such excess may be transferred to either the depreciation ac-  
13 count or to the bond and interest redemption account, and if  
14 any surplus shall be accumulated in the depreciation account  
15 over and above that which the municipality shall find may be  
16 necessary for the probable replacements which may be needed  
17 during the then present fiscal year, and the next ensuing fiscal  
18 year, such excess may be transferred to the bond and interest  
19 redemption account, and if surplus shall exist in the bonds and  
20 interest redemption account same shall be applied insofar as  
21 possible in the purchase or retirement of outstanding revenue  
22 bonds payable from such account.

Sec. 9. For the purpose of acquiring any waterworks sys-  
2 tem under the provisions of this act, or for the purpose of ac-  
3 quiring any property necessary therefor, the municipality shall  
4 have the right of eminent domain as is provided by chapter  
5 fifty-four of the code of West Virginia, one thousand nine hun-  
6 dred thirty-one, as now or hereafter amended: *Provided, how-*  
7 *ever,* That such right of eminent domain for the acquisition of  
8 a complete privately owned waterworks system shall not be

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*Chairman Senate Committee.*

*James L. Smith*

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9 exercised under the provisions of this act without prior ap-  
10 proval of the public service commission of West Virginia, and  
11 in no event shall any municipality establish or construct a mu-  
12 nicipal waterworks system under the provisions of this act to  
13 supply service in competition with an existing privately owned  
14 waterworks system in such municipality unless a certificate of  
15 public convenience and necessity therefor shall have been issued  
16 by the public service commission of West Virginia.

Sec. 10. Whenever any municipality now or hereafter shall  
2 own and operate a waterworks system, whether constructed  
3 under the provisions of this act or not, and shall desire to con-  
4 struct improvements and betterments thereto, it may issue reve-  
5 nue bonds under the provisions of this act to pay for same, and  
6 the procedure therefor, including the fixing of rates and the  
7 computation of the amount thereof, shall be the same as in this  
8 act provided for the issuance of bonds for acquisition or con-  
9 struction of a waterworks system in a municipality which has  
10 not heretofore owned and operated a waterworks system: *Pro-*  
11 *vided, however,* That in the ordinance declaring the in-  
12 tention to issue the bonds and providing details in con-

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*James A. Hyman*

*Chairman Senate Committee.*

*James L. Smith*

*Chairman House Committee.*

13-14 nection therewith, the governing body shall provide, find  
15 and declare in addition to the other requirements set out in this  
16 act, the value of the then existing system and the value of the  
17 property proposed to be constructed, and the revenues derived  
18 from the entire system when the contemplated betterments and  
19 improvements are completed, shall be divided according to such  
20 values and so much of the revenue as is in proportion to the  
21 value of such betterments and improvements as against the  
22 value of the previous existing plant as so determined, shall be  
23 set aside and used solely and only for the purpose of paying  
24 the revenue bonds issued for such betterments, together with  
25 costs of the operation and the depreciation thereof, and such  
26 revenue shall be deemed to be income derived exclusively from  
27 such betterments and improvements.

Sec. 11. Every municipality 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.

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James L. Smith  
James A. Higgins

*Chairman House Committee.*

*Chairman Senate Committee.*

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8 The ordinance pursuant to which any such bonds are issued  
9 shall pledge the revenues derived from the waterworks to the  
10 purposes aforesaid and shall definitely fix and determine the  
11 amount of revenues which shall be necessary and set  
12 apart in a special fund for the bond requirements. The  
13 amounts as and when so set apart into said special fund for the  
14 bond requirements shall be remitted to the state sinking fund  
15 commission to be retained and paid out by said commission con-  
16 sistent with the provisions of this act and the ordinance pur-  
17 suant to which such bonds have been issued. The bonds hereby  
18 authorized shall be issued in such amounts as may be deter-  
19 mined necessary to provide funds for the purpose for which  
20 they are authorized, and in determining the amount of bonds  
21 to be issued it shall be proper to include interest on the bonds  
22 for a period not beyond six months from the estimated con-  
23 struction period for the improvement. If the proceeds of bonds  
24 because of error or otherwise shall be less than the cost of the  
25 property or improvement for which authorized, additional  
26 bonds may be issued to provide the amount of such deficit and  
27 such additional bonds shall be deemed to be of the same issue  
28 and shall be entitled to payment from the same fund without

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*Wm. D. Hyatt*

*Chairman Senate Committee.*

*James L. Smith*

*Chairman House Committee.*

29 preference or priority over the bonds first authorized and  
30 issued. If the proceeds of bonds shall exceed the cost of the  
31 property or improvement, the surplus shall be converted into  
32 the fund for the retirement of the bonds and payment of the  
33 interest thereon.

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

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James L. Smith  
Anna A. Rogers

Chairman House Committee.

Chairman Senate Committee.

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Sec. 13. This act shall, without reference to any other  
2 statute be deemed full authority for the construction, acqui-  
3 tion, improvement, equipment, maintenance, operation and re-  
4 pair of the works herein provided for and for the issuance and  
5 sale of the bonds by this act authorized, and shall be construed  
6 as an additional and alternative method therefor and for the  
7 financing thereof, and no petition or election or other or fur-  
8 ther proceeding in respect to the construction or acquisition of  
9 the works or to the issuance or sale of bonds under this act and  
10 no publication of any resolution, ordinance, notice or proceed-  
11 ing relating to such construction or acquisition or to the issu-  
12 ance or sale of such bonds shall be required except such as are  
13 prescribed by this act, any provisions of other statutes of the  
14 state to the contrary notwithstanding: *Provided, however,* That  
15 all functions, powers and duties of the state department of  
16 health shall remain unaffected by this act.

Sec. 14. This act being necessary for the public health,  
2 safety and welfare, it shall be liberally construed to effectuate  
3 the purposes thereof.

Sec. 15. The sections and provisions of this act are separ-  
2 able and are not matters of mutual essential inducement, and

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14

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3 it is the intention to confer the whole or any part of the powers  
4 herein provided for, and if any of the sections or provisions or  
5 parts thereof is for any reason illegal, it is the intention that the  
6 remaining sections and provisions or parts thereof shall remain  
7 in full force and effect.

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*James A. Smith*  
Chairman Senate Committee

*James A. Smith*  
Chairman House Committee

*B. M. Hiner*  
Speaker of the House of Delegates.

*Geo. H. Hall*  
Clerk of the House of Delegates.

*H. M. S. S. S.*  
President of the Senate.

*Chas. D. Smith*  
Clerk of the Senate.

The within is.....*approved*.....

this...*19<sup>th</sup>*...day of...*May*..., 1933.

*H. S. Kemp*  
Governor.

Filed in the office of the Secretary of State  
at West Virginia. **MAY 20 1933**  
Wm S. O'Brien,  
Secretary of State