ENROLLED BILL
(EXTRAORDINARY SESSION, 1933)

House Bill No. 31

(By Mr. Smith G. Harrison)

Passed May 11, 1933

In Effect from Passage
ENROLLED BILL
(H. B. No. 31)

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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
existing laws with respect thereof. The term "waterworks" as used in this act shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pumping stations, intakes, wells, impounding reservoirs or purification plants. The term "municipality" as used in this act shall be construed to mean any municipal corporation, incorporated city, town or village in the state of West Virginia. The term "governing body" as used in this act shall be construed to mean the legally constituted governing body of the municipality.

Sec. 3. Whenever the municipality shall determine to purchase, improve or construct a waterworks system under the provisions of this act, it shall cause an estimate to be made of the cost thereof, and shall, by ordinance, provide for the issuance of revenue bonds under the provisions of this act, which ordinance shall set forth a brief description of the contemplated improvement, the estimated cost thereof, the amount, rate of interest, time and place of payment and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated in such manner and
upon such terms as the governing body of such city or town may by ordinance specify. All such bonds shall be exempt from taxation by the state of West Virginia or any county or municipality therein. Such bonds shall bear interest at not more than six per cent per annum, payable semi-annually, and shall be payable at such times and place not exceeding thirty-four years from their date as shall be prescribed in the ordinance providing for their issuance. Such ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired or constructed, fix a minimum rate or rates for water to be collected prior to the payment of all of said bonds, and shall pledge the revenues derived from the waterworks system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of, and interest on the bonds and the proportion of the balance of such revenues and income which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper operation thereof. The rates to be charged for the services from such waterworks
42 shall be sufficient to provide for the payment of interest upon
43 all bonds and to create a sinking fund to pay the principal
44 thereof as and when the same become due, and to provide for
45 the operation and maintenance of the system, and to provide
46 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
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
Sec. 6. Bonds issued under the provisions of this act shall be payable solely from the revenues derived from such waterworks systems, and such bonds shall not in any event constitute an indebtedness of such municipality within the meaning of the constitutional provisions or limitations, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this act, and that it does not constitute an indebtedness of such municipality within any constitutional or statutory limitation.

Sec. 7. There shall be and there is hereby created a statutory mortgage lien upon the waterworks system so acquired or constructed from the proceeds of bonds hereby authorized to be issued, which shall exist in favor of the holder of said bonds and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such waterworks system shall remain subject to such statutory mortgage lien until payment in full of the principal and interest of said bonds. Any holder of bonds issued under the provisions of this act or of any coupons representing interest accrued thereon, may, either at
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
then current, and the cost of maintaining and operating the
said plant during the fiscal year then next ensuing, then any
such excess may be transferred to either the depreciation ac-
count or to the bond and interest redemption account, and if
any surplus shall be accumulated in the depreciation account
over and above that which the municipality shall find may be
necessary for the probable replacements which may be needed
during the then present fiscal year, and the next ensuing fiscal
year, such excess may be transferred to the bond and interest
redemption account, and if surplus shall exist in the bonds and
interest redemption account same shall be applied insofar as
possible in the purchase or retirement of outstanding revenue
bonds payable from such account.

Sec. 9. For the purpose of acquiring any waterworks sys-
tem under the provisions of this act, or for the purpose of ac-
quiring any property necessary therefor, the municipality shall
have the right of eminent domain as is provided by chapter
fifty-four of the code of West Virginia, one thousand nine hun-
dred thirty-one, as now or hereafter amended: Provided, how-
ever, That such right of eminent domain for the acquisition of
a complete privately owned waterworks system shall not be
9 exercised under the provisions of this act without prior ap-
proval of the public service commission of West Virginia, and
in no event shall any municipality establish or construct a mu-
nicipal waterworks system under the provisions of this act to
supply service in competition with an existing privately owned
waterworks system in such municipality unless a certificate of
public convenience and necessity therefor shall have been issued
by the public service commission of West Virginia.

Sec. 10. Whenever any municipality now or hereafter shall
own and operate a waterworks system, whether constructed
under the provisions of this act or not, and shall desire to con-
struct improvements and betterments thereto, it may issue reve-
nue bonds under the provisions of this act to pay for same, and
the procedure therefor, including the fixing of rates and the
computation of the amount thereof, shall be the same as in this
act provided for the issuance of bonds for acquisition or con-
struction of a waterworks system in a municipality which has
not heretofore owned and operated a waterworks system: Pro-
vided, however, That in the ordinance declaring the in-
tention to issue the bonds and providing details in con-
13-14 section therewith, the governing body shall provide, find
and declare in addition to the other requirements set out in this
act, the value of the then existing system and the value of the
property proposed to be constructed, and the revenues derived
from the entire system when the contemplated betterments and
improvements are completed, shall be divided according to such
values and so much of the revenue as is in proportion to the
value of such betterments and improvements as against the
value of the previous existing plant as so determined, shall be
set aside and used solely and only for the purpose of paying
the revenue bonds issued for such betterments, together with
costs of the operation and the depreciation thereof, and such
revenue shall be deemed to be income derived exclusively from
such betterments and improvements.

Sec. 11. Every municipality issuing bonds under the pro-
visions of this act shall thereafter, so long as any of such bonds
remain outstanding, operate and maintain its waterworks as
hereinafter provided and shall charge, collect and account for
revenues therefrom as will be sufficient to pay all operating
costs, provide a depreciation fund, retire the bonds and pay
the interest requirements of the bonds as the same become due.
The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the state sinking fund commission to be retained and paid out by said commission consistent with the provisions of this act and the ordinance pursuant to which such bonds have been issued. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated construction period for the improvement. If the proceeds of bonds because of error or otherwise shall be less than the cost of the property or improvement for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without
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.
Sec. 13. This act shall, without reference to any other statute be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation and repair of the works herein provided for and for the issuance and sale of the bonds by this act authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition or election or other or further proceeding in respect to the construction 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 construction 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.

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

Sec. 15. 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 thereof is for any reason illegal, it is the intention that the
remaining sections and provisions or parts thereof shall remain
in full force and effect.
Enrolled H. B. No. 31

Dr. M. Shiner
Speaker of the House of Delegates.

Clerk of the House of Delegates.

President of the Senate.

Clerk of the Senate.

The within is approved.

this 17th day of May, 1933.

Governor.

Filed in the office of the Secretary of State of West Virginia, May 20, 1933.

Wm. S. Ogden,
Secretary of State.