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MADRAS RECORD OFFICE.

Government of Madras.

Public DEPARTMENT.

G.O. No. 848	Press Mis.
Dated 8-7-1870	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Department,
8th July 1870.*

No. 15. Proceedings of Government, dated 8th July 1870, No. 848.

The Government request the Board of Revenue, the Advocate-General, and the gentlemen named in the margin, to favour Government with an expression of opinion regarding the accompanying "Bill to facilitate the construction of works of public utility from Local and Municipal Funds" which has been introduced in the Legislative Council of the Governor-General.

Mr. G. Banbury.
" G. L. Morris.
" J. W. Brecks.
" H. E. Sullivan.
" A. Macgregor.

(True Extract.)

Under Secy. to Govt.

To the Board of Revenue.
" Advocate-General.
To

A Bill to Facilitate the Construction of Works of Public Utility from Local and Municipal Funds.

Whereas it is expedient to facilitate the construction of works of public utility from Local and Municipal Funds by means of advances to be made by the Government : It is hereby enacted as follows :—

Preamble.

Short title.

Extent of Act.

Interpretation clause.

"Advance" means an advance made under this Act and includes all interest and charges payable to the Government under this Act on account of such advance :

"Advance."

"Fund."

"Additional rate."

"The person administering."

1. This Act may be called "The Local Public Works Act, 1870."

2. This Act shall extend to all parts of British India.

3. In this Act—

"Fund" means all monies received or receivable on account of a Local or Municipal Fund from which an advance is to be repaid :

"Additional rate" means any rate or cess which may be levied for the purposes of a Local or Municipal Fund from which an advance is to be repaid :

"The person administering" includes all persons duly authorized to receive, keep in deposit, or expend a Fund, or an additional rate.

4. If the person administering any Public or Municipal Fund desires to obtain an advance from the Government for the purpose of carrying out, or of assisting in carrying out, a work of public utility at the charge of such Fund, he may make an application to the Local Government for such advance, and the Local Government, after such inquiry as it may think desirable, if satisfied that such advance should be made, may authorize it to be made, subject to the provisions herein-after contained.

8th July 1870.

5. The Governor-General in Council shall from time to time make rules for regulating all matters relating to the making of such advances, and the said rules shall provide, amongst other things, for the following :

Governor-General to make rules.

1. The determination of the Local and Municipal Funds to which this Act shall apply :
2. The works for which advances may be made under this Act :
3. The manner of making applications for advances :
4. The manner of conducting inquiries relative to applications :
5. The manner of recording the conditions on which an advance is made :
6. The manner and time of making advances :
7. The inspection of works carried out under this Act :
8. The instalments by which advances shall be repaid, the interest to be charged on advances, and the manner and time of repaying advances and discharging the interest charged on the same :
9. The determination of the charges that may be made in respect of any advance, against the Fund from which such advance is re-payable, on account of the share of the costs of the Government in giving effect to this Act :
10. The manner of keeping and auditing the accounts of the expenditure of advances, of the repayment of the same, and of the discharge of the interest thereon :
11. The amount that may from time to time be applied by the Local Government from the public revenues for the purpose of making advances.

The said rules shall be published in the *Gazette of India*, and when so published all Courts shall take judicial notice of them.

6. The person from time to time administering any Fund shall duly repay and discharge such advance to the Government from such Fund, in accordance with the conditions on which it was made, and in preference to all other claims against such Fund.

Obligation to repay advances.

7. If at any time an advance be not repaid and discharged in accordance with the conditions on which it was made, the Local Government may appoint an officer to take possession of and receive the whole or any specified part of the Fund in the place of the person for the time being administering the same, and thereupon and so long as such officer shall remain so appointed and to the extent directed by the Local Government, the said person shall cease to have any authority to keep or receive the said Fund, and the receipt of such officer shall be a sufficient discharge for all demands payable to such Fund.

If advance be not repaid, Local Government may appoint officer to keep Fund.

The Local Government may direct such officer to repay and discharge the advance as aforesaid from any amount so received by him. All payments made in that behalf by such officer shall be deemed to be a first charge against the said Fund, and the residue only of any amount so received, after making all such payments, shall be repaid to the person administering the said Fund.

8. If at any time an advance be not repaid and discharged, according to the conditions on which it was made, and if such advance has been made subject to the condition that an additional rate shall be levied to provide for the due re-payment and discharge of the advance, and if the person administering the Fund fails to levy such rate in the manner required under the said rules, the Local Government may order him to do all things needful for the levy of the said rate, and may appoint an officer to levy and receive the same.

An officer so appointed shall, so far as he shall be authorized so to do by the Local Government, and for the purpose of levying and receiving such rate, exercise all or any of the powers commonly so exercised by the person administering the Fund, and in the place of such person ;

8th July 1870.

and so long as such officer remains so appointed and to the extent of the authority given to the said officer, by the Local Government, such person shall cease to exercise the said powers.

An additional rate levied and received under this section shall be dealt with as though it had been received under the section next preceding.

9. No advance under this Act shall exceed six times the gross income of the Fund received during the year next preceding that in which the advance is authorized by the Local Government.

No advance to exceed six times income of Fund.

10. No person administering any Local or Municipal Fund, who is not authorized by some special law to borrow money on the security of such Fund, shall borrow money on such security otherwise than in accordance with the provisions of this Act.

Money not to be borrowed except under this Act.

Statement of Objects and Reasons.

The Government of India has recognised the importance of facilitating to the utmost the prosecution of local works of improvement, and has come to the conclusion that a system somewhat similar to that established under the English Public Works Loan Acts may be introduced in India with much advantage. The Government would make advances, to be repaid with interest in a term of years, for works of certain classes, the public utility of which was duly ascertained. A certain maximum sum would be placed at the command of the Local Governments, to be applied in making such advances, on which they would operate, the power of extending the advances to new objects being limited by the obligation not to exceed that sum, so that, when the whole authorized sum was once advanced, the earlier loans must be paid off before fresh ones could be made.

2. It has been ruled, however, more than once recently that it is not desirable to give the local bodies who deal with local or municipal revenues independent powers of borrowing, and that, when for any special reason it may be expedient that funds should be borrowed for local objects, the Government itself should lend the money. This course has been followed in several cases.

3. But in most of these cases, there is no means of giving the Government a legal lien on the revenues on the security of which the loans are made. A municipal body or a person administering local revenues has no power to do more than deal with the revenue as it is received, and cannot give any valid pledge that the income of future years shall be applied in a particular way, unless under express legislative authority, which certainly has no existence in the case of most of the Local Funds in India. When the last law regarding municipalities in the North-Western Provinces, Act VI. of 1868, was passed, the power of borrowing was deliberately rejected by the Government of India and the Legislative Council.

4. The present Bill has, therefore, been prepared in the Public Works Department in order to provide for the making of advances of public money for works of public utility to local or municipal bodies, obtaining at the same time valid security for their repayment from the funds at the disposal of such bodies.

(Signed) R. STRACHEY.

21st March 1870.

Exd. J. Wright.

Bobt. of 1870; 3110715.

PUBLIC.

To

THE BOARD OF REVENUE.
Ac., Ac., Ac.

Dated July, 8th.

Recd.

End

G. O., 8th July 1870, No. 848.

JULY.
No. 15.

Calling for the opinions of certain Departments and Officers on the "Bill to facilitate the construction of works of public utility from Local and Municipal Funds."

2
5-11-14

A
BILL

TO

Facilitate the Construction of Works of Public Utility from Local and Municipal Funds.

WHEREAS it is expedient to facilitate the construction of works of public utility from Local and Municipal Funds by means of advances to be made by the Government: It is hereby enacted as follows:—

1. This Act may be called "The Local Public Works Act, 1870."

2. This Act shall extend to all parts of British India.

3. In this Act—

"Advance" means an advance made under this Act and includes all interest and charges payable to the Government under this Act on account of such advance:

"Fund" means all monies received or receivable on account of a Local or Municipal Fund from which an advance is to be repaid:

"Additional rate" means any rate or cess which may be levied for the purposes of a Local or Municipal Fund from which an advance is to be repaid:

"The person administering" includes all persons duly authorized to receive, keep in deposit, or expend a Fund, or an additional rate.

4. If the person administering any Public or Municipal Fund desires to obtain an advance from the Government for the purpose of carrying out, or of assisting in carrying out, a work of public utility at the charge of such Fund, he may make an application to the Local Government for such advance, and the Local Government, after such enquiry as in each case it may think desirable, if satisfied that such advance should be made, may authorize it to be made, subject to the provisions hereinafter contained.

5. The Governor General in Council shall from time to time make rules for regulating all matters relating to the making of such advances, and the said rules shall provide, amongst other things, for the following:

1. The determination of the Local and Municipal Funds to which this Act shall apply:

2. The works for which advances may be made under this Act:

3. The manner of making applications for advances:

4. The manner of conducting enquiries relative to applications:

5. The manner of recording the conditions on which an advance is made:

6. The manner and time of making advances:

7. The inspection of works carried out under this Act:

8. The instalments by which advances shall be repaid, the interest to be charged on advances, and the manner and time of repaying advances and discharging the interest charged on the same:

9. The determination of the charges that may be made in respect of any advance, against the Fund from which such advance is repayable, on account of the share of the costs of the Government in giving effect to this Act:

10. The manner of keeping and auditing the accounts of the expenditure of advances, of the repayment of the same, and of the discharge of the interest thereon:

11. The amount that may from time to time be applied by the Local Government from the public revenues for the purpose of making advances.

The said rules shall be published in the *Gazette of India*, and when so published all Courts shall take judicial notice of them.

6. The person from time to time administering any Fund shall duly repay and discharge such advance to the Government from such Fund, in accordance with the conditions on which it was made, and in preference to all other claims against such Fund.

7. If at any time an advance be not repaid and discharged in accordance with the conditions on which it was made, the Local Government may appoint an officer to take possession of and receive the whole or any specified part of the Fund in the place of the person for the time being administering the same, and thereupon and so long as such officer shall remain so appointed and to the extent directed by the Local Government, the said person shall cease to have any authority to keep or receive the said Fund, and the receipt of such officer shall be a sufficient discharge for all demands payable to such Fund.

The Local Government may direct such officer to repay and discharge the advance as aforesaid from any amount so received by him. All payments made in that behalf by such officer shall be deemed to be a first charge against the said Fund, and the residue only of any amount so received, after making all such payments, shall be repaid to the person administering the said Fund.

8. If at any time an advance be not repaid and discharged, according to the conditions on which it was made, and if such advance has been made subject to the condition that an additional rate shall be levied to provide for the due repayment and discharge of the advance, and if the person administering the Fund fails to levy such rate in the manner required under the said rules, the Local Government may order him to do all things needful for the levy of the said rate, and may appoint an officer to levy and receive the same.

An officer so appointed shall, so far as he shall be authorized so to do by the Local Government, and for the purpose of levying and receiving such rate, exercise all or any of the powers commonly so exercised by the person administering the Fund, and in the place of such person; and so long as such officer remains so appointed and to the extent of the authority given to the said officer by the Local Government, such person shall cease to exercise the said powers.

An additional rate levied and received under this section shall be dealt with as though it had been received under the section next preceding.

9. No advance under this Act shall exceed six times the gross income of the Fund received during the year next preceding that in which the advance is authorized by the Local Government.

10. No person administering any Local or Municipal Fund who is not authorized by some special law to borrow money on the security of such Fund shall borrow money on such security otherwise than in accordance with the provisions of this Act.

Government of India.

LEGISLATIVE DEPARTMENT.

A
BILL

TO

Facilitate the construction of works of public
utility from Local and Municipal Funds.

(Colonel Strachey.)

(Price annas.)

STATEMENT OF OBJECTS AND REASONS.

The Government of India has recognized the importance of facilitating to the utmost the prosecution of local works of improvement, and has come to the conclusion that a system somewhat similar to that established under the English Public Works Loan Acts may be introduced in India with much advantage. The Government would make advances, to be repaid with interest in a term of years, for works of certain classes, the public utility of which was duly ascertained. A certain maximum sum would be placed at the command of the Local Governments, to be applied in making such advances, on which they would operate, the power of extending the advances to new objects being limited by the obligation not to exceed that sum, so that, when the whole authorized sum was once advanced, the earlier loans must be paid off before fresh ones could be made.

It has been ruled, however, more than once recently that it is not desirable to give the local bodies who deal with local or municipal revenues independent powers of borrowing, and that, when for any special reason it may be expedient that funds should be borrowed for local objects, the Government itself should lend the money. This course has been followed in several cases.

But in most of these cases there is no means of giving the Government a legal lien on the revenues on the security of which the loans are made. A municipal body or a person administering local revenues has no power to do more than deal with the revenue as it is received, and cannot give any valid pledge that the income of future years shall be applied in a particular way, unless under express legislative authority, which certainly has no existence in the case of most of the Local Funds in India. When the last law regarding municipalities in the North-Western Provinces, Act VI of 1868, was passed, the power of borrowing was deliberately rejected by the Government of India and the Legislative Council.

The present Bill has therefore been prepared in the Public Works Department in order to provide for the making of advances of public money for works of public utility to local or municipal bodies, obtaining at the same time valid security for their repayment from the funds at the disposal of such bodies.

21st March 1870.

R. STRACHEY.

4/17/1903

Public Department 11/11/1903

Government of India.

LEGISLATIVE DEPARTMENT.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter

*Outstanding
Action 8/11/1903*

Annexure

TO

Bill to facilitate the construction of
works of public utility from Local and
Municipal Funds.

*Mr. G. Banbury
Mr. C. L. Morris
Mr. J. M. Brooks
Mr. H. E. Sullivan
Mr. A. Mac Gregor.*

(Statement of Objects and Reasons.)

M. M.

J. D. S.

*The Govt request
the Board of Revenue, the
Advocate General and the
gentlemen named in the
margin to favor Govt.
with an expression of
opinion regarding the
accompanying "Bill
to facilitate the construc-
tion of works of public
utility from Local
and Municipal Funds"
which has been intro-
duced in the Legislative
Council of the Government
General.*

*To the Board of Revenue
" Advocate General.
To the Gentlemen named above*

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I think that we had better take
the opinion of the Board of Revenue
and a few selected District
Officers my hopes J. L. Morris
Baker have ^{perhaps} ~~perhaps~~ Sullivan
perhaps also the Advocate here
and of Mr. Hambury on this
Bill.

Mr. Fisher

for index as mg

- sent me by mail

Brk

Cont. of 18. 3rd series

Public

To
The Board of Health.
for

Dated July 27.
Recd. } 1870, No. 248

Nos. 15

Calling for the opinions of
certain Agents and Officers
on the Bill to facilitate
the construction of works of
public utility from local
and municipal funds.

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15

Remanded to the Board -
for Reporting & Mr. Sullivan
11/8

24/7 to 004-
11/12