

# WEST VIRGINIA CODE: §8-17-11

## **§8-17-11. Apportionment among all abutters; limit on total cost chargeable to abutters; engineer's report; notice; hearings; correcting and laying assessments.**

Where the petitioner indicated in the petition his desire to have the total cost apportioned among all of the abutters, the engineer shall, as soon as the governing body has ordered the proper municipal authorities to proceed with the improvement under the provisions of section eight of this article, determine or cause to be determined the several frontages abutting on the improvement, a brief description thereof and the owners of such frontages as of the date of service of, or the date of the first publication of, a notice under the provisions of section eight of this article; and he shall keep an account of all items of cost connected therewith that affect the total cost. As soon as the improvement is completed and the account called for in section nine of this article has been furnished to him, the engineer shall compute the actual total cost of the improvement.

The total cost shall be personally borne by such owners of abutting property, including the petitioner, as of the date of service of, or the date of the first publication of, a notice under the provisions of section eight of this article; and the amount of the assessment against each shall be apportioned by the engineer on the basis of the formula next hereinafter set forth. Each lot or parcel of land so abutting shall be assessed with that portion of the total cost of the entire project which is represented by the proportion which the abutting frontage in feet of such lot or parcel bears to the total abutting frontage in feet of all the lots or parcels of land abutting on the streets, alleys, public ways or easements, or sewer rights-of-ways or easements, so improved: Provided, That if the character of the improvements shall be substantially different upon different streets, alleys, public ways or easements, or sewer rights-of-ways or easements, or portions thereof, the cost may be equitably apportioned to the respective streets, alleys, public ways or easements, or sewer rights-of-ways or easements, or portions thereof, in proportion to the character and cost of the improvements respectively thereon; and the part of the cost so apportioned to each respective street, alley, public way or easement, or sewer right-of-way or easement, or portion thereof, shall be apportioned to and assessed against the respective lots or parcels of land abutting thereupon in the proportion as hereinabove provided: Provided, however, That if any part of the street, alley, public way or easement improved is used by a railway then the cost of the portion of any improvements between the rails and for two feet outside said rails shall be assessed against and wholly borne by the owner of the railway: Provided further, That if there be any property abutting on the portion of the street, alley, public way or easement, or sewer right-of-way or easement, so improved which it has been determined by the governing body, and shown in the ordinance or resolution authorizing the improvement, not to be specially benefited by the improvement, or for other reasons would not be liable to assessment for any of, or for some part of, the cost of improvements, then the cost of the improvements abutting such part of said street, alley, public way or easement, or sewer right-of-way or easement, as is so determined to be nonassessable, shall be apportioned

among, assessed against and borne by the remaining property abutting upon the portion of the street, alley, public way or easement, or sewer right-of-way or easement, improved in proportion to the frontage of such remaining abutting property as hereinabove provided: And provided further, That if such improvement includes the building, renewing or repairing of sidewalks on only one side of a street, alley, public way or easement, then the cost of such improvement shall be assessed only on the property abutting on that side where the sidewalks are so built, constructed or repaired: Provided, That if there be property abutting the street, alley, public way or easement, or sewer right-of-way or easement, so improved which is owned by the United States of America, and, for that reason, not legally subject to assessment, then the municipality shall pay the proportionate part of the cost of the improvement which otherwise would be assessable against such federally owned property: Provided, however, That if the actual total cost exceeds \$1,000, the municipality shall be responsible for such excess over \$1,000, and if the actual total cost is less than \$1,000 but exceeds the estimated total cost by more than ten percent of the latter, the municipality shall be responsible for such excess over one hundred ten percent of the estimated total cost.

The engineer shall formulate a report showing the chargeable total cost to be apportioned among, assessed against and borne by the abutters, the names of the abutters (including the petitioner), the several frontages owned by said abutters, a brief description thereof and the proper amount of the chargeable total cost to be assessed personally against each abutter, and shall deliver such report to the governing body. The governing body shall thereupon give notice to the abutters to be assessed that, on or after a date named in said notice, an assessment may be laid personally against the abutters as embodied in said report. Said notice shall state that the abutters so named, or other interested party, may on said date appear before the governing body to move the correction or revision of such proposed assessment. Said notice shall show the same facts embodied in the engineer's report hereinabove described and shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. On or after the date so advertised, the governing body may revise, amend, correct and verify the report according to the evidence introduced by the contesting abutters or by the engineer, and shall thereafter proceed by ordinance or resolution to lay the assessments, as corrected and verified, against the abutters personally.