WEST VIRGINIA CODE CHAPTER 8 ARTICLE 17

WV Legislature

PART I. PURPOSE; DEFINITIONS.

§8-17-1. Purpose of article; liberal construction.

It is hereby declared to be the purpose and policy of the Legislature in enacting this article to provide for a simplified method of low cost municipal improvements which cannot be practicably accomplished out of municipal revenues or in accordance with the procedures established in article eighteen of this chapter. This article shall be liberally construed to accomplish the purpose hereof.

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§8-17-2. Definitions.

For the purposes of this article:

(1) "Abutter" shall include the owner or owners, 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, of the property abutting on any street, alley, public way or easement, or sewer right-of-way or easement, upon or in which an improvement shall be made or proposed to be made under the provisions of this article;

(2) "Engineer" shall mean the municipal engineer, or, if the municipality has no regularly employed municipal engineer, any registered professional engineer, if there be any practicing in the municipality or the county, or if no such engineer be practicing in the county, any competent civil engineer;

(3) "Petitioner" shall, unless the context clearly indicates otherwise, include those abutters, whether one or more, who file the petition and bond described in section four of this article;

(4) "Improvement" shall include the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing and repairing of streets, alleys, public ways or easements, or portions thereof, and the building, renewing and repairing of sidewalks, and the constructing, renewing and repairing of storm or sanitary or combined storm and sanitary sewer systems, or portions thereof, upon or in any streets, alleys, public ways or easements, or sewer rights-of-way or easements, or portions thereof, independently or in conjunction with other of such improvements, within the municipality; and

(5) "Total cost" shall include the cost and expense of surveys, engineering and attorney fees, the printing and publishing in relation thereto, and the cost and expense of all labor, work, supervision, inspection, equipment leased and materials furnished and used in completing said improvements, excepting, however, any salaries and wages paid to municipal employees that would have been paid regardless of the work on the proposed improvement.

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PART II. POWER AND AUTHORITY TO MAKE LOW COST IMPROVEMENTS -- PRELIMINARY PROCEEDINGS.

§8-17-3. Municipality empowered and authorized to make improvements.

Every municipality is hereby empowered and authorized, in addition to any other rights, power or authority conferred upon it, to make improvements upon the terms and conditions and in the manner hereinafter in this article set forth.

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§8-17-4. Petition and bond; action of governing body; memorandum of engineer.

Upon the filing of a written petition for the making of an improvement, together with the bond hereinafter described, by (1) a petitioner stating in said petition the willingness of said petitioner to pay all of the total cost of said improvement, or (2) a petitioner owning the greater amount of frontage of property abutting upon any portion of a street, alley, public way or easement, or sewer right-of-way or easement, upon or in which said improvement is to be made, the governing body shall, by ordinance or resolution, order the engineer to investigate the improvement and to prepare a memorandum describing the portions of the streets, alleys, public ways or easements, or sewer rights-of-way or easements, proposed to be improved, and certifying the reasonable necessity of the improvement, the plans and specifications for the improvement and a list of all items comprising the total cost of the improvement, with an estimate of the cost of each item.

There shall be stated, specified or described in the petition the name and mailing address of the petitioner, the part or parts of the therein named streets, alleys, public ways or easements, or sewer rights-of-way or easements, desired improved, the improvement desired and whether the petitioner will pay all of the total cost or whether he desires the total cost to be apportioned among all of the abutters. In any case where two or more petitioners file the petition and it is stated therein that they intend to pay all of the total cost of the improvement, it shall also be stated therein either that they desire to have such total cost apportioned among them on a pro rata basis of their abutting footages according to a list of such footages compiled by them and contained in the petition or that they desire to pay such total cost according to a list of percentage shares formulated by them and contained in the petition.

Any petition filed under the provisions of this article shall be signed by the petitioner. A bond shall be given by the petitioner with good security to be approved by the governing body in the penal sum of $1,000. The bond shall bind the petitioner (jointly and severally, in the case of more than one petitioner) to pay all charges and assessments imposed upon such petitioner under the provisions of this article.

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§8-17-5. Hearing on adverse report in engineer's memorandum; notice thereof; modification of memorandum; expenses charged to petitioner upon failure of petition.

If the engineer certifies in his memorandum that the improvement is not reasonably necessary, or that the estimated total cost is more than $1,000, or both, the governing body shall notify the petitioner of the adverse report in the engineer's memorandum, and of a date (at least ten days from the date of the mailing of the notice as provided below), time and place of a meeting of the governing body, at which the engineer shall be present and the petitioner may object to or be heard on any part of the engineer's memorandum concerned with the said adverse report. The notice shall be given by mailing a copy thereof to the petitioner at the address listed in the petition unless the petitioner shall have notified the governing body in writing of a change in his mailing address, in which case the notice shall be mailed according to such change. The governing body may modify the memorandum in accordance with the evidence introduced at said meeting; but if no evidence is introduced, the engineer's memorandum shall be accepted. In any case where the petition fails because there is no reasonable necessity for the improvement or because the estimated total cost of the improvement is more than $1,000, or because of both reasons, the petitioner shall be charged with all municipal expenses in connection therewith, except salaries and wages of regular municipal officials and employees, which charge shall be made by ordinance or resolution of the governing body; and a statement of such charge shall be mailed to the petitioner at the proper address, determined as aforesaid.

For convenience of reference herein, the term "engineer's memorandum" shall mean, as the case may be, his original memorandum, or his memorandum as modified in accordance with the provisions of this section or section eight of this article.

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§8-17-6. When petition for improvement is to be granted.

A petition for improvement shall be granted when it and the accompanying bond have been found to be regular, and when the engineer's memorandum indicates that the proposed improvement is reasonably necessary and that the total cost will not exceed $1,000.

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PART III. SAME -- PROCEEDINGS AFTER GRANTING OF PETITION.

§8-17-7. Procedure when petitioner to pay all of total cost.

If the petitioner has stated in the petition that he will pay all of the total cost, the governing body shall, as soon as the petition is granted as provided in section six of this article, order, by ordinance or resolution, the proper municipal authorities to proceed with the accomplishment of the improvement according to the plans and specifications in the engineer's memorandum.

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§8-17-8. Procedure when total cost to be apportioned among all abutters.

If the petitioner has stated in the petition that he desires the total cost to be apportioned among all of the abutters, the governing body shall, as soon as the petition is granted, cause notice to be given to all abutters that the petition has been granted; that the engineer's memorandum, certifying reasonable necessity, the plans and specifications and the cost estimates, will be reconsidered, before work is started, at a public meeting of the governing body on the date and at the time and place named in the notice; and that all abutters will be given an opportunity to protest or be heard concerning any or all particulars of the engineer's memorandum at that meeting or an adjournment thereof. Such notice to abutters may be by service on such abutters in the manner in which process commencing a civil action under the law of this state is permitted to be served, at least ten days before said meeting. In lieu of such service of such notice, the following described notice, or one in substantially the same form, may be given, and shall be deemed to have been served on all such abutters, by publication of such notice 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 such municipality:

"NOTICE TO ALL PERSONS OR CORPORATIONS OWNING PROPERTY ABUTTING ON ..... (here describe the portion of the street, alley, public way or easement, sewer right-of-way or easement, to be improved) IN THE ..... (city, town or village) OF ..... (name of municipality);

A petition has been granted by the ..... (council, board of directors, commissioners or other governing body) of the ..... (city, town or village) of ..... (name of municipality) to improve the portion of the ..... (street, alley, public way or easement, or sewer right-of-way or easement) above described in ..... (name of municipality) by ..... (grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing or repairing, or the building, renewing or repairing of sidewalks, or the constructing of sanitary or storm sewers, or both, or other general description of the proposed improvement), as specifically described in the engineer's memorandum certifying the reasonable necessity of the proposed improvement, the plans and specifications thereof, and the estimate of the items of cost thereof, and to apportion the cost of such improvement among the owners, as of ..... (the date of the first publication of this notice), of the abutting property.

The engineer's memorandum above described and the granting of the petition will be reconsidered by the ..... (council, board of directors, commissioners or other governing body) at a public meeting to be held on the ..... day of ....., 19....., at ..... M. at ..... Any abutting owner or interested party will be given an opportunity to protest or be

heard at said meeting or an adjournment thereof.

..... (name of recorder)

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..... (official position)."

An affidavit of publication of the notice, made by the newspaper publisher, or some person authorized to do so on behalf of such publisher, and a copy of the notice shall be made a part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of said notice upon all persons owning any interest in any property abutting upon any portion of said street, alley, public way or easement, or sewer right-of-way or easement, to be improved shall conclusively be deemed to have been given when such newspaper publication shall have been completed.

Any part or parts of the engineer's memorandum may be modified or remodified at the protest meeting in accordance with the evidence introduced at such meeting, including the extent of the portions of the streets, alleys, public ways or easements, or sewer rights-of-way or easements, proposed to be improved as designated in the engineer's memorandum. If, after modification or remodification at such protest meeting, the memorandum indicates that the improvement is not reasonably necessary or that its estimated total cost is more than $1,000, or both, then the petition shall be automatically revoked; and the petitioner shall be charged with all municipal expense in connection therewith except the salaries and wages of regular municipal employees, which charge shall be made by ordinance or resolution of the governing body and a statement of said charge shall be mailed to the petitioner at the proper address, determined as aforesaid.

If the engineer's memorandum has not been so modified or remodified at the protest meeting as to render the petition automatically revoked as provided above, the governing body shall order, by ordinance or resolution, the proper municipal authorities to proceed with the accomplishment of the improvement according to the plans and specifications in the engineer's memorandum, as modified or remodified at the protest meeting in the event that they were modified or remodified.

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§8-17-9. Accomplishment of the improvement; use of municipal employees and equipment; contracts; account of costs.

When the proper municipal authorities shall have been ordered by the governing body to proceed under the provisions of either section seven or section eight of this article, they shall do so without delay. The improvement shall be accomplished, as far as possible without interfering with normal municipal services, with the municipality's regular employees and equipment; but contracts may be made with reputable persons for the improvement. Said authorities shall keep an account of all items of cost connected therewith that affect the total cost of the improvement. Upon completion of the improvement, said proper municipal authorities shall deliver the account of costs to the engineer.

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§8-17-10. Apportionment among petitioners only; limit on total cost chargeable to petitioners; notice.

Where the willingness of the petitioner to pay all of the total cost is stated in the petition, the engineer shall compute the actual total cost as soon as the improvement is completed and the account called for in section nine of this article is furnished to him and, where more than one petitioner filed the petition, the engineer shall assess the amount owed by each petitioner according to the method indicated in the petition as prescribed in section four of this article: Provided, 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 certify his determination of charges to the governing body, and, after adopting the same by ordinance or resolution, the governing body shall notify the petitioner of the assessment list by mailing a written copy thereof to the petitioner at the proper address, determined as aforesaid.

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§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:

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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.

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§8-17-12. Assessments where property owned or controlled by public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.

When any of the lots or parcels of land abutting the portion of the street, alley, public way or easement, or sewer right-of-way or easement, improved consist of property owned or controlled by this state, any municipality, county, Board of Education or other public body, or consist of property owned by or used for, a church, or a religious, charitable, educational or eleemosynary institution, for purposes not subject to taxation, the owners of such property, 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, shall nevertheless be assessed with their proper proportion of the total cost of said improvement, and it shall be the duty of the owners or those persons having charge of the fiscal affairs of such owners or the management of any such property or institution to make proper arrangements for the payment of such assessments and to cause the same to be paid.

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PART IV. COLLECTION OF ASSESSMENTS AND CHARGES.

§8-17-13. Due date of assessments; statement of amount in default to petitioner.

Assessments made under the provisions of section eleven of this article shall be due the municipality within sixty days after the adoption by the governing body of the ordinance or resolution laying the assessment; and upon payment of an assessment by an abutter, he shall be given a receipt therefor, a copy of which shall be retained by the municipality; and, upon payment in due course of all such assessments pertaining to an improvement, the petitioner shall be automatically discharged on his bond. If any such assessment, in whole or in part, be not paid within said sixty days, the governing body shall determine the total amount in default and shall charge said amount to the petitioner by ordinance or resolution; and a statement of the charge shall be mailed to the petitioner at the proper address, determined as aforesaid.

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§8-17-14. Due date of charges against petitioner; collection on bond; petitioner's right of action.

Charges made against any petitioner under the provisions of sections five, eight, ten and thirteen of this article shall be due the municipality within thirty days from the date that a statement was mailed to him at the proper address, determined as aforesaid. If any such charges against any petitioner be not paid within such thirty days, the governing body shall by ordinance or resolution authorize the proper municipal authorities to proceed to collect on the petitioner's bond.

Any petitioner who is forced to pay, either by collection on the bond or by voluntary payment to avoid collection on the bond, any sum which should have been paid by another petitioner or any other abutter shall have a right of action against any such defaulter for the amount that the defaulter should have paid, with interest at six percent from the date that the defaulter was in default; and where a petitioner makes a voluntary payment for any such defaulter to avoid collection on the bond, a receipt shall be given to him, and a copy retained by the municipality, showing the petitioner who made such payment, the defaulter for whom the payment was made and the charge or assessment for which the defaulter was in default, which receipt shall be prima facie evidence of the petitioner's right to collect from the defaulter named in said receipt the amount specified therein, with interest as above stated.

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PART V. CUMULATIVE AUTHORITY.

§8-17-15. Cumulative authority.

The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any Constitutional, statutory or charter provisions which may now or hereafter be in effect.

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