WEST VIRGINIA CODE CHAPTER 8 ARTICLE 18

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PART I. POWER AND AUTHORITY TO MAKE IMPROVEMENTS.

§8-18-1. Power and authority of municipalities relating to street, sidewalk, sewer and other permanent improvements.

Every municipality is hereby empowered and authorized, in addition to any other rights, power and authority conferred upon it, upon the terms, conditions and in the manner hereinafter set forth, to grade or regrade, pave or repave, surface or resurface, curb or recurb, streets (which term is used in this article to include avenues and roads), alleys, public ways or easements, or portions thereof, and to build or renew sidewalks, and to construct, provide or renew any of such improvements or other permanent public improvements in any streets, alleys, public ways or easements, or portions thereof, in such municipality, and, if deemed advisable, to construct storm and sanitary sewers, or all or a part of a storm or sanitary or combined storm and sanitary sewer system in any streets, alleys, public ways or easements, or sewer right-of-ways or easements, or portions thereof, independently or in conjunction with other of such improvements, and to assess the costs of any or all of such improvements on abutting property.

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§8-18-2. Petition of abutting property owners for improvement; improvements without petition.

Upon the petition in writing of persons 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, for any permanent improvement (which term is used in this section and the succeeding sections of this article to include any reimprovement) authorized in section one of this article, the governing body of any municipality may, after giving notice to abutting property owners as hereinafter in this article provided, by ordinance or resolution declare the necessity or convenience of such improvement and order and cause such portions of such streets, alleys, public ways or easements, or sewer right-of-ways or easements, to be graded, regraded, paved, repaved, surfaced, resurfaced, curbed, recurbed, sewered, resewered, permanently improved (which term is used in this section and the succeeding sections of this article to also mean reimproved) with sidewalks or otherwise permanently improved with suitable material, or any one or more of such improvements without the others, as may be determined by the governing body, to be made or constructed within such municipality or within such part or parts thereof as the governing body may determine, and such governing body may specially assess the entire cost of such improvements, or any part thereof, upon the property abutting on both sides of the portions of the streets, alleys, public ways or easements, or sewer right-of-ways or easements, improved.

The governing body of any municipality may also adopt such ordinance or resolution of necessity or convenience and provide for such improvements and the assessing of the cost thereof upon abutting property without such a petition of property owners having first been received, when the ordinance or resolution providing for such improvements is adopted by the affirmative vote of at least three fourths of the members of such governing body by recorded vote, after having given notice to abutting property owners as hereinafter in this article provided.

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§8-18-3. Notice to abutting owners before authorizing improvements; form of notice; affidavit of publication.

Before the adoption of such ordinance or resolution of necessity or convenience, the governing body shall cause notice to be given to owners of abutting property that such ordinance or resolution will be considered before adoption at a public meeting of the governing body at a date, time and place named in the notice and that all persons shall at that meeting, or an adjournment thereof, be given an opportunity to protest or be heard concerning the adoption or rejection of said ordinance or resolution. Such notice to owners of property abutting on the portion of the street, alley, public way or easement, or sewer right-of-way or easement, to be improved may be by service on such owners in the manner in which process commencing a civil action under the laws 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 owners of abutting property, 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, or sewer right-of-way or easement, to be improved) IN THE ..... (city, town or village) OF ..... (name of municipality):

Proposals have been made to the ..... (council, board of directors, commissioners or other governing body) of the ..... (city, town or village) of ..... (name of municipality) to permanently 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 or recurbing, building or renewing of sidewalks, or the constructing of sanitary or storm sewers, or other general description of the proposed improvements) as the ..... (council, board of directors, commissioners or other governing body) may deem proper, and to assess the cost of such improvements on the property abutting said portion of said ..... (street, alley, public way or easement, or sewer right-of-way or easement).

The proposals to make such improvements, and the plans, specifications, profiles and estimates therefor, will be considered 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)

..... (official position)."

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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.

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PART II. PROCEDURES RELATED TO IMPROVEMENTS AND ASSESSMENTS.

§8-18-4. Ordinance or resolution authorizing improvements; approval of plans, specifications and estimates; provisions for advertisement of bids and payment of cost; default.

After hearing held pursuant to notice as provided in section three of this article, the governing body, by ordinance or resolution, may authorize such improvements and the assessing of the total cost or any part thereof on abutting property as herein provided. In the same or subsequent ordinances or resolutions, but before advertising for bids from contractors, the governing body shall cause to be prepared plans, specifications and estimates of the cost of the proposed improvements under the supervision of the engineer for the municipality. Such plans, specifications and estimates shall show the proposed grade and sufficient data for any owner of abutting property to calculate approximately what proportionate part of the estimated cost thereof might be assessed against his property, and shall be filed with the recorder and open to the inspection of interested persons before advertisement for bids of contractors and before the meeting at which such bids may be accepted or rejected. Before advertising for bids of contractors, such governing body shall consider said plans, specifications and estimates and may amend or modify them, and before advertising for bids shall by ordinance or resolution approve such plans, specifications and estimates as so amended and modified. Such ordinance or resolution shall also provide for advertisement for bids, for the letting of a contract or contracts for the work to the lowest responsible bidder, with right reserved to such governing body to reject any and all bids, and shall provide for supervision of such work by the mayor, city manager, if any, municipal engineer, if any, or other person or committee designated by the governing body. Such ordinance or resolution shall also provide for payment of the cost of the work when completed. The governing body shall provide in such ordinance or resolution for the payment by abutting property owners of the cost of the work in equal installments payable over a period of not less than five years nor more than ten years from the date of assessment, with interest not to exceed eight percent a year from the date of assessment, and in said ordinance or resolution the governing body shall fix the number of installments in which the amounts assessed shall be payable: Provided, That each of said assessments or the installments thereof then remaining unpaid shall be payable at any time after assessment without interest after the date such payment is made: Provided, however, That on failure of the owner of the property assessed to pay any installment as and when due, and if such default continues for sixty days, then at the option of the governing body (if neither assessment certificates nor bonds are issued as hereinafter in this article provided), or the holder of the assessment certificates (if the assessments are evidenced by such certificates), or the holder of any bonds secured by such assessments (if bonds are issued), the entire balance due may be declared immediately due and payable and the municipality, or the holder of the certificates, or bonds, as the case may be, may forthwith proceed to enforce the collection thereof: Provided further, That if the amounts to be assessed against abutting property be less than $2 for each abutting front foot of property, then said governing body is

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authorized to make the same payable in one lump sum or in installments, with interest, over a period of less than five years from the date of assessment.

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§8-18-5. Report on completion; notice to abutting owners of assessments; hearings; correcting and laying assessments.

When the improvement of such street, alley, public way or easement, or sewer right-of-way or easement, has been completed, the governing body shall cause the engineer, or other person charged by the governing body with the supervision of the work of improvement, to make a report showing the several frontages abutting thereon, the total cost, the respective amounts chargeable upon each lot or parcel of land assessed abutting thereon and the proper amounts to be assessed against the respective abutting lots or parcels of land as provided herein, with a description of the abutting lots and parcels of land as to ownership, frontage and location. The governing body shall thereupon give notice to the owners of the property to be assessed that on or after a date named in said notice an assessment may be laid against the property so improved as embodied in said report. Said notice shall state that the owner or owners whose property is to be assessed, or other interested party, may on said date appear before the governing body to move the revision or correction of such proposed assessment. Such notice 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. Said notice shall show the total cost of the improvement, the several frontages abutting thereon and the respective amounts to be assessed against the abutting property, with a description of the respective abutting lots and parcels of land as to ownership, frontage and location. On or after the date so advertised, the governing body may revise, amend, correct and verify the report and proceed by ordinance or resolution to lay the assessments as corrected and verified.

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PART III. APPORTIONMENT IN MAKING ASSESSMENTS.

§8-18-6. Construction of sewers and sewer systems; assessments; corner lots, etc.

The governing body of any municipality is hereby empowered and authorized to order and cause to be constructed, within said municipality, or partly within and partly without the corporate limits of said municipality, public, common, lateral, branch and trunk storm and sanitary sewers and sewer systems and combined storm and sanitary sewers or sewer systems, or both, by contract or directly by the municipality, for the benefit of said municipality or any part thereof, and to purchase lands or easements or to condemn lands or easements in the manner provided by law for such sewers or sewer systems. When the governing body shall order and complete the construction of any such sewer or sewer system or any part thereof within said municipality, the property abutting on such sewer or abutting upon any street, alley, public way or easement, or any sewer right-of-way or easement, in which such sewer shall be constructed, or abutting on any street, alley, public way or easement, or any sewer right-of-way or easement, in which any part of such a sewer is constructed, may be charged with all or any part of the cost thereof, including the cost of such sewer or sewer system across intersections of streets, alleys, public ways and easements.

A sewer system shall be deemed to include all of the common sewers whether they be lateral, branch, trunk or combined sewers, which serve to drain a definite drainage area as specified in the order of the governing body directing the work to be done.

In case of a corner lot, or of acreage which has not been divided into lots, frontage which may be assessed shall be measured along the longest dimension thereof abutting on each street, alley, public way or easement, or sewer right-of-way or easement, in which such sewer is laid, but if sewered on two or more sides then such corner lot, or acreage which has not been divided into lots, is to be charged only with the side first sewered unless two hundred feet or more in depth measured from such first sewered side, in which event the corner lot, or acreage which has not been divided into lots, shall be charged only with the footage in excess of two hundred feet. Any lot, or any acreage which has not been divided into lots, having such a depth of two hundred feet or more and abutting on two or more streets, alleys, public ways or easements, or sewer right-of-ways or easements, one in the front and one in the rear of said lot, or said acreage which has not been divided into lots, shall be assessed on both of said streets, alleys, public ways or easements, or sewer right-of-ways or easements, if a sewer is constructed on both such streets, alleys, public ways or easements, or sewer right-of-ways or easements. Where a corner lot, or an acreage which has not been divided into lots, has been assessed on both ends, it shall not be assessed on the side, and where it has been assessed on the side, it shall not be assessed on either end.

In case of corner lots, or acreage which has not been divided into lots, where the cost of sewering along one dimension is not assessed against the owner thereof, and in the case of lots, or acreage, less than two hundred feet deep abutting at each end on a street, alley, public way or easement, or sewer right-of-way or easement, in which a sewer is laid, the cost

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of sewering along the dimension or end not assessed against the property owner shall in every case be apportioned and assessed against the other property abutting on the streets, alleys, public ways or easements, or sewer right-of-ways or easements, being improved, in the manner of apportionment of the cost of improvements in intersections.

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§8-18-7. What total cost to include.

In ascertaining the total cost of the improvements in any project undertaken pursuant to the provisions of this article, there shall be included the cost and expense of surveys, engineering and attorneys' 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.

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§8-18-8. Apportionment and assessment of cost.

The cost of the entire project, including the cost of all improvements at and within intersections, shall be apportioned to, and assessed against and borne by the properties abutting upon the streets, alleys, public ways or easements, or sewer right-of-ways or easements, in or upon which the improvements involved in the project shall have been made. Each lot or parcel of land so abutting shall be assessed, subject to the provisions of section six of this article respecting assessment for sewer improvement of corner lots, acreage not divided into lots and lots or acreage sewered on more than one side or end, 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 of land 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 right-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 right-of-ways or easements, or portions thereof, the cost may be equitably apportioned to the respective streets, alleys, public ways or easements, or sewer right-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 property shall be assessed only to the extent it is benefited and 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 improvements, not to be specially benefited by the improvements, or not to be specially benefited to the full extent of the cost of the improvements, 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, or so much thereof as is so determined to be nonassessable, shall be apportioned among, assessed against and borne by the remaining property abutting upon the streets, alleys, public ways or easements, or sewer right-of-ways or easements, improved in proportion, subject to the aforesaid provisions of section six of this article, to the frontage of such remaining abutting property as hereinabove provided: And provided further, That if such improvements include the building or renewal of sidewalks on only one side of a street, alley, public way or easement, then the cost of such sidewalk shall be assessed only on the property abutting on that side where the sidewalks are so built or renewed: Provided, That in apportioning and assessing the cost of sewers or sewer systems the provisions of section six of this article shall be observed: Provided, however, 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.

In apportioning the cost to any lot or parcel of land in any situation not covered in this article, the cost shall be apportioned equitably, as determined by the governing body, in keeping with the concepts and principles expressed in this article and the special benefit to the property in question from the improvements made.

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§8-18-9. Assessment against property of 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, such property shall nevertheless be assessed with its proper proportion of the cost of said improvement, and it shall be the duty of those persons having charge of the fiscal affairs of such owner or the management of any such property or institution to make proper arrangements for the payment of, and cause to be paid, such assessments as and when due and payable.

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PART IV. LIENS OF ASSESSMENTS AND ENFORCEMENT THEREOF.

§8-18-10. Liens; recording notice of liens; suit for enforcement; priority.

The property abutting the portion of the street, alley, public way or easement, or sewer right-of-way or easement, improved shall be subject to a lien, from the date of the ordinance or resolution laying the assessment, for the payment of the cost of the improvements assessed against said property. A notice of the liens of said assessments referring to the assessing ordinance or resolution, and setting forth a list of the property assessed, described respectively as to amounts of assessment and ownership, frontage and location of the property, shall be certified by the recorder of the municipality to the clerk of the county court of the county wherein the improvement or any part thereof is located. The county clerk shall record the same in a proper trust deed book and index the same in the name of each owner of abutting property assessed. From the date of the assessment, the municipality (if neither assessment certificates nor bonds are issued as hereinafter in this article provided), or the holder of the assessment certificates (if the assessments are evidenced by such certificates), or the holders of the bonds secured by such assessments (if bonds are issued), shall have such liens and shall be entitled to enforce the same in its, his or their name or the name of the municipality to the extent of the amount, principal and interest, of such assessments and against the said property, as to any assessment not paid as and when due. Said assessments shall be and constitute liens in the hands of the municipality, or the holders of said certificates, or the holders of said bonds, as the case may be, upon the respective lots and parcels of land assessed and shall have priority over all other liens except those for land taxes due the state, county and municipality, and except any liens for preexisting special assessments. Said assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. The municipality, or the holders of any such certificates, or the holders of any such bonds, as the case may be, may enforce the lien thereof in any proper suit, and when default in the payment, as and when due, of any assessment, principal or interest, or installment, shall occur and such default shall have continued for more than sixty days, the municipality, or the holders of any such certificates, or the holders of any such bonds, as the case may be, may declare the whole unpaid balance due and payable and by proper civil action seeking equitable relief enforce the lien thereof, upon process issued and served according to law upon the owner or owners of the lots or parcels of land subject to said lien at the time such suit may be brought as shown by the records of the clerk of the county court of the county in which said lots or parcels of land are located.

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§8-18-11. How assessments may be evidenced.

The governing body shall also determine and provide in the ordinance or resolution laying the assessments, adopted in accordance with the provisions of section five of this article, if such provision was not made in the ordinance or resolution adopted in accordance with the provisions of section four of this article, the method of paying for the work, for the cost of which assessments are levied as in this article provided, whether by an appropriation from funds in the treasury of the municipality unappropriated to be repaid from the collection of the assessments, or by the issuance of certificates as hereinafter provided, or from the proceeds of bonds issued in anticipation of the collection of special assessments to be made against the abutting property owners as provided for in section fourteen of this article.

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PART V. FINANCING IMPROVEMENTS BY USE OF UNAPPROPRIATED FUNDS TO BE REPAID BY ASSESSMENTS.

§8-18-12. How funds of municipality to be repaid if work paid for from unappropriated funds rather than by means of assessment certificates or from the proceeds of bonds.

If the governing body shall determine by ordinance or resolution as in this article provided to pay for the work completed, for the cost of which assessments are levied as in this article provided, from unappropriated funds in the treasury of the municipality, it shall be the duty of the governing body immediately to certify such assessments to the treasurer for collection in accordance with the terms provided in the ordinance or resolution authorizing the improvements.

To each of the installments of assessments remaining unpaid in the treasurer's hands on the dates specified for the payment thereof, a penalty of ten percent shall be added, and any assessments so remaining unpaid in the treasurer's hands on such dates shall be taken up by the governing body on settlements had with the treasurer on such dates, and such assessments, with the penalty added thereto, shall be collected in all respects as provided for the collection of taxes due the municipality, and they shall be a lien upon the property liable therefor the same as a lien for taxes, which lien may be enforced in the same manner as provided for a lien for taxes.

Whenever all installments of an assessment for such improvements shall be paid in full to the treasurer he, on behalf of the municipality, shall execute and deliver to the party paying the same a release of the lien therefor, which may be recorded in the office of the clerk of the county court as other releases of liens; and whenever any such assessments shall not be in the hands of the treasurer for collection, but the same shall be shown to the satisfaction of the municipal Auditor or other official performing the duties of Auditor for the municipality to have been paid in full to any officer entitled to receive the same, such Auditor or such other official or the mayor, in cases where the municipality has no Auditor or such other official, may in like manner execute such release.

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PART VI. FINANCING IMPROVEMENTS BY ISSUANCE OF ASSESSMENT CERTIFICATES.

§8-18-13. Assessment certificates.

If the governing body shall determine by ordinance or resolution to pay for the cost of the work by the issuance of assessment certificates, then immediately upon the laying of the assessment against the abutting property, such assessment certificates shall be issued evidencing said assessments and each installment of principal and interest payable. Said certificates may be payable to the municipality or to the bearer and be signed by the mayor and recorder, or other equivalent officers of the municipality, and shall refer to the ordinance or resolution laying the assessments; shall show the amount and date of the assessment and describe the property against which the assessment is laid, describing the same as to ownership, amount, frontage and briefly as to location. Said certificates shall also show the dates on which principal and interest payments are due, and shall contain a provision that in the event there is default in the payment of any one of such installments and such default continues for a period of sixty days, then all unpaid installments shall become due and payable at the election of the certificate holder and the holder may proceed to collect all of the unpaid balances of installments, with interest until paid. Said certificates may be issued to the contractor making the improvements in payment therefor, upon the contractor's reimbursing the municipality for those items of the cost and expense advanced by the municipality and referred to in section seven of this article. Said certificates payable to the bearer shall be assignable by delivery of the certificates and be enforceable by the holder. The municipality issuing such certificates shall not be held as guarantor or in any way liable for the payment of bearer certificates.

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PART VII. FINANCING IMPROVEMENTS BY ISSUANCE OF BONDS.

§8-18-14. Issuance of bonds.

Every municipality is hereby empowered and authorized to issue its bonds for any improvements under the provisions of this article in anticipation of special assessments to be made upon the property abutting upon the streets, alleys, public ways or easements, or sewer rights-of-way or easements, so improved, and such bonds may be in such an amount as will be sufficient to pay the entire estimated cost and expense of such improvements for which such special assessments are levied. Such municipality is also authorized to sell such bonds, but the price for which they are sold shall not be below the par value of such bonds. Such bonds shall be payable in not to exceed ten years from the date of the issuance thereof, and shall bear interest at not to exceed twelve percent per annum, payable at such times, as shall be determined by the governing body of the municipality; and in the issuance and sale of such bonds, the municipality shall be governed by all the restrictions and limitations of the Constitution of this state, and by the restrictions and limitations of the statutes of this state with respect to the issuance and sale of other bonds, so far as they are not in conflict with the provisions of this article; and the assessments shall be collected as provided in sections ten and twelve of this article, and as paid and collected shall be applied to the liquidation of such bonds and the interest thereon; and if by reason of penalties collected with delinquent assessments there be any balance after the payment of such bonds and all accrued interest and cost, such balance shall be turned into the municipal treasury to the credit of the interest and sinking fund of the municipality: Provided, That no such municipality shall by sale or issuance of such bonds cause the aggregate of its indebtedness of every kind whatsoever to exceed five percent of the value of taxable property therein: Provided, however, That nothing herein contained shall be construed as authorizing any such municipality to become indebted in any other manner or for any purpose, to an amount, including its existing indebtedness, in the aggregate exceeding two and one-half percent of the value of the taxable property therein, as provided in section three, article one, chapter thirteen of this code, except for the purpose of grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, building or renewing sidewalks, or constructing sewers or otherwise improving or reimproving the streets, alleys, public ways or easements, or sewer rights-of-way or easements, of such municipality, as provided for in this article; nor shall such municipality make such issuance and sale without at the same time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and the principal thereof within and not exceeding ten years. All of the assessments, interest and penalties collected from the abutting property owners on account of the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, building or renewing sidewalks, or constructing sewers or otherwise improving or reimproving the streets, alleys, public ways or easements, or sewer rights-of-way or easements, of any such municipality, under the provisions of this article, shall annually be applied to the annual tax required to pay the interest on such debt and such principal within and not exceeding ten years; and in the event that the assessments, interest and penalties so collected do not amount to a sum sufficient to pay annually the interest on such debt and the principal thereof within and not

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exceeding ten years, then the governing body of such municipality shall collect so much of such levy as will pay annually the interest on such debt and the principal thereof within and not exceeding ten years.

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§8-18-15. Bonds to pay municipality's share of cost of improvements.

Every municipality is also empowered and authorized to issue and sell its bonds, as provided in this article for the sale of other bonds, to pay any part of the cost of such improvements to be paid by the municipality, and such municipality may levy taxes in addition to all other taxes authorized by law, to pay such bonds and interest thereon: Provided, That the total indebtedness of the municipality for all purposes shall not exceed five percent of the total value of all taxable property therein.

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§8-18-16. Bond issue to be authorized by voters.

No bonds shall be issued under the provisions of this article unless and until the question of issuing such bonds shall have first been submitted to a vote of the qualified voters of the municipality, and shall have received three fifths of all of the votes cast at such election for or against the same. The governing body of any municipality empowered and authorized to issue bonds under the provisions of this article may provide by ordinance for an annual election, at which the question shall be submitted to the people as to whether the municipality shall issue bonds, for the purposes and under the provisions of this article, to an amount not to exceed in the ensuing year the amount recommended by such ordinance for such ensuing year. The ordinance providing for such election need not specify in detail the location of the improvements contemplated to be paid for during the ensuing year out of such aggregate issue authorized for such year, but, before issuing any such bonds, the governing body shall adopt an ordinance or resolution as in this article provided, authorizing the improvements to be made. It shall be a sufficient description of the purpose for which such election is held if the ordinance calling the same shall recite that the governing body proposes to issue bonds for the purpose of grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, building or renewing sidewalks, or constructing sewers or otherwise improving or reimproving the streets, alleys, public ways or easements, or sewer right-of-ways or easements, of such municipality at such time as to the governing body shall seem fit during the ensuing year ending on the ..... day of ....., 19....., to an amount not exceeding in the aggregate during said year the sum of $..... When the governing body shall have once been authorized by a vote of the qualified voters to issue bonds for such purposes and to a sum not to exceed the amount set forth in the ordinance calling such election, no further election shall be necessary for the issuing of bonds during such ensuing year up to the amount stipulated in such ordinance calling such election, but the governing body shall, from time to time during such ensuing year, by ordinance authorize the issuance of such bonds in such sums, and authorize such improvements the cost of which shall be paid from the proceeds of such bonds, as said governing body shall determine. The aggregate amount of bonds authorized by such annual election shall not be exceeded during such ensuing year, unless the same be authorized by a special bond election held at a subsequent time in such year and duly called as provided for the calling of the annual bond election. The provisions of article one, chapter thirteen of this code, concerning bond elections shall, so far as they are not in conflict with the provisions of this article, apply to the annual bond elections and special bond elections herein provided for.

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PART VIII. PAYMENT OF ASSESSMENTS.

§8-18-17. Payment of assessments or installments; release.

Payments of any assessments or installments thereof may be made to the treasurer of the municipality or the holder of the assessment certificates. If payment is made to the treasurer he shall require all interest to be paid which is owed up to the time of payment, and notify the holder of the certificate, if informed of the holder's address, that he has received such payment, and make payment to the holder on presentation for cancellation of the certificate representing such payment. If payment is made to the holder of the certificate, the holder shall deliver to the payor certificates marked "paid" representing the payments made of principal and interest. On presentation to the treasurer for cancellation of all certificates of principal and interest for the whole assessment made against a specific piece of property assessed, the treasurer shall on request execute and deliver a release of the lien of such assessment.

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PART IX. REASSESSMENT FOR VOID ASSESSMENTS.

§8-18-18. Reassessment for void, irregular or omitted assessments.

In the case of the construction of any permanent improvements where an assessment has heretofore been laid or may hereafter be laid for the cost thereof, which said assessment is or shall be void or voidable by reason of errors, irregularities or defects in the proceedings under which such improvements were made, or in case such assessment shall have been made against the wrong person or property, or shall have been omitted to be made in a case where the same was proper, it shall be the duty of the governing body within ten years after the completion of such improvements, or after any court shall have declared such assessment invalid, to cause notice to be given to any person or persons against whom the cost of said improvements might properly be or have been assessed, of its intention to lay such assessment and fixing a date, time and place at which the owner or owners may appear and show cause against the same. Said notice shall be served in the manner provided in this article for the giving of notices in assessment proceedings, or in any other manner provided by law. At the time and place specified in the notice aforesaid or at any time thereafter, the governing body shall proceed to lay and levy an assessment or assessments for the cost of such improvements as would have been lawful under proper proceedings at the time said improvements were completed, unless the owner or owners so notified shall show good cause against the same. The reassessment or reassessments so laid shall be a lien upon the property liable therefor in the manner hereinabove provided from the date of the completion of the improvements, with interest therefrom, and proper assessment certificates may be issued, recordation had, and the payment thereof and the lien thereof may be enforced in the same manner and upon the same terms as would have been proper at the time of the completion of the said improvements had the assessments therefor been then properly laid and levied.

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PART X. LIMITATION ON ADDITIONAL ASSESSMENTS.

§8-18-19. Limitation on additional assessments.

When the cost of grading or regrading, paving or repaving, surfacing or resurfacing, curbing or recurbing or other work permanently improving streets, alleys, public ways or easements, or of building or renewing sidewalks, or constructing sewers, has been assessed against abutting property under the provisions of this article, no part of the cost of a similar permanent improvement of the same portion of the same street, alley, public way or easement, or sewer right-of-way or easement, shall be assessed against such abutting property within ten years after completion of the last preceding similar such improvement for which assessments have been so made and levied.

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PART XI. CONSTRUCTION.

§8-18-20. Liberal construction of article; validity and enforcement of assessments when bond issue for same improvements.

This article shall be liberally construed to accomplish the purpose of providing reasonable, economical and expeditious means for municipalities to provide permanent improvements and to assure to the contractors making such improvements, or persons directly or indirectly financing the same, security in the payment of the cost and expense of such improvements; and nothing in this article shall be construed as imposing a time limit on a certificate holder or bondholder for the enforcement of his rights.

Moreover, the validity and enforcement of the assessments in this article provided shall not be impaired by the issuance and sale of bonds, as provided in article one of chapter thirteen of this code, for the same improvements, nor by the application, in whole or in part, of the proceeds of any such bond issue to the cost of any such improvement prior to collection of said assessments.

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§8-18-21. 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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§8-18-22. Connection to sewers; board of health; penalty.

Regardless of whether a lot or parcel is within any municipality's geographical limits, the owner or owners of any lot or parcel of land abutting on any street, alley, public way or easement on which a municipal sewer is now located or may hereafter be constructed and laid (whether constructed and laid under the provisions of this article or any other provisions of law) upon which lot or parcel of land any business or residence building is now located or may hereafter be erected, not connected with a public sewer, may be required and compelled by the municipality or by the board of health to connect any such building with such sewer. Notice so to connect shall be given by the municipality or by the board of health to the owner and to the lessee or occupant of such building. The owner or owners shall connect to the municipal sewer within thirty days after notice to connect has been sent by the municipality. Regardless of whether the owner or owners connect to such sewer, the municipality may bill the owner or owners of the lot or parcel and the owner or owners shall pay the municipality's charge based on the actual water consumption on the lot or parcel. If the lot or parcel is not metered, the municipality's charge shall be based on the municipality's good faith estimate of the consumption on the lot or parcel.

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§8-18-23. Authority to require discontinuance of water service by provider utility for nonpayment of sewer service rates and charges; lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) When any municipality owns, maintains, operates or provides sewer facilities to its residents and customers and does not own, maintain, operate or provide water facilities to them when the same is provided by any other publicly or privately owned utility, municipality or public service district, the municipality providing sewer facilities may require the provider of water facilities to discontinue water service to any of its users who are delinquent in the payment of sewer service rates and charges to the municipality. The provider of water facilities is empowered and authorized hereby to discontinue water service upon demand of the municipality for this purpose; however, prior to discontinuance of any water service, the municipality shall contract with the provider of water facilities which contract shall provide that the municipality shall reimburse the provider of water facilities for all costs and expenses incurred in both the termination of water service to the delinquent user of sewer facilities and the subsequent resumption of water service to such user. The contract shall provide for reasonable methods and assurances so that the provider of water facilities will be protected and held harmless from claims and damages when water service is discontinued in error or in violation of the rights of the user through the fault of the municipality providing sewer facilities and making the demand for discontinuance of water service to the user of such sewer facilities. Any contract made for this purpose shall have the approval of the Public Service Commission prior to its execution and performance. Any disconnection of water service must comply with all rules, regulations and orders of the Public Service Commission.

(b) Whenever any rates and charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all such rates and charges are fully paid.

(c) All rates and charges whenever delinquent, as provided by ordinance of the municipality, shall, when notice thereof is duly recorded in the office of the clerk of the county commission wherein the subject real property is situate, be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs

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incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates and charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency has been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being instituted.

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