

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939



ENROLLED

HOUSE BILL No. 324

(By Mr. Buckel)



PASSED March 11 1939

In Effect from Passage

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House Bill No. 324

(By Mr. BICKEL)

[Passed March 11, 1939; to take effect from passage.]

AN ACT to authorize and enable any municipality in the state to improve streets, public ways, alleys, sidewalks, or to construct sewers therein through the utilization of any money, work, labor or material furnished by the United States or any other governmental agency; to lay assessments upon abutting property for the proper protection of cost of such improvements and public works not covered by such governmental assistance; to declare such assessments to be liens upon the abutting property; to prescribe the time for the payment of such assessments, and to authorize the issuance of interest-bearing certificates evidencing such assessments; to authorize the sale of such certificates by the municipality; to provide for the recording of a notice of each such assessment; and to authorize the municipi-

pality to make the necessary contracts in relation to the subject matter hereof.

Be it enacted by the Legislature of West Virginia:

Section 1. Every municipal corporation in this state, whether existing and operating under a special charter or under general law, is hereby authorized and empowered, in addition to any other rights or powers conferred upon it by special charter or by any general law, relating to street, sidewalks or sewer improvements, to take advantage of a present situation and to avail itself of existing or future opportunities to obtain money, work, labor or material which may be furnished or provided by the United States or other governmental agency, to pave or repave and to curb any streets or alleys in such municipality and, if deemed advisable, to construct storm and sanitary sewers, or either of such sewers, in any street, public way, or alley, independently or in conjunction with paving upon the terms, conditions, and in the manner, hereinafter set forth.

Sec. 2. Upon the petition in writing of persons owning the greater amount of frontage of property abutting upon both sides of a street or alley, between any two streets or

4 between a street and an alley, specified and embraced within
5 the project proposed to be submitted to the governmental
6 agency whose assistance in the premises is sought, the gov-
7 erning body of any such municipality, by a lawful majority
8 thereof, may, upon the approval of such project by such
9 governmental agency, order and cause such street, or alley,
10 or streets or alleys to be paved or repaved between the side-
11 walk lines, with cobblestone, brick, Belgian blocks, concrete,
12 asphaltum or other material, and suitable curbs to be con-
13 structed if requisite, and suitable sidewalks to be constructed
14 if requisite, and the storm sewers and sanitary sewers, or
15 either of them, or any one or more of such improvements with-
16 out the others, as may be determined by the governing body, to
17 be constructed therein or in such part or parts thereof as the
18 governing body may determine.

19 The purpose of this section is to permit the inclusion of
20 more than one street or alley, or block of a street or alley,
21 in one project, in order to get for the municipality and the
22 property owners as advantageous an agreement as possible
23 with such governmental agency, but at the same time to
24 include within the streets or alleys or portions thereof to be

25 improved under the project only such stated portions of
26 such streets or alleys as to which petition has been signed
27 by the owners of as much as fifty-one per cent of the prop-
28 erty abutting thereon between any two streets or between a
29 street and an alley, and such blocks of a street or alley as
30 to which the owners of such percentage of abutting property
31 shall not have signed such petition shall be eliminated from
32 the project: *Provided, however,* That the governing body
33 shall not order any work to be done on any such improvements
34 planned pursuant to this act, and shall not incur any expense
35 for, or enter into any contract for, materials to be used in
36 the making of such improvements, unless and until a bona
37 fide and binding agreement or agreements has or have been
38 made between the municipality and some bank or banks, or
39 other corporation or corporations, or some individual or in-
40 dividuals, for the purchase by such banks, corporations or
41 individuals, of the assessment lien certificates to be issued
42 in respect to such project as provided for in section eight
43 of this act. It is understood, and it is hereby declared to be
44 the purpose of this act, that municipalities otherwise finan-
45 cially unable to effect or secure desired street improvements

46 may be enabled to do so through the assistance of other
47 governmental agencies, and the provisions of this section
48 are designed to prevent a municipality from incurring debt
49 or obligations for that part of the expense of any such project
50 to be borne by it unless and until it has been assured, as above
51 provided, that the assessment lien certificates related to the
52 particular project proposed, can be sold: *Provided further,*
53 That where any foreign railroad or other foreign corporation
54 is the owner of property abutting upon any street or alley
55 sought to be improved under the provisions hereof, notice
56 shall be given to such railroad or other foreign corporation
57 as prescribed by section one, article ten, chapter eight of the
58 code of West Virginia, one thousand nine hundred thirty-one,
59 before the adoption of any ordinance or resolution relating
60 to, and providing for, such improvement.

Sec. 3. Subject to the provisions of this act the municipality
2 is authorized to enter into the contract or contracts requisite
3 to accomplish the purposes of this act, provided that the
4 municipality shall not guarantee the completion of any work
5 or project undertaken hereunder so far as concerns the money,
6 work, labor or material to be furnished by a contributing

7 governmental agency, but such contracts are to be conditional
8 upon the contingency of the cessation or suspension of the
9 governmental policy or practice under which such aid is
10 furnished by the government or any agency thereof.

Sec. 4. In ascertaining the total cost of the improvements
2 in any project undertaken pursuant to this act, there shall
3 be included the cost and expense of surveys, and of the
4 printing and publishing of any ordinances or notices required
5 to be printed or published in relation thereto, and the cost
6 and value of all labor, work and materials furnished and
7 used in completing said improvements, including cost of in-
8 spection. The cost and value of all labor, work and material
9 and other assistance furnished by the government or con-
10 tributing governmental agency concerned in the project, as
11 ascertained and reported to the municipality by the said gov-
12 ernmental agency, shall be deducted from the total cost, and
13 the remainder, hereinafter referred to as the net cost, shall
14 be apportioned and assessed as hereinafter provided.

Sec. 5. The net cost of the entire project shall be appor-
2 tioned to, and assessed against, the owners of the properties
3 abutting upon the street or streets, public ways, alley or

4 alleys, upon which the improvements involved in the project
5 shall have been made, in the proportion which the distance
6 for which any particular lot abuts upon any street or alley
7 so improved bears to the total length of street or streets, public
8 ways, alley or alleys, improved under such project, except
9 that if the character of the improvements shall be different
10 upon different streets, public ways or alleys, the net cost of
11 the entire project may be equitably apportioned to the re-
12 spective streets, public ways, or alleys, or portions thereof, in
13 proportion to the character and cost of the improvements
14 thereon; and the costs so apportioned to each respective street,
15 public way, or alley, or portion thereof, shall be apportioned
16 to and assessed against the owners of the properties abutting
17 thereupon in proportion to the distance for which the lot
18 owned abuts on such street, public way, alley, or portion
19 thereof, so improved: *Provided*, That the fact that any lot
20 or fractional part of a lot abuts on more than one street, or
21 upon a street and an alley, one of which has been already im-
22 proved in any one or more of the ways herein provided for, or
23 the fact that more than one street or alley abutting for any
24 one lot or fractional part of a lot shall be included in a pro-

25 ject providing for improvements under the provisions of this
26 act, for any one or more of such improvements, shall not pre-
27 clude or inhibit such improvement or improvements being
28 constructed hereunder, if the conditions provided for in sec-
29 tion two hereof as to signature of petition shall have been
30 complied with.

Sec. 6. The sum or sums of money assessed pursuant to
2 the preceding section, together with the interest thereon, are
3 hereby constituted and declared to be liens upon the several
4 lots or fractional parts of lots abutting upon the street or
5 streets or alley or alleys improved pursuant to the provisions
6 of this act. Such liens shall be effective from the date the
7 governing body of the municipality shall have declared, by
8 resolution, that the work involved in said project has been
9 completed and accepted, and such liens shall have priority
10 over all other liens except those for taxes: *Provided, however,*
11 That such assessments shall, after six months from the passage
12 of such resolution referred to above in this section, cease to
13 constitute liens against said property as against creditors of
14 the owners thereof or purchasers thereof for value, without
15 actual notice of such lien, unless within six months a state-

16 ment of said liens showing the name of the owner of the
17 property, the location of the lot or tract of real estate affected,
18 the name and designation of the project under which the
19 improvements were made, the nature of the improvements
20 and the name of the street or streets, public ways, alleys
21 improved, upon which said real estate abuts, and the amount
22 of the assessment, shall have been filed for record in the office
23 of the clerk of the county court of the county in which said
24 municipality is situated. It shall be and is hereby made the
25 duty of the clerk of the county court to record such assess-
26 ments in the trust deed books in the name of the municipality,
27 and in the name of each person against whose property assess-
28 ments have been made, and the said clerk shall be paid by
29 the municipality a fee of ten cents for recording each item
30 of assessment appearing on said statements.

Sec. 7. Any lien constituted by this act may be enforced
2 by suit in equity in the circuit court of the county in which
3 the municipality is situated; such suit may be maintained by
4 and in the name of the municipality or by and in the name
5 of the legal owner of any assessment lien certificate herein-
6 after provided for in this act.

Sec. 8. (a) Such assessment relating to any particular
2 project shall be payable in such number of installments as
3 the governing body of the municipality, before the making of
4 said assessments, may have determined, provided that such
5 installments shall not be spread over a period of more than
6 five years.

7 (b) Such assessments, and each installment thereof, shall
8 bear interest at the rate of five per cent per annum, until
9 the date due of the installment; thereafter at the rate of
10 six per cent: *Provided*, That in case any property owner
11 shall pay the entire assessment against his property within
12 thirty days from the date of the assessment he shall not be
13 charged interest thereon for the time subsequent to such
14 date.

15 (c) The owner of any property against which any assess-
16 ment is made hereunder who has not paid such assessment
17 in full within thirty days from its date, may pay at any
18 time thereafter the whole of such assessment, or the whole
19 of any installment thereof, with interest to the time of pay-
20 ment; and upon payment of the whole of any assessment,
21 with its interest, if interest is chargeable hereunder, the gov-

erning body of the municipality shall cause a release of the
lien to be executed and delivered to the owner of the particular
property covered by such assessment.

(d) Each such assessment installment may be evidenced
by an assessment lien certificate in such form as the govern-
ing body of the municipality may adopt; the municipality
shall have power to sell any or all of such certificates, without
recourse, for cash, to any bank or banks, or other corporation
or corporations or to any individual or individuals for an
amount not less than the principal thereof and the accrued
interest thereon, and shall first apply the proceeds to the
payment of the expense and indebtedness incurred by reason
of such improvements.

(e) Each such assessment lien certificate shall be signed
by the mayor and the clerk or recorder of the municipality;
shall bear date of the day the council passed the resolution
provided for in section six hereof, and shall state: The amount
of the total assessment against the property named therein
and the amount of the particular installment covered by the
certificate, and that the amount thereof may be paid on or
before the date to be named therein as the due date according

43 to the schedule of installments adopted by the governing body ;
44 that the amount of the certificate bears interest at the rate
45 of five per cent per annum to maturity; and at rate of
46 six per cent per annum thereafter; the name of the owner
47 of the lot or tract of real estate against whom and which the
48 assessment has been made, the location of said real estate,
49 with the name of the street or streets improved upon which
50 such real estate abuts, and shall also identify the project
51 under which were made the street improvements on account
52 of which said assessment was made, shall give the date on
53 which the municipal governing body passed the resolution
54 directing the work to be done and the date on which the
55 statement for lien was filed in the county clerk's office pur-
56 suant to section six of this act; and shall further state that
57 if said certificate is sold by the municipality, it is done with-
58 out guarantee by, or recourse upon, the municipality, but
59 carrying to the legal owner thereof all rights of the munic-
60 ipality arising hereunder against the owner of the property
61 described and against said property itself.

Sec. 9. Immediately upon the completion and acceptance

2 of any work or improvement constructed pursuant to this

3 act and the passage by the governing body of the resolution
4 referred to in section six hereof, the governing body shall
5 direct the clerk or the recorder of the municipality to cause
6 to be prepared a notice which shall name and describe the
7 location of the street or streets or alley in or upon which said
8 improvements shall have been constructed, give the name of
9 the owner of each lot or fractional part of lot abutting or
10 abounding upon said street or streets or alley; the number
11 of feet of each lot or fractional part of lot abutting upon
12 said streets or alley; the number of feet embraced in street
13 or alley intersections, and the amount assessed against each
14 lot or fractional part of lot. Said notice shall cite all owners
15 of such lots or fractional parts of lots abutting to appear
16 before the governing body at a regular meeting thereof
17 within twenty days from the publication, or personal service,
18 of such notice, to show cause, if any they can, why the
19 assessments aforesaid should not become final. This notice
20 shall be published once in one or more newspapers of general
21 circulation published in said city, and the affidavits of the
22 publishers showing the publication thereof as herein provided
23 shall be recorded in the minutes of the governing body at its

24 next regular meeting, or in lieu of such publication such
25 notice may be given by personal service upon the owners
26 of the lots or fractional parts of lots affected, and proof of
27 such service shall be recorded in the same way as above
28 provided for recording proof of service by publication. The
29 governing body, shall, upon the request of any one or more
30 of the owners of lots or fractional parts of lots, appoint a
31 day for the hearing of any grievances of such owner or
32 owners and may correct or amend any assessment made
33 against them, or any of them, for good cause shown. The
34 clerk or recorder shall give notice to all persons claiming
35 to be aggrieved by any such assessment of the time and place
36 of such hearing, which hearing shall be begun within ten
37 days after the expiration of the twenty days mentioned in
38 said notice and may be adjourned from time to time. In
39 case any owner or owners of abutting property fail to com-
40 plain of any damages or injury by reason of the assessments
41 aforesaid or shall fail to appear for the purpose of having
42 the same corrected, the assessments as to such owner or owners
43 as laid by the governing body shall be final. Said assessments
44 shall be recorded in the proper record book of the munici-

45 pality, and notice and statement as provided in section six
46 thereof shall be recorded in the county clerk's office.

Sec. 10. The provisions of this act are hereby declared to
2 be cumulative in effect, and it is the intent and purpose of
3 this act to confer upon municipal corporations additional
4 powers to those already conferred upon such municipal cor-
5 porations by their respective charters or by general law with
6 relation to street or sewer improvements.

Sec. 11. No part of this act shall be invalidated by the fact
2 that any other part thereof is held to be invalid.

Sec. 12. The provisions of this act shall be operative and
2 of full force and effect until June thirtieth, one thousand nine
3 hundred forty-one, only, and thereafter they shall be null
4 and void without effect.

I certify that the foregoing act,
having been presented to the Governor for
his approval, and not having been returned
by him to the House of the Legislature in
which it originated within the time pre-
scribed by the constitution of the state, has
become a law without his approval.

This the 17th day of March,
1939

Wm S. Whinn

SECRETARY OF STATE

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. O. Wiseman

Chairman Senate Committee

Will H. Walker

Chairman House Committee

Originated in the

House of Delegates

Takes effect

from

passage.

Angeline

Clerk of the Senate

Geo. A. Hall

Clerk of the House of Delegates

Wm. B. Brown

President of the Senate

James L. Thomas

Speaker House of Delegates

The within

this the

day of

1939.

Governor.

