WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1941

ENROLLED

SENATE BILL No. 24

(By Mr. Morris)

PASSED March 7, 1941

In Effect from Passage
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Senate Bill No. 24
(BY MR. MORRIS)

[Passed March 7, 1941; in effect from passage.]

AN ACT to amend and reenact sections two, eight, nine and twelve, chapter ninety-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-nine, relating to authorizing and enabling 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 proportion 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 by the municipality; to provide for the recording of a notice of each such assessment; and to authorize the municipality to make the necessary contracts in relation to the subject matter thereof.

Be it enacted by the Legislature of West Virginia:

That sections two, eight, nine and twelve, chapter ninety-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-nine, be amended and re-enacted to read as follows:

Section 2. Petition of Abutting Property Owners Favoring Governmental Project; What Territory May be Included; Agreement for Sale of Assessment Lien Certificates; Notice to Foreign Corporations Affected. Upon the petition in writing of persons owning the greater amount of frontage of property abutting upon both sides of a street or alley,

(a) Between any two streets or between a street and an alley; or
(b) Between a street or alley and the corporate boundary line; or

(c) Between the end of paving or sewer existing at the time of the passage of this act, though such end be not marked by an intersecting street or alley, and a street or alley or the corporate limits; or

(d) Between the end of paving or sewer existing at the time of the passage of this act, though such end be not marked by an intersecting street or alley and the beginning of another piece of such existing paving or sewer, though such beginning be not marked by a street or alley, or

(e) Between a street or alley, or the end of an existing paving or sewer, and the line at which the present day use of the street to be improved ends, though the recorded plot shows public right of way of such street to extend farther; specified and embraced within the project proposed to be submitted to the governmental agency whose assistance in the premises is sought, the governing body of any such municipality, by a lawful majority thereof, may, upon the approval of such project by such govern-
mental agency, order and cause such street, or alley, or streets or alleys to be paved or repaved between the property lines, with cobblestone, brick, Belgian blocks, concrete, asphaltum or other material, and suitable curbs to be constructed if requisite, and suitable sidewalks to be constructed if requisite, and storm sewers and sanitary sewers, or either of them or any one or more of such improvements without the others, as may be determined by the governing body, to be constructed therein or in such part or parts thereof as the governing body may determine.

The purpose of this section is to permit the inclusion of more than one street or alley, or block or portion of a street or alley, in one project, in order to get for the municipality and the property owners as advantageous an agreement as possible with such governmental agency, but at the same time to include within the streets or alleys, or portions thereof to be improved under the project, only such stated portions of such streets or alleys as to which petition has been signed by the owners of as much as fifty-one per cent of the property abutting on the
portion thereof to be improved, as specified under one of
the clauses (a), (b), (c), (d), or (e) above in this section:

Provided however, That the governing body shall not
order any work to be done on any such improvements
planned pursuant to this act, and shall not incur any ex-

pense for, or enter into any contract for, materials to be
used in the making of such improvements, unless and

until bona fide and binding agreement or agreements has
or have been made between the municipality and some
bank or banks, or other corporation or corporations, or
some individual or individuals, for the purchase by such
banks, corporations or individuals, of the assessment lien
certificates to be issued in respect to such project as
provided for in section eight of this act. It is understood,
and it is hereby declared to be the purpose of this act,
that municipalities otherwise financially unable to effect
or secure desired street improvements may be enabled to
do so through the assistance of other governmental
agencies, and the provisions of this section are designed
to prevent a municipality from incurring debt or obliga-
tions for that part of the expense of any such project to be
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73 borne by it unless and until it has been assured, as above
74 provided, that the assessment lien certificates related to
75 the particular project proposed, can be sold: Provided
76 further, That where any foreign railroad or other foreign
77 corporation is the owner of property abutting upon any
78 street or alley sought to be improved under the provisions
79 hereof, notice shall be given to such railroad or other
80 foreign corporation as prescribed by section one, article
81 ten, chapter eight of the code of West Virginia, one thou-
82 sand nine hundred thirty-one, before the adoption of any
83 ordinance or resolution relating to, and providing for,
84 such improvement.

Sec. 8. Assessment Payable in Installments; Interest;
2 Release of Lien; Assessment Lien Certificates. (a) Such
3 assessment relating to any particular project shall be
4 payable in such number of installments as the governing
5 body of the municipality, before the making of said
6 assessments, may have determined: Provided, That such
7 installments shall not be spread over a period of more
8 than five years.
9 (b) Such assessments, and each installment thereof,
shall bear interest at the rate of five per cent per annum, until the date due of the installment, thereafter, at the rate of six per cent: Provided, That in case any property owner shall pay the entire assessment against his property within thirty days from the date of the assessment he shall not be charged interest thereon for the time subsequent to such date.

(c) The owner of any property against which any assessment is made hereunder who has not paid such assessment in full within thirty days from its date, may pay at any time thereafter the whole of such assessment, or the whole of any installment thereof, with interest to the time of payment; and upon payment of the whole of any assessment, with its interest, if interest is chargeable hereunder, the governing 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 governing 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 ninety per cent of the principal thereof, 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 to the schedule of installments adopted by the governing body; that the amount of the certificate bears interest at the rate of five per cent per annum to maturity; and at the rate of six per cent per annum thereafter; the name of the owner of the lot or tract of real estate against whom and which the
assessment has been made, the location of said real estate,
with the name of the street or streets improved upon
which such real estate abuts, and shall also identify the
project under which were made the street improvements
on account of which said assessment was made, shall give
the date on which the municipal governing body passed
the resolution directing the work to be done and the date
on which the statement for lien was filed in the county
clerk's office pursuant to section six of this act; and shall
further state that if said certificate is sold by the munici-
pality, it is done without guarantee by, or recourse upon,
the municipality, but carrying to the legal owner thereof
all rights of the municipality arising hereunder against
the owner of the property described and against said
property itself.

Sec. 9. Publication of Assessment; Notice to Property Owners by Personal Service; Hearing on Assessment. Immediately upon the completion and acceptance
of any work or improvement constructed pursuant to
this act and the passage by the governing body of the
resolution referred to in section six hereof, the govern-
ing body shall direct the clerk or the recorder of the
municipality to cause to be prepared a notice which
shall name and describe the location of the street or
streets or alley in or upon which said improvements
shall have been constructed, give the name of the owner
of each lot or fractional part of lot abutting or abounding
upon said street or streets or alley; the number of
feet of each lot or fractional part of lot abutting upon
said streets or alley; the number of feet embraced in
street or alley intersections, and the amount assessed
against each lot or fractional part of lot. Said notice
shall cite all owners of such lots or fractional parts of
lots abutting to appear before the governing body at
a regular meeting thereof to be held not less than ten
days nor more than twenty days from the publication,
or personal service, of such notice, to show cause, if any
they can, why the assessments aforesaid should not be-
come final. This notice shall be published once in one
or more newspapers of general circulation published
in said city, and the affidavits of the publishers show-
ing the publication thereof as herein provided shall be
recorded in the minutes of the governing body at its next regular meeting, or in lieu of such publication such notice may be given by personal service upon the owners of the lots or fractional parts of lots affected, and proof of such service shall be recorded in the same way as above provided for recording proof of service by publication. The governing body shall, upon the request of any one or more of the owners of lots or fractional parts of lots, appoint a day for the hearing of any grievances of such owner or owners and may correct or amend any assessment made against them, or any of them, for good cause shown. The clerk or recorder shall give notice to all persons claiming to be aggrieved by any such assessment of the time and place of such hearing, which hearing shall be begun within ten days after the regular meeting of the governing body held as hereinabove provided for the purpose of determining why said assessments should not become final. This hearing may be adjourned from time to time. In case any owner or owners of abutting property fail to complain of any damages or injury by reason of the assess-
mments aforesaid or shall fail to appear for the purpose
of having the same corrected, the assessments as to such
owner or owners as laid by the governing body shall
be final. Said assessments shall be recorded in the
proper record book of the municipality, and notice and
statement as provided in section six thereof shall be
recorded in the county clerk's office.

Sec. 12. Duration of Act. The provisions of this act
shall be operative and of full force and effect until June
thirtieth, one thousand nine hundred forty-five, only, and
thereafter they shall be null and void without effect;
provided, however, That this act shall continue in effect
with respect to any project contracted for as provided for
by ordinance prior to June thirtieth, one thousand nine
hundred forty-five.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 14th day of March, 1941.

Governor.

Filed in the office of the Secretary of State of West Virginia

WM. S. O'BRIEN,
Secretary of State