

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1941

## ENROLLED

SENATE BILL No. 24

(By Mr. Morris)

PASSED March 17, 1941

In Effect from Passage

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



#24

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Senate Bill No. 24

(BY MR. MORRIS)

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

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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 Favor-*  
2 *ing Governmental Project; What Territory May be In-*  
3 *cluded; Agreement for Sale of Assessment Lien Certi-*  
4 *ficates; Notice to Foreign Corporations Affected.* Upon  
5 the petition in writing of persons owning the greater  
6 amount of frontage of property abutting upon both sides  
7 of a street or alley,  
8 (a) Between any two streets or between a street and  
9 an alley; or

10 (b) Between a street or alley and the corporate  
11 boundary line; or

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

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

22 (e) Between a street or alley, or the end of an existing  
23 paving or sewer, and the line at which the present day  
24 use of the street to be improved ends, though the recorded  
25 plot shows public right of way of such street to extend  
26 farther; specified and embraced within the project pro-  
27 posed to be submitted to the governmental agency whose  
28 assistance in the premises is sought, the governing body  
29 of any such municipality, by a lawful majority thereof,  
30 may, upon the approval of such project by such govern-

31 mental agency, order and cause such street, or alley, or  
32 streets or alleys to be paved or repaved between the  
33 property lines, with cobblestone, brick, Belgian blocks,  
34 concrete, asphaltum or other material, and suitable curbs  
35 to be constructed if requisite, and suitable sidewalks to be  
36 constructed if requisite, and storm sewers and sanitary  
37 sewers, or either of them or any one or more of such im-  
38 provements without the others, as may be determined by  
39 the governing body, to be constructed therein or in such  
40 part or parts thereof as the governing body may de-  
41 termine.

42 The purpose of this section is to permit the inclusion of  
43 more than one street or alley, or block or portion of a  
44 street or alley, in one project, in order to get for the  
45 municipality and the property owners as advantageous  
46 an agreement as possible with such governmental agency,  
47 but at the same time to include within the streets or  
48 alleys, or portions thereof to be improved under the  
49 project, only such stated portions of such streets or alleys  
50 as to which petition has been signed by the owners of as  
51 much as fifty-one per cent of the property abutting on the

52 portion thereof to be improved, as specified under one of  
53 the clauses (a), (b), (c), (d), or (e) above in this section:  
54 *Provided however,* That the governing body shall not  
55 order any work to be done on any such improvements  
56 planned pursuant to this act, and shall not incur any ex-  
57 pense for, or enter into any contract for, materials to be  
58 used in the making of such improvements, unless and  
59 until bona fide and binding agreement or agreements has  
60 or have been made between the municipality and some  
61 bank or banks, or other corporation or corporations, or  
62 some individual or individuals, for the purchase by such  
63 banks, corporations or individuals, of the assessment lien  
64 certificates to be issued in respect to such project as  
65 provided for in section eight of this act. It is understood,  
66 and it is hereby declared to be the purpose of this act,  
67 that municipalities otherwise financially unable to effect  
68 or secure desired street improvements may be enabled to  
69 do so through the assistance of other governmental  
70 agencies, and the provisions of this section are designed  
71 to prevent a municipality from incurring debt or obliga-  
72 tions for that part of the expense of any such project to be

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,

10 shall bear interest at the rate of five per cent per annum,  
11 until the date due of the installment, thereafter, at the  
12 rate of six per cent: *Provided*, That in case any property  
13 owner shall pay the entire assessment against his prop-  
14 erty within thirty days from the date of the assessment  
15 he shall not be charged interest thereon for the time sub-  
16 sequent to such date.

17 (c) The owner of any property against which any  
18 assessment is made hereunder who has not paid such  
19 assessment in full within thirty days from its date, may  
20 pay at any time thereafter the whole of such assessment,  
21 or the whole of any installment thereof, with interest to  
22 the time of payment; and upon payment of the whole of  
23 any assessment, with its interest, if interest is chargeable  
24 hereunder, the governing body, of the municipality shall  
25 cause a release of the lien to be executed and delivered to  
26 the owner of the particular property covered by such  
26a assessment.

27 (d) Each such assessment installment may be evi-  
28 denced by an assessment lien certificate in such form as  
29 the governing body of the municipality may adopt; the



30 municipality shall have power to sell any or all of such  
31 certificates, without recourse, for cash, to any bank or  
32 banks, or other corporation or corporations or to any in-  
33 dividual or individuals for an amount not less than ninety  
34 per cent of the principal thereof, and shall first apply the  
35 proceeds to the payment of the expense and indebtedness  
36 incurred by reason of such improvements.

37 (e) Each such assessment lien certificate shall be  
38 signed by the mayor and the clerk or recorder of the  
39 municipality; shall bear date of the day the council passed  
40 the resolution provided for in section six hereof, and shall  
41 state: The amount of the total assessment against the  
42 property named therein and the amount of the particular  
43 installment covered by the certificate, and that the  
44 amount thereof may be paid on or before the date to be  
45 named therein as the due date according to the schedule  
46 of installments adopted by the governing body; that the  
47 amount of the certificate bears interest at the rate of five  
48 per cent per annum to maturity; and at the rate of six per  
49 cent per annum thereafter; the name of the owner of the  
50 lot or tract of real estate against whom and which the

51 assessment has been made, the location of said real estate,  
52 with the name of the street or streets improved upon  
53 which such real estate abuts, and shall also identify the  
54 project under which were made the street improvements  
55 on account of which said assessment was made, shall give  
56 the date on which the municipal governing body passed  
57 the resolution directing the work to be done and the date  
58 on which the statement for lien was filed in the county  
59 clerk's office pursuant to section six of this act; and shall  
60 further state that if said certificate is sold by the munici-  
61 pality, it is done without guarantee by, or recourse upon,  
62 the municipality, but carrying to the legal owner thereof  
63 all rights of the municipality arising hereunder against  
64 the owner of the property described and against said  
65 property itself.

Sec. 9. *Publication of Assessment; Notice to Prop-*  
2 *erty Owners by Personal Service; Hearing on Assess-*  
3 *ment.* Immediately upon the completion and acceptance  
4 of any work or improvement constructed pursuant to  
5 this act and the passage by the governing body of the  
6 resolution referred to in section six hereof, the govern-

7 ing body shall direct the clerk or the recorder of the  
8 municipality to cause to be prepared a notice which  
9 shall name and describe the location of the street or  
10 streets or alley in or upon which said improvements  
11 shall have been constructed, give the name of the owner  
12 of each lot or fractional part of lot abutting or abounding  
13 upon said street or streets or alley; the number of  
14 feet of each lot or fractional part of lot abutting upon  
15 said streets or alley; the number of feet embraced in  
16 street or alley intersections, and the amount assessed  
17 against each lot or fractional part of lot. Said notice  
18 shall cite all owners of such lots or fractional parts of  
19 lots abutting to appear before the governing body at  
20 a regular meeting thereof to be held not less than ten  
21 days nor more than twenty days from the publication,  
22 or personal service, of such notice, to show cause, if any  
23 they can, why the assessments aforesaid should not be  
24 come final. This notice shall be published once in one  
25 or more newspapers of general circulation published  
26 in said city, and the affidavits of the publishers showing  
27 the publication thereof as herein provided shall be

28 recorded in the minutes of the governing body at its  
29 next regular meeting, or in lieu of such publication such  
30 notice may be given by personal service upon the owners  
31 of the lots or fractional parts of lots affected, and proof  
32 of such service shall be recorded in the same way as  
33 above provided for recording proof of service by publi-  
34 cation. The governing body shall, upon the request of  
35 any one or more of the owners of lots or fractional parts  
36 of lots, appoint a day for the hearing of any grievances  
37 of such owner or owners and may correct or amend  
38 any assessment made against them, or any of them, for  
39 good cause shown. The clerk or recorder shall give  
40 notice to all persons claiming to be aggrieved by any  
41 such assessment of the time and place of such hear-  
42 ing, which hearing shall be begun within ten days after  
43 the regular meeting of the governing body held as  
44 hereinabove provided for the purpose of determining  
45 why said assessments should not become final. This  
46 hearing may be adjourned from time to time. In case  
47 any owner or owners of abutting property fail to com-  
48 plain of any damages or injury by reason of the assess-

49 ments aforesaid or shall fail to appear for the purpose  
50 of having the same corrected, the assessments as to such  
51 owner or owners as laid by the governing body shall  
52 be final. Said assessments shall be recorded in the  
53 proper record book of the municipality, and notice and  
54 statement as provided in section six thereof shall be  
55 recorded in the county clerk's office.

Sec. 12. *Duration of Act.* The provisions of this act  
2 shall be operative and of full force and effect until June  
3 thirtieth, one thousand nine hundred forty-five, only, and  
4 thereafter they shall be null and void without effect;  
5 provided, however, That this act shall continue in effect  
6 with respect to any project contracted for as provided for  
7 by ordinance prior to June thirtieth, one thousand nine  
8 hundred forty-five.

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

C. H. McKown

Chairman Senate Committee

Leon Rice

Chairman House Committee

Originated in the Senate

Takes effect from passage

A. Hale Watkins

Clerk of the Senate

J. R. Aliff

Clerk of the House of Delegates

Byron B. Randolph

President of the Senate

Malcolm R. Arnold

Speaker House of Delegates

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

Matthew M. Neely  
Governor.

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

Wm. S. O'BRIEN,  
Secretary of State

MAR 17 1941