

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951



ENROLLED

*House Committee Substitute for
Engrossed*

Senate **HOUSE BILL** No. 66

(Originating in the House Committee on the Judiciary)
(By Mr. _____)



PASSED March 10, 1951

In Effect 90 days from Passage



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AN ACT to amend and reenact section three-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of county courts with respect to improvements outside of municipalities including construction of waterworks, the laying of sanitary sewer lines and assessment of the cost thereof, the improvements of streets, alleys and sidewalks and assessment of the cost thereof.

Be it enacted by the Legislature of West Virginia:

That section three-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3-a. *Powers With Respect to Construction of*

2 *Waterworks, Sewers, Sewage Disposal Plants, Improve-*
3 *ment of Streets, Alley and Sidewalks and the Assessment*
4 *of the Cost of Sanitary Sewers and Improved Streets.—*

5 In addition to all other powers and duties now conferred
6 by law upon county courts, such courts are hereby au-
7 thorized and empowered to install, construct, repair,
8 maintain and operate water works, water mains, sewer
9 lines and sewage disposal plants in connection therewith
10 within their respective counties: *Provided*, That the coun-
11 ty court of Webster is authorized to expend county funds
12 in the opening of, and upkeep of, a sulphur well now sit-
13 uate on county property: *Provided*, That such authority
14 and power as herein conferred upon county courts shall
15 not extend into the territory within any municipal corpo-
16 ration: *Provided, however*, That any county court is here-
17 by authorized to enter into contracts or agreements with
18 any municipality within the county, or with a municipality
19 in an adjoining county, with reference to the exercise of
20 the powers vested in such court by this section.

21 In addition to the foregoing, the county court shall have
22 the power to improve streets, sidewalks and alleys and lay

23 sewers as follows: upon petition in writing duly verified,
24 of the persons, firms or corporations owning not less than
25 sixty per cent of the frontage of the lots abutting on both
26 sides of any street or alley, between any two cross-streets,
27 or between a cross-street and an alley in any unincorpo-
28 rated community, requesting the county court so to do ac-
29 cording to plans and specifications submitted with such pe-
30 tition and offering to have their property so abutting as-
31 sessed not only with their portion of the cost of such im-
32 provement abutting upon their respective properties, but
33 also offering to have their said properties proportionately
34 assessed with the total cost of paving, grading and curbing
35 the intersections of such streets and alleys, the county
36 court may cause any such street or alley to be improved or
37 paved or repaved substantially with the materials and ac-
38 cording to such plans and specifications as hereinafter
39 provided.

40 The total cost including labor and materials, engineer-
41 ing, and legal service of grading and paving, curbing, im-
42 proving any such street or alley (including the cost of the
43 intersections) and assessing the cost thereof shall be borne

44 by the owners of the land abutting upon such street or al-
45 ley when the work is completed and accepted according to
46 the following plan, that is to say, payment is to be made by
47 all landowners on either side of such street or alley so
48 paved or improved, in such proportion of the total cost as
49 the frontage in feet of each owner's land so abutting bears
50 to the total frontage of all the land so abutting on such
51 street or alley, so paved or improved as aforesaid, which
52 computation shall be made by the county engineer or sur-
53 veyor and certified by him to the clerk of said court.

54 Upon petition in writing, duly verified, of the persons,
55 firms or corporations owning not less than sixty per cent of
56 the frontage of the lots abutting on one side of any street
57 between any two cross-streets or between a cross-street
58 and an alley in any unincorporated community requesting
59 the county court so to do according to plans and specifica-
60 tions submitted with such petition and offering to have
61 their property so abutting assessed with the total cost
62 thereof, the county court may cause any sidewalk to be im-
63 proved, or paved, or repaved, substantially with such ma-
64 terials according to such plans and specifications and the

65 total cost including labor materials, engineering and legal
66 service of improving, grading, paving, or repaving such
67 sidewalk and assessing the cost thereof shall, when the
68 work is completed and accepted, be assessed against the
69 owners of the lots or fractional part of lots abutting on
70 such sidewalk, in such portion of the total cost as the front-
71 age in feet of each owner's land so abutting bears to the to-
72 tal frontage of all lots so abutting on such sidewalk so
73 paved or improved, as aforesaid, which computation shall
74 be made by the county engineer or surveyor and certified
75 by him to the clerk of said court.

76 Upon petition in writing, duly verified, of the persons,
77 firms or corporations owning not less than sixty per cent of
78 the frontage of the lots abutting on both sides of any street
79 or alley, in any unincorporated community requesting the
80 county court so to do according to plans and specifications
81 submitted with such petition and offering to have their
82 property so abutting assessed with the cost, as hereinafter
83 provided, the county court may lay and construct sanitary
84 sewers in any street or alley with such materials and sub-
85 stantially according to such plans and specifications and

86 when such sewer is completed and accepted, the county
87 engineer or surveyor shall report to the county court, in
88 writing, the total cost of such sewer and a description of
89 the lots and lands, as to the location, frontage, depth and
90 ownership liable for such sewer assessment, so far as the
91 same may be ascertained, together with the amount charge-
92 able against each lot and owner, calculated in the follow-
93 ing manner: The total cost of constructing and laying the
94 sewer including labor, materials, legal and engineering
95 services shall be borne by the owners of the land abutting
96 upon the streets and alleys, in which the sewer is laid ac-
97 cording to the following plan: payment is to be made by
98 each landowner on either side of such portion of a street or
99 alley in which such sewer is laid, in such proportions as the
100 frontage of his land upon said street or alley bears to the
101 total frontage of all lots so abutting on such street or alley.
102 In case of a corner lot frontage is to be measured along the
103 longest dimension thereof abutting on such street or alley
104 in which such sewer is laid. Any lot having a depth of two
105 hundred feet or more, and fronting on two streets, or al-
106 leys, one in the front and one in the rear of said lot, shall

107 be assessed on both of said streets or alleys if a sewer is
108 laid in both such streets and alleys. Where a corner lot has
109 been assessed on the end it shall not be assessed on the side
110 for the same sewer, and where it has been assessed on the
111 side it shall not be assessed on the end for the same sewer.

112 If the petitioners request the improvement of any such
113 street, alley, or sidewalk in a manner which does not re-
114 quire the permanent paving, or repaving, thereof, the
115 county court shall likewise have authority to improve
116 such street, alley or sidewalk, substantially as requested
117 in such petition, and the total cost thereof including
118 labor, materials, engineering and legal service shall be
119 assessed against the abutting owners in the proportion
120 which the frontage of their lots abutting upon such street,
121 alley, or sidewalk bears to the total frontage of all lots
122 abutting upon such street, alley or sidewalk, so improved.

123 Upon the filing of such petition and before work is
124 begun, or let to contract, the county court shall fix a
125 time and place for hearing protests and shall require the
126 petitioners to post notice of such hearing in at least two
127 conspicuous places on the street, alley or sidewalk af-

128 fected, and to give notice thereof by publication in a
129 newspaper of general circulation in the county in which
130 the improvement is to be made at least once before said
131 hearing, which hearing shall be held not less than ten
132 nor more than thirty days after the filing of such petition.

133 At the time and place set for hearing protests the county
134 court may examine witnesses and consider other evidence
135 to show that said petition was filed in good faith; that the
136 signatures thereto are genuine; and that the proposed im-
137 provement, paving, repaving, or sewerage, will result in
138 special benefits to all owners of property abutting on said
139 street, alley or sidewalk in an amount at least equal in
140 value to the cost thereof. The court shall within ten days
141 thereafter enter a formal order stating its decision and if
142 the petition be granted shall proceed after due advertise-
143 ment, reserving the right to reject any or all bids, let a con-
144 tract for such work and materials to the lowest respon-
145 sible bidder.

146 Any owner of property abutting upon said street, alley
147 or sidewalk aggrieved by such order shall have the right
148 to review the same on the record made before the county

149 court by filing within ten days after the entry of such
150 order, a petition with the clerk of the circuit court as-
151 signing errors and giving bond in a penalty to be fixed
152 by the circuit court to pay any costs or expenses incurred
153 upon such appeal should the order of the county court be
154 affirmed. The circuit court shall proceed to review the
155 matter as in other cases of appeal from the county court.

156 All assessments made under this section shall be certi-
157 fied to the county clerk and recorded in a proper trust deed
158 book and indexed in the name of the owner of any lot or
159 fractional part of a lot so assessed. The assessment so made
160 shall be a lien on the property liable therefor, and shall
161 have priority over all other liens except those for taxes,
162 and may be enforced by suit in equity in the name of the
163 contractor performing the work in the same manner as
164 provided for other liens for permanent improvements.
165 Such assessment shall be paid in not more than ten equal
166 annual installments, bearing interest at the rate of six per
167 cent per annum as follows: the first installment, together
168 with interest on the whole assessment, shall be paid not
169 later than one year from the date of such assessment, and

170 a like installment with interest on the whole amount
171 remaining unpaid each year thereafter until the principal
172 and all interest shall have been paid in full.

173 The county court may issue coupon-bearing certificates
174 payable in not more than ten equal annual installments
175 for the amount of such assessment and the interest there-
176 on, to be paid by the owner of any lot or fractional part
177 thereof, fronting on such street, alley, or sidewalk which
178 has been improved, paved, or repaved or in which a
179 sewer has been laid, as aforesaid, and the holder of said
180 certificate shall have a lien having priority over all other
181 liens except those for taxes upon the lot or part of lot
182 fronting on such street, alley, or sidewalk, and such cer-
183 tificate shall likewise draw interest from the date of
184 assessment at the rate of six per cent per annum, and
185 payment thereof may be enforced in the name of the
186 holder of said certificate by proper suit in equity in any
187 court having jurisdiction to enforce such lien.

188 Certificates authorized under this section may be issued,
189 sold or negotiated to the contractor doing the work, or to
190 his assignee, or to any person, firm, or corporation, pro-

191 vided that the county court in issuing such certificates
192 shall not be held as a guarantor, or in any way liable for
193 the payment thereof. Certificates so issued shall contain
194 a provision to the effect that in the event of default in
195 the payment of any one or more of said installments,
196 when due, said default continuing for a period of sixty
197 days, all unpaid installments shall thereupon become
198 due and payable, and the owner of said certificates may
199 proceed to collect the unpaid balance thereof in the
200 manner hereinbefore provided.

201 In all cases where petitioners request paving or re-
202 paving, or the laying of sewers under the provisions of
203 this section, the county court shall let the work of grad-
204 ing, paving, curbing or sewerage to contract to the lowest
205 responsible bidder. In each such case the county court
206 shall require a bond in the penalty of the contract price
207 guaranteeing the faithful performance of the work and
208 each such contract shall require the contractor to repair
209 any defects due to defective workmanship or materials
210 discovered within one year after the completion of the
211 work.

212 Upon presentation to the clerk of the county court of
213 the certificates evidencing the lien, duly cancelled and
214 marked paid by the holder thereof, or evidence of pay-
215 ment of the assessment if no certificates have been issued,
216 said clerk shall execute and acknowledge a release of the
217 lien which release may be recorded, as other releases in
218 the office of the clerk of the county court.

219 The owner of any lot or fractional part of a lot abutting
220 upon such street, alley or sidewalk so improved, paved,
221 repaved or sewerred shall have the right to anticipate the
222 payment of any such assessment or certificate by paying
223 the principal amount due, with interest accrued thereon
224 to date of payment, and also to pay the entire amount,
225 without interest at any time, within thirty days following
226 the date of the assessment.

227 Nothing in this section contained shall be construed to
228 authorize the county courts of the various counties to
229 acquire any road construction, ditching, or paving equip-
230 ment. The county courts are hereby authorized to rent
231 from the state road commissioner or any other person,
232 firm or corporation such equipment as may be necessary

233 from time to time, to improve any street or sidewalk
234 which petitioners do not desire to have paved in a per-
235 manent manner, and for such purpose to employ such
236 labor as may be necessary but no expense connected
237 therewith shall be charged to any county funds.

238 No county court shall be under any duty after the
239 paving, repaving or improvement of any street, alley
240 or sidewalk or the laying of any sanitary sewer under
241 the provisions of this section, to maintain or repair the
242 same, but any such court shall have authority upon
243 petition duly verified signed by at least sixty per cent of
244 the owners of property abutting upon any improvement
245 made under this section to maintain or repair such im-
246 provement or sewer and to assess the cost thereof against
247 the owners of such abutting property in the same manner
248 as the cost of the original improvement.

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

Robert C. Byrd

Chairman Senate Committee

James W. Loop

Chairman House Committee

Originated in the House of Delegates

Takes effect *90 days from* ----- passage.

Thomas Meyer

Clerk of the Senate

J. B. Cluff

Clerk of the House of Delegates

W. L. ...

President of the Senate

W. E. ...

Speaker House of Delegates

The within *approved* this the *16th*
day of *March*, 1951.

Chas. L. Patton

Governor



of West Virginia **MAR 16 1951**
D. PITT O'BRIEN,
SECRETARY OF STATE