

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951

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## ENROLLED

*House Committee Substitute for  
Engrossed*

Senate **HOUSE** BILL No. 66

*(Originating in the House Committee on the Judiciary)*  
(By Mr. \_\_\_\_\_)

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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 unincorporated  
28 community, requesting the county court so to do according  
29 cording to plans and specifications submitted with such petition  
30 tion and offering to have their property so abutting assessed  
31 sessed not only with their portion of the cost of such improvement  
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 according  
38 cording to such plans and specifications as hereinafter  
39 provided.

40 The total cost including labor and materials, engineering,  
41 ing, and legal service of grading and paving, curbing, improving  
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.

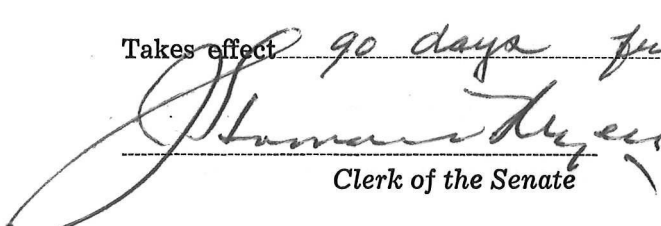
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

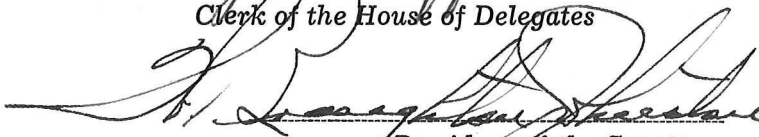
  
Chairman House Committee

Originated in the House of Delegates

Takes effect 90 days from passage.

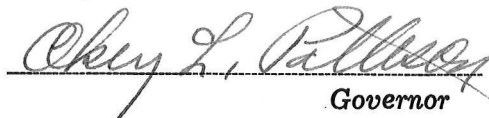
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within approved this the 16<sup>th</sup>  
day of March, 1951.

  
Governor



of West Virginia

MAR 16 1951

D. PITT O'BRIEN,  
SECRETARY OF STATE