WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1953

ENROLLED

HOUSE BILL No. 5

(By Mr. ____________)

PASSED February 28, 1953

In Effect Ninety days from Passage

MAR 5 1953

O. MITT O'BRIEN,
SECRETARY OF STATE
ENROLLED

House Bill No. 5
(By MR. SAMMONS)

(Passed February 28, 1953; in effect ninety days from passage.)

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article seven-a, relating to low cost municipal improvements.

Be it enacted by the Legislature of West Virginia:

That chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article seven-a, to read as follows:

Article 7-a. Low Cost Improvements.

Section 1. Purpose of Article; Liberal Construction;

Method Cumulative.—It is hereby declared to be the purpose and policy of the Legislature in enacting this law to provide for a simplified method of low cost municipal improvements which are impracticable to be accom-
plished by normal budgets or by the procedures under articles eight and nine of this chapter. To this end, this article shall be liberally construed by council or court to accomplish its purpose; and the adoption of this method of municipal improvements shall not be deemed and construed to be the adoption of an exclusive method, but shall be deemed and construed to be the adoption of an available method additional to any others which may have theretofore been available by charter or general law or which may hereafter become available.

Sec. 2. Definitions.—For the purpose of this article, (a) "Municipality" shall include any incorporated city, town or village, whether existing and operating under a special charter, home rule charter or general law; (b) "Council" shall include any governing body or bodies exercising the powers commonly exercised by the council of a municipality; (c) "Abutter" shall include the owner or owners, as of the date of the first publication of the notice described in section eight of this article, of the property abutting on both sides of any street, alley, public way or easement
upon or in which an improvement shall be made or proposed to be made under this article;

(d) "Engineer" shall mean the city engineer or, if the municipality has no regularly employed city engineer, any registered professional engineer, if there be any practicing in the county or the municipality, or if no such engineer be practicing in the county, any competent civil engineer.

(e) "Petitioner" shall, unless the context clearly indicates otherwise, include those abutters, whether one or more than one, who file the petition and bond described in section four of this article;

(f) "Improvement" shall include the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing and repairing of streets and alleys, and the building, renewing and repairing of sidewalks, and the building, renewing and repairing of storm sewers, sanitary sewers and sewer systems or parts thereof in any streets, easements, public ways or alleys, or portions thereof, independently or in conjunction with other of such improvements, within the municipality; and

(g) "Total cost" shall include, to the extent that they
were furnished, but excepting salaries and wages paid to municipal employees that would have been paid regardless of the work on the proposed improvement, the cost and expense of surveys, engineering and attorney fees, the printing and publishing in relation thereto, and the cost and expense of all labor, work, supervision, inspection, equipment leased and materials furnished and used in completing said improvements.

Sec. 3. Powers of Municipal Corporations Relating to Street, Sidewalk and Sewer Improvements.—Every municipality in this state is hereby authorized, in addition to any other rights or powers conferred upon it, to make improvements upon the terms and conditions and in the manner hereinafter set forth.

Sec. 4. Petition of Abutters; Petitioner's Bond; Action of Council; Memorandum of Engineer.—Upon the filing of written petition and bond hereinafter described by the persons owning the greater amount of frontage of property abutting upon both sides of any portion of a street, public way, alley or easement, or, where the petition states the willingness of the petitioner to pay all of the total cost,
upon the filing of the petition and bond hereinafter described by any one or more of the abutters on any street, public way, alley or easement, the council shall, by ordinance or resolution, order the engineer to investigate and to prepare a memorandum describing the portions of the streets, alleys, public ways or easements proposed to be improved, and certifying the reasonable necessity of the improvement, the plans and specifications for the improvement, and a list of all items comprising the total cost of the improvement as specified in section two-g of this article, with an estimate of the cost of each item.

The petition shall list the name and actual mailing address of the petitioner; it shall specify the part or parts of the therein named streets, alleys, public ways or easements that petitioner desires improved; it shall specifically describe the proposed improvement desired; it shall state whether the petitioner will pay all of the total cost, or whether he desires the total cost to be apportioned among all of the abutters; in any case where two or more petitioners file the petition, if the petition indicates their
intent to pay all of the total cost, it shall state either that
they desire to have such total cost apportioned among
them on a pro rata basis of their abutting footages ac-
cording to a list of such footages compiled by them and
inserted in the petition, or whether they desire to pay
such total cost according to a list of percentage shares
formulated by them and inserted in the petition; and it
shall be signed by the petitioner. The bond shall be given
by the petitioner, with good security, to be approved by
the council; it shall be in the amount of one thousand
dollars; and it shall bind the petitioner (jointly and
severally in the case of more than a single petitioner)
to pay all charges and assessments made on him under
this article.

Sec. 5. Appeal on Engineer's Memorandum; Charges
upon Failure of Petition.—If the memorandum of the en-
gineer certifies that the proposed improvement is not
reasonably necessary, and/or that the estimated total
cost is more than one thousand dollars, the council shall
notify the petitioner of the adverse report in the engin-
eer's memorandum, and of a time (at least ten days from
the date of the mailing of the notice as provided below) and place of a council meeting, at which the engineer shall be present, at which the petitioner may object to or be heard on any part of the engineer's memorandum concerned with the said adverse report; and this notice shall be given by mailing a copy thereof to the petitioner at the address listed in the petition unless the petitioner shall have notified the council in writing of a change in his actual mailing address, in which case the notice shall be mailed according to such change. The council may modify the memorandum in accordance with the evidence introduced at said meeting; but if no evidence is introduced, the engineer's memorandum shall be accepted. In any case, where the petition fails because of no reasonable necessity and/or because of an estimated total cost of more than one thousand dollars, the petitioner shall be charged with all municipal expenses in connection therewith except salaries and wages of regular municipal officials and employees, which charge shall be made by ordinance or resolution of the council; and a statement of such charge shall be mailed to the petitioner at the
address listed in the petition unless the petitioner shall have notified the council in writing of a change in his actual mailing address, in which case the statement shall be mailed according to such change.

Sec. 6. When Petition Deemed Granted.—A petition for improvement shall be deemed granted when it and the accompanying bond have been found to be regular, and when the engineer's memorandum, as modified on petitioner's appeal in the event that it was appealed and modified, indicates that the proposed improvement is reasonably necessary and that the total cost will not exceed one thousand dollars.

Sec. 7. Procedure When Petitioner to Pay All of Total Cost; Council Order When Petition Granted.—If the petitioner has stated in the petition that he will pay all of the total cost, the council shall, as soon as the petition is granted as provided in section six of this article, order by ordinance or resolution the proper municipal authorities to proceed with the accomplishment of the improvement according to the plans and specifications in the engineer's memorandum, as modified on petitioner's ap-
peal in the event that they were appealed and modified.

Sec. 8. Procedure When Total Cost to Be Apportioned Among All Abutters; Notice to Abutting Owners before Authorizing Improvements; Form of Notice; Protest Meeting; Certificate of Publication; Notice to Railroad or Foreign Corporation; Automatic Revocation of Grant of Petition; Charges upon Automatic Revocation.—If the petitioner has stated in the petition that he desires the total cost to be apportioned among all of the abutters, the council shall, as soon as the petition is granted, cause notice to be given to all abutters that the petition has been granted, that the engineer's memorandum, certifying reasonable necessity, plans and specifications, and cost estimates, will be reconsidered, before work is started, at a public meeting of the council at a time and place named in the notice, and that all abutters will be given an opportunity to protest or be heard concerning any or all particulars of the engineer's memorandum at that meeting or an adjournment thereof. The above mentioned notice to the abutters may be by personal service on abutters at least ten days before
the protest meeting. In lieu of personal service of such notice, the following described notice, or one in substantially the same form, may be given, and shall be deemed to have been served on all such abutters, by publication once a week for three successive weeks before said meeting in some newspaper of general circulation in said municipality, as follows:

"NOTICE TO ALL PERSONS OWNING PROPERTY ABUTTING ON ___________________ (here describe the portions of the streets, alleys, public ways or easements to be improved) IN THE MUNICIPALITY OF _____________

_________________ (name of municipality);

A petition has been conditionally granted by the ___________(common council, board of directors, commissioners or other governing body) of the municipality of _____________ (name of municipality) to improve the _____________ (street, alley, public way or easement) above described in _____________ (name of municipality) by _____________ (grading, regrading, constructing storm sewers or other general description of the proposed improvement), as specifically described in
the engineer's memorandum certifying the reasonable
necessity of the proposed improvement, the plans and
specifications thereof, and the estimate of the items of
cost thereof, and to apportion the cost of such improve-
ment among the owners, as of _________________ (the
date of the first publication of this notice), of the abutting
property.

The engineer's memorandum above described will be
reconsidered by the __________ (governing body) at
a public meeting to be held on __________ (date) at __________
(time) at __________ (place). Any abutting owner or in-
terested party will be given an opportunity to protest
or be heard at said meeting or an adjournment there-
of.

_________________________ (name of the clerk or recorder),
_________________________ (official position)."

A certificate of publication of the notice, made by the
newspaper publisher, and a copy of the notice shall be
made a part of the minutes of the governing body and
spread on its records of the meeting described in the
notice. The service of said notice upon all persons, firms
or corporations owning any interest in any property
abutting upon any portion of said street, alley, public
way or easement to be improved shall conclusively be
deemed to have been given when such newspaper pub-
lication shall have been completed: Provided, That where
any foreign railroad or other foreign corporation is the
owner of property abutting upon any street, alley, public
way or easement sought to be improved under the pro-
visions hereof, notice shall be given to such railroad or
other foreign corporation as prescribed by section one,
article ten, chapter eight of the code of West Virginia,
one thousand nine hundred thirty-one, before the adop-
tion of any ordinance or resolution relating to, and pro-
viding for, such improvements.

Any part or parts of the engineer's memorandum may
be modified or remodified at the protest meeting in ac-
cordance with the evidence introduced at such meeting,
including the extent of the portions of the streets, alleys,
public ways or easements proposed to be improved as
designated in the engineer's memorandum. If, after
modification at such protest meeting, the memorandum
indicates that the proposed improvement is not reasonably necessary and/or that its estimated total cost is more than one thousand dollars, then the petition shall be automatically revoked; and the petitioner shall be charged with all municipal expense in connection there-with except salaries and wages of regular municipal employees, which charge shall be made by ordinance or resolution of the council; and a statement of said charge shall be mailed to the petitioner at the address listed in the petition unless the petitioner shall have notified the council in writing of a change in his actual mailing address, in which case the statement shall be mailed according to such change.

If the engineer's memorandum has not been so modified at the protest meeting as to render the petition automatically revoked as provided above, the council shall order by ordinance or resolution the proper municipal authorities to proceed with the accomplishment of the improvement according to the plans and specifications in the engineer's memorandum, as modified at the protest meeting in the event that they were modified.
Sec. 9. Accomplishment of the Improvement; Municipal Facilities Used Where Practicable.—When the proper municipal authorities shall have been ordered by the council to proceed under either section seven or section eight of this article, they shall do so without delay. The improvement shall be accomplished, as far as possible without interfering with normal municipal services, with the regular municipal employees and equipment; but contracts may be made with reputable firms for the improvement. Said authorities shall keep an account of all items of cost connected therewith that affect the total cost of the improvement. Upon completion of the improvement, said proper municipal authorities shall deliver the account of costs to the engineer.

Sec. 10. Apportionment among Petitioners Only; Limit on Total Cost Chargeable to Petitioner; Notice.—Where the petitioner has indicated in the petition his willingness to pay all of the total cost, the engineer shall compute the actual total cost as soon as the improvement is completed and the account mentioned in section nine of this article is given to him; and, where more than a single
petitioner filed the petition, the engineer shall assess the amount owed by each petitioner according to the method indicated in the petition as prescribed by section four of this article: *Provided*, That if the actual total cost exceeds one thousand dollars, the municipality shall be responsible for such excess over one thousand dollars; and that, notwithstanding that the actual total cost is less than one thousand dollars, if the actual total cost exceeds the estimated total cost by more than ten percent of the latter, the municipality shall be responsible for such excess over one hundred ten percent of the estimated total cost.

The engineer shall certify his determination of charges to the council; and, after adopting the same by ordinance or resolution, the council shall notify the petitioner of the assessment list by mailing a written copy thereof to the petitioner at the address listed in the petition unless the petitioner shall have notified the council in writing of a change in his actual mailing address, in which case the statement shall be mailed according to such change.

Sec. 11. *Apportionment among All Abutters; Limit on Total Cost Chargeable to Abutters; Engineer’s Report;*
Notice; Hearings; Correcting and Laying Assessments.—

Where the petitioner has indicated in the petition his desire to have the total cost apportioned among all of the abutters, the engineer shall, as soon as the council has ordered the proper municipal authorities to proceed under section eight of this article, determine or cause to be determined the several frontages abutting on the improvement, a brief description thereof, and the owners of such frontages as of the date of the first publication of the notice described in section eight of this article; and he shall keep an account of all items of cost connected therewith that affect the total cost. As soon as the improvement is completed and the account mentioned in section nine of this article is given to him, the engineer shall compute the actual total cost of the improvement.

The total cost shall be personally borne by such abutters, including the petitioner, as of the date of the first publication of the notice described in section eight of this article; and the amount of the assessment against each shall be apportioned by the engineer on the basis of the following formula. Each lot or parcel of land so abutting
shall be assessed with that portion of the total cost of
the entire project which is represented by the proportion
which the abutting frontage in feet of such lot or parcel
bears to the total abutting frontage in feet of all the lots
or parcels of land abutting on the streets, public ways,
alleys or easements so improved: Provided, however,
That if the character of the improvements shall be sub-
stantially different upon different streets, public ways,
easements or alleys, or portions thereof, the cost may be
equitably apportioned to the respective streets, public
ways, alleys, easements, or portions thereof, in proportion
to the character and cost of the improvements respec-
tively thereon; and as a part of the cost so apportioned
to each respective street, public way, easement, or alley,
or portion thereof, shall be apportioned to and assessed
against the respective lots or parcels of land abutting
thereupon in the proportion as hereinabove provided:
Provided further, That if any part of the street, alley,
easement or public way improved is used by a railway
then the cost of the portion of the improvements between
the rails and for two feet outside said rails shall be as-
sessed against and wholly borne by the owner of the railway: Provided further, That if there be any land or other property abutting on the portion of the street or alley so improved which it has been determined by the governing body of the municipality, and, shown in the ordinance or resolution authorizing the improvement, not to be specially benefited by the improvement, or for other reasons would not be liable to assessment for any of the cost of improvement, then the cost of the improvements abutting such part of said street or alley, as is so determined to be nonassessable shall be apportioned among, assessed and borne by the remaining property abutting upon the portion of the street, alley, public way or easement improved in proportion to the frontage of such remaining abutting property as hereinabove provided: Provided further, That if such improvement include the construction or reconstruction of sidewalks on only one side of a street, alley, public way or easement, then the cost of such sidewalk shall be assessed only on the property abutting on that side where the sidewalks are so constructed: Provided further, That if there be
land or other property abutting the street, alley, easement or public way so improved which is owned by the United States of America, and for that reason not legally subject to assessment, then the municipality shall pay the proportionate part of the cost of the improvement which otherwise would be assessable against such federally owned land or property: Provided further, That if the actual total cost exceeds one thousand dollars, the municipality shall be responsible for such excess over one thousand dollars; and that, notwithstanding that the actual total cost is less than one thousand dollars: if the actual total cost exceeds the estimated total cost by more than ten percent of the latter, the municipality shall be responsible for such excess over one hundred ten percent of the estimated total cost.

The engineer shall formulate a report showing the chargeable total cost to be borne by the abutters, the names of the abutters (including the petitioner), the several frontages owned by said abutters and a brief description thereof, and the proper amount of the chargeable total cost to be assessed personally against each abutter, and
shall deliver such report to the council. The council shall thereupon give notice to the abutters to be assessed that, on or after a date named in said notice, an assessment may be laid personally against the abutters as embodied in said report. Said notice shall state that the abutters so named, or other interested party, may on said date appear before the council to move the correction or revision of such proposed assessment. Said notice, which shall be by publication once a week for two successive weeks in some newspaper of general circulation in the county in which said municipality is located, shall show the same facts embodied in the engineer's report hereinabove described. On or after the date so advertised, the council may revise, amend, correct and verify the report according to the evidence introduced by appealing abutters or by the engineer, and shall thereafter proceed by ordinance or resolution to lay the assessments, as corrected and verified, against the abutters personally.

Sec. 12. Due Dates of Assessments; Statements of Default to Petitioner.—Assessments made under section eleven of this article shall be due the municipality within
sixty days after the passage by the council of the ordi-
nance or resolution laying the assessment; and upon pay-
ment of an assessment by an abutter, he shall be given a
receipt therefor, a copy of which shall be retained by the
municipality; and, upon payment in due course of all of
such assessments upon an improvement, the petitioner
shall be automatically discharged on his bond. If any
such assessment, in whole or in part, be not paid within
said sixty days, the council shall determine the total
amount in default and shall charge said amount to the
petitioner by ordinance or resolution; and a statement
of the charge shall be mailed to the petitioner at the
address listed in the petition unless the petitioner shall
have notified the council in writing of a change in his
actual mailing address, in which case the statement shall
be mailed according to such change.

Sec. 13. Due Dates of Charges Against Petitioner;
Municipality’s Collection on Bond; Petitioner’s Right
of Action.—Charges made on any petitioner under sec-
tions five, eight, ten and twelve of this article shall be
due the municipality within thirty days from the date
that a statement was mailed to him as provided in said
last mentioned sections. If any such charges on any
petitioner be not paid within such thirty days, the council
shall by ordinance or resolution authorize the proper
municipal authorities to proceed to collect on the peti-
tioner's bond.

Any petitioner who is forced to pay, either by collection
on the bond or by voluntary payment to avoid collection
on the bond, any sum which should have been paid by
another petitioner or any other abutter, shall have a
right of action against any such defaulter for the amount
that the defaulter should have paid, with interest at six
percent from the date that the defaulter was in default;
and, where a petitioner makes a voluntary payment for
any such defaulter to avoid collection on the bond, a
receipt shall be given him, and a copy retained by the
city, showing the petitioner who made such payment,
the defaulter for whom the payment was made, and the
charge or assessment for which the defaulter was in de-
fault, which receipt shall be prima facie evidence of the
petitioner's right to collect from the defaulter named in
said receipt for the amount specified therein, with interest
as above stated.

Sec. 14. Assessments Where Property Owned or Con-
trolled by Public Charitable, Eleemosynary, Educational
or Religious Institutions; Duty of Those in Charge to Cause
Assessments to Be Paid.—When any of the lots abutting
the portion of the street, alley, easement or public way
improved consist of property owned or controlled by the
state, county, municipality, board of education or other
public body, or consist of property owned or used for a
church or a religious, charitable, educational or eleemo-
synary institution for purposes not subject to taxation,
the owners of such property as of the date of the first
publication of the notice described in section eight of this
article shall nevertheless be assessed with their proper
proportion of the total cost; and it shall be the duty of
the owner and/or those persons having charge of the
fiscal affairs of such owner or the management of any
such property or institution to make proper arrangements
for the payment of such assessments and to cause the
same to be paid.
Sec. 15. _Separability._—If any provision or part of this article is declared unconstitutional or invalid, such declaration shall in no way affect any other part thereof.
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 House of Delegates

Takes effect Ninety days from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 5th day of March 1953.

[Signature]

Governor