

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961



ENROLLED

HOUSE BILL No...132.....

(By Mr. Kelley)



PASSED March 10, 1961

In Effect Ninety Days from Passage

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of West Virginia MAR 17 1961

JOE F. BURDETT
SECRETARY OF STATE

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House Bill No. 132

(By MR. KELLEY)

[Passed March 10, 1961; in effect ninety days from passage.]

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 construction of waterworks, sewers, sewage disposal plants, improvement of streets, alleys and sidewalks and the assessment of the cost of sanitary sewers and improved streets.

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, Alleys and Sidewalks and the Assess-**
- 4 ment of the Cost of Sanitary Sewers and Improved**

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

21 In addition to the foregoing, the county court shall
22 have the power to improve streets, sidewalks and alleys
23 and lay sewers as follows: Upon petition in writing duly
24 verified, of the persons, firms, or corporations owning not
25 less than sixty per cent of the frontage of the lots abutting

26 on both sides of any street or alley, between any two
27 cross-streets, or between a cross-street and an alley in
28 any unincorporated community, requesting the county
29 court so to do according to plans and specifications
30 submitted with such petition and offering to have their
31 property so abutting assessed not only with their por-
32 tion of the cost of such improvement abutting upon
33 their respective properties, but also offering to have their
34 said properties proportionately assessed with the total
35 cost of paving, grading and curbing the intersections
36 of such streets and alleys, the county court may cause
37 any such street or alley to be improved or paved or re-
38 paved substantially with the materials and according to
39 such plans and specifications as hereinafter provided: *Pro-*
40 *vided, however,* That the county court is further author-
41 ized, if the said county court so determines by a unani-
42 mous vote of its constituted membership, that two or more
43 intersecting streets, sidewalks, alleys and sewers, should
44 be improved as one project, in order to satisfy peculiar
45 problems resulting from access as well as drainage prob-
46 lems, then, in that event, the said county court may order

47 such improvements as one single unit and project, upon
48 petition in writing duly verified of the persons, firms or
49 corporations owning not less than sixty per cent of the
50 frontage of the lots abutting on both sides of all streets
51 or alleys, or portions thereof included by said county
52 court in said unit and project.

53 The total cost, including labor and materials, engineer-
54 ing, and legal service of grading and paving, curbing,
55 improving any such street or alley (including the cost
56 of the intersections) and assessing the cost thereof shall
57 be borne by the owners of the land abutting upon such
58 street or alley when the work is completed and accepted
59 according to the following plan, that is to say, payment
60 is to be made by all landowners on either side of such
61 street or alley so paved or improved, in such proportion
62 of the total cost as the frontage in feet of each owner's
63 land so abutting bears to the total frontage of all the land
64 so abutting on such street or alley, so paved or improved
65 as aforesaid, which computation shall be made by the
66 county engineer or surveyor and certified by him to the
67 clerk of said court.

68 Upon petition in writing duly verified, of the person,
69 firms or corporations owning not less than sixty per cent
70 of the frontage of the lots abutting on one side of any
71 street between any two cross-streets or between a cross-
72 street and an alley in any unincorporated community
73 requesting the county court so to do according to plans
74 and specifications submitted with such petition and offer-
75 ing to have their property so abutting assessed with the
76 total cost thereof, the county court may cause any sidewalk
77 to be improved, or paved, or repaved, substantially with
78 such materials according to such plans and specifications
79 and the total cost including labor and materials, engineer-
80 ing and legal service of improving, grading, paving, or
81 repaving such sidewalk and assessing the cost thereof
82 shall, when the work is completed and accepted, be
83 assessed against the owners of the lots or fractional part
84 of lots abutting on such sidewalk, in such portion of the
85 total cost as the frontage in feet of each owner's land so
86 abutting bears to the total frontage of all lots so abutting
87 on such sidewalk so paved or improved, as aforesaid;
88 which computation shall be made by the county engineer

89 or surveyor and certified by him to the clerk of said court.
90 Upon petition in writing, duly verified, of the persons,
91 firms or corporations owning not less than sixty per cent
92 of the frontage of the lots abutting on both sides of any
93 street or alley, in any unincorporated community request-
94 ing the county court so to do according to plans and
95 specifications submitted with such petition and offering
96 to have their property so abutting assessed with the cost,
97 as hereinafter provided, the county court may lay and
98 construct sanitary sewers in any street or alley with such
99 materials and substantially according to such plans and
100 specifications and when such sewer is completed and ac-
101 cepted, the county engineer or surveyor shall report to the
102 county court, in writing, the total cost of such sewer and
103 a description of the lots and lands, as to the location,
104 frontage, depth and ownership liable for such sewer
105 assessment, so far as the same may be ascertained, to-
106 gether with the amount chargeable against each lot and
107 owner, calculated in the following manner: The total cost
108 of constructing and laying the sewer including labor,
109 materials, legal and engineering services shall be borne

110 by the owners of the land abutting upon the streets and
111 alleys, in which the sewer is laid according to the follow-
112 ing plan: Payment is to be made by each landowner on
113 either side of such portion of a street or alley in which
114 such sewer is laid, in such proportions as the frontage
115 of his land upon said street or alley bears to the total
116 frontage of all lots so abutting on such street or alley.
117 In case of a corner lot, frontage is to be measured along
118 the longest dimensions thereof abutting on such street or
119 alley in which such sewer is laid. Any lot having a depth of
120 two hundred feet or more, and fronting on two streets, or
121 alleys, one in the front and one in the rear of said lot, shall
122 be assessed on both of said streets or alleys if a sewer is
123 laid in both such streets and alleys. Where a corner lot has
124 been assessed on the end it shall not be assessed on the side
125 for the same sewer, and where it has been assessed on the
126 side it shall not be assessed on the end for the same sewer.

127 If the petitioners request the improvement of any such
128 street, alley, or sidewalk in a manner which does not
129 require the permanent paving, or repaving, thereof, the
130 county court shall likewise have authority to improve

131 such street, alley or sidewalk, substantially as requested
132 in such petition, and the total cost thereof including
133 labor, materials, engineering and legal services shall be
134 assessed against the abutting owners in the proportion
135 which the frontage of their lots abutting upon such street,
136 alley or sidewalk bears to the total frontage of all lots
137 abutting upon such street, alley or sidewalk, so improved.

138 Upon the filing of such petition and before work is
139 begun, or let to contract, the county court shall fix a time
140 and place for hearing protests and shall require the peti-
141 tioners to post notice of such hearing in at least two
142 conspicuous places on the street, alley or sidewalk affect-
143 ed, and to give notice thereof by publication in a news-
144 paper of general circulation in the county in which the
145 improvement is to be made at least once before said
146 hearing, which hearing shall be held not less than ten
147 nor more than thirty days after the filing of such petition.

148 At the time and place set for hearing protests the county
149 court may examine witnesses and consider other evidence
150 to show that said petition was filed in good faith; that
151 the signatures thereto are genuine; and that the proposed

152 improvement, paving, repaving, or sewerage, will result
153 in special benefits to all owners of property abutting on
154 said street, alley or sidewalk in an amount at least equal
155 in value to the cost thereof. The court shall within ten
156 days thereafter enter a formal order stating its decision
157 and if the petition be granted shall proceed after due
158 advertisement, reserving the right to reject any or all
159 bids, to let a contract for such work and materials to the
160 lowest responsible bidder.

161 Any owner of property abutting upon said street, alley
162 or sidewalk aggrieved by such order shall have the right
163 to review the same on the record made before the county
164 court by filing within ten days after the entry of such
165 order, a petition with the clerk of the circuit court assign-
166 ing errors and giving bond in a penalty to be fixed by
167 the circuit court to pay any costs or expenses incurred
168 upon such appeal should the order of the county court
169 be affirmed. The circuit court shall proceed to review
170 the matter as in other cases of appeal from the county
171 court.

172 All assessments made under this section shall be cer-

173 tified to the county clerk and recorded in a proper trust
174 deed book and indexed in the name of the owner of any
175 lot or fractional part of a lot so assessed. The assessment
176 so made shall be a lien on the property liable therefor,
177 and shall have priority over all other liens except those
178 for taxes, and may be enforced by a civil action in the
179 name of the contractor performing the work in the same
180 manner as provided for other liens for permanent im-
181 provements. Such assessment shall be paid in not more
182 than ten equal annual installments, bearing interest at
183 the rate of six per cent per annum as follows: The first
184 installment, together with interest on the whole assess-
185 ment, shall be paid not later than one year from the date
186 of such assessment, and a like installment with interest
187 on the whole amount remaining unpaid each year there-
188 after until the principal and all interest shall have been
189 paid in full.

190 The county court may issue coupon-bearing certificates
191 payable in not more than ten equal annual installments
192 for the amount of such assessment and the interest there-
193 on, to be paid by the owner of any lot or fractional part

194 thereof, fronting on such street, alley, or sidewalk which
195 has been improved, paved, or repaved or in which a sewer
196 has been laid, as aforesaid, and the holder of said certifi-
197 cate shall have a lien having priority over all other liens
198 except those for taxes upon the lot or part of lot fronting
199 on such street, alley, or sidewalk, and such certificate
200 shall likewise draw interest from the date of assessment
201 at the rate of six per cent per annum, and payment
202 thereof may be enforced in the name of the holder of said
203 certificate by proper civil action in any court having
204 jurisdiction to enforce such lien.

205 Certificates authorized under this section may be issued,
206 sold or negotiated to the contractor doing the work, or
207 to his assignee, or to any person, firm, or corporation,
208 provided that the county court in issuing such certificates
209 shall not be held as a guarantor, or in any way liable
210 for the payment thereof. Certificates so issued shall con-
211 tain a provision to the effect that in the event of default
212 in the payment of any one or more of said installments,
213 when due, said default continuing for a period of sixty
214 days, all unpaid installments shall thereupon become

215 due and payable, and the owner of said certificates may
216 proceed to collect the unpaid balance thereof in the man-
217 ner hereinbefore provided.
218 In all cases where petitioners request paving or repav-
219 ing, or the laying of sewers, under the provisions of this
220 section, the county court shall let the work of grading,
221 paving, curbing or sewerage to contract to the lowest
222 responsible bidder. In each such case the county court
223 shall require a bond in the penalty of the contract price
224 guaranteeing the faithful performance of the work and
225 each such contract shall require the contractor to repair
226 any defects due to defective workmanship or materials
227 discovered within one year after the completion of the
228 work.
229 Upon presentation to the clerk of the county court of
230 the certificates evidencing the lien, duly cancelled and
231 marked paid by the holder thereof, or evidence of pay-
232 ment of the assessment if no certificates have been issued,
233 said clerk shall execute and acknowledge a release of
234 the lien which release may be recorded, as other releases
235 in the office of the clerk of the county court.

236 The owner of any lot or fractional part of a lot abutting
237 upon such street, alley or sidewalk so improved, paved,
238 repaved or sewerred shall have the right to anticipate
239 the payment of any such assessment or certificate by pay-
240 ing the principal amount due, with interest accrued there-
241 on to date of payment, and also to pay the entire amount,
242 without interest at any time, within thirty days following
243 the date of the assessment.

244 Nothing in this section contained shall be construed
245 to authorize the county courts of the various counties
246 to acquire any road construction, ditching, or paving
247 equipment. The county courts are hereby authorized to
248 rent from the state road commissioner or any other per-
249 son, firm or corporation such equipment as may be neces-
250 sary from time to time, to improve any street or sidewalk
251 which petitioners do not desire to have paved in a per-
252 manent manner, and for such purpose to employ such
253 labor as may be necessary but no expense connected
254 therewith shall be charged to any county funds.

255 No county court shall be under any duty after the pav-
256 ing, repaving or improvement of any street, alley or side-

257 walk or the laying of any sanitary sewer under the pro-
258 visions of this section, to maintain or repair the same, but
259 any such court shall have authority upon petition duly
260 verified signed by at least sixty per cent of the owners
261 of property abutting upon any improvement made under
262 this section to maintain or repair such improvement or
263 sewer and to assess the cost thereof against the owners
264 of such abutting property in the same manner as the cost
265 of the original improvement.

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

Harmon Davis, Jr.
Chairman Senate Committee

Wm. H. H. Withrow
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

Sulus W. Singleton Jr.
Speaker House of Delegates

The within approved this the 17th day of March, 1961.

Wm. Barr
Governor



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of West Virginia MAR 17 1961

JOE F. BURDETT
SECRETARY OF STATE