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OFFICE OF SECRETARY OF STATE STATE OF WEST VIRGINIA

## WEST VIRGINIA LEGISLATURE

**REGULAR SESSION, 1976** 

## ENROLLED

SENATE BILL NO. 27

(By Mr. Steptoe)

In Effect Passage

FILED IN THE OFFICE OF SECRETARY OF STATE OF WEST VIRGINIA

THIS DATE 3/31/74

## ENROLLED Senate Bill No. 27

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(By Mr. Steptoe)

[Passed March 13, 1976; in effect 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 increasing from six to not to exceed eight percent per annum the interest borne on assessments paid for permanent improvements to property made by county commissions and increasing from six not to exceed eight percent per annum the interest drawn on the coupon-bearing certificates payable for such assessments.

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:

## ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

- §7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers and improved streets.
  - 1 In addition to all other powers and duties now con-
  - 2 ferred by law upon county commissions, such commissions
  - 3 are hereby authorized and empowered to install, con-
  - 4 struct, repair, maintain and operate waterworks, water
  - 5 mains, sewer lines and sewage disposal plants in connec-
  - 6 tion therewith within their respective counties: *Provided*.
  - 7 That the county commission of Webster is authorized to
  - 8 expend county funds in the opening of, and upkeep of,
  - 9 a sulphur well now situate on county property: *Provided*,
- 10 That such authority and power herein conferred upon

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county commissions shall not extend into the territory within any municipal corporation: *Provided, however,*That any county commission is hereby authorized to enter into contracts or agreements with any municipality within the county, or with a municipality in an adjoining county, with reference to the exercise of the powers vested in

such commissions by this section.

18 In addition to the foregoing, the county commission shall have the power to improve streets, sidewalks and 19 20 alleys and lay sewers as follows: Upon petition in writing 21 duly verified, of the persons, firms or corporations owning 22 not less than sixty percent of the frontage of the lots 23 abutting on both sides of any street or alley, between 24 any two cross-streets, or between a cross-street and an 25 alley in any unincorporated community, requesting the 26 county commission so to do according to plans and speci-27 fications submitted with such petition and offering to 28 have their property so abutting assessed not only with 29 their portion of the cost of such improvement abutting 30 upon their respective properties, but also offering to have 31 their said properties proportionately assessed with the 32 total cost of paving, grading and curbing the intersections 33 of such streets and alleys, the county commission may 34 cause any such street or alley to be improved or paved 35 or repaved substantially with the materials and according 36 to such plans and specifications as hereinafter provided: 37 Provided, however, That the county commission is further 38 authorized, if the said county commission so determines 39 by a unanimous vote of its constituted membership, that 40 two or more intersecting streets, sidewalks, alleys and 41 sewers, should be improved as one project, in order to satisfy peculiar problems resulting from access as well 43 as drainage problems, then, in that event, the said county 44 commission may order such improvements as one single 45 unit and project, upon petition in writing duly verified 46 of the persons, firms or corporations owning not less than 47 sixty percent of the frontage of the lots abutting on both sides of all streets or alleys, or portions thereof included 48 49 by said county commission in said unit and project.

The total cost including labor and materials, engineering, and legal service of grading and paving, curbing,

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

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Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on one side of any street 68 between any two cross-streets or between a cross-street and an alley in any unincorporated community requesting 70 the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the total cost thereof, the county commission may cause any side-73 74 walk to be improved, or paved, or repaved, substantially 75 with such materials according to such plans and specifi-76 cations and the total cost including labor and materials, engineering and legal service of improving, grading, paving, or repaving such sidewalk and assessing the cost thereof shall, when the work is completed and accepted, be assessed against the owners of the lots or fractional part of lots abutting on such sidewalk, in such portion of the total cost as the frontage in feet of each owner's land so abutting bears to the total frontage of all lots so abutting on such sidewalk so paved or improved, as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him to the clerk of said commission.

Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of any street or alley, in any unincorporated community requesting the county commission so to do according to plans and

93 specifications submitted with such petition and offering to 94 have their property so abutting assessed with the cost, as 95 hereinafter provided, the county commission may lay and 96 construct sanitary sewers in any street or alley with such 97 materials and substantially according to such plans and 98 specifications and when such sewer is completed and 99 accepted, the county engineer or surveyor shall report to 100 the county commission, in writing, the total cost of such 101 sewer and a description of the lots and lands, as to the 102 location, frontage, depth and ownership liable for such 103 sewer assessment, so far as the same may be ascertained, 104 together with the amount chargeable against each lot and 105 owner, calculated in the following manner: The total cost 106 of constructing and laying the sewer including labor, 107 materials, legal and engineering services shall be borne by 108 the owners of the land abutting upon the streets and alleys, 109 in which the sewer is laid according to the following plan: 110 Payment is to be made by each landowner on either side of 111 such portion of a street or alley in which such sewer is 112 laid, in such proportions as the frontage of his land upon 113 said street or alley bears to the total frontage of all lots 114 so abutting on such street or alley. In case of a corner 115 lot, frontage is to be measured along the longest dimen-116 sions thereof abutting on such street or alley in which 117 such sewer is laid. Any lot having a depth of two hundred 118 feet or more, and fronting on two streets, or alleys, one in 119 the front and one in the rear of said lot, shall be assessed 120 on both of said streets or alleys if a sewer is laid in both 121 such streets and alleys. Where a corner lot has been as-122 sessed on the end it shall not be assessed on the side for 123 the same sewer and where it has been assessed on the side 124 it shall not be assessed on the end for the same sewer.

125 If the petitioners request the improvement of any such 126 street, alley or sidewalk in a manner which does not re-127 quire the permanent paving or repaving thereof, the coun-128 ty commission shall likewise have authority to improve 129 such street, alley or sidewalk, substantially as requested 130 in such petition, and the total cost thereof including labor, 131 materials, engineering and legal services shall be assessed 132 against the abutting owners in the proportion which the 133 frontage of their lots abutting upon such street, alley or

134 sidewalk bears to the total frontage of all lots abutting 135 upon such street, alley or sidewalk, so improved.

Upon the filing of such petition and before work is begun, or let to contract, the county commission shall fix a time and place for hearing protests and shall re-quire the petitioners to post notice of such hearing in at least two conspicuous places on the street, alley or side-walk affected, and to give notice thereof by publication of such notice as a Class I legal advertisement in com-pliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the improvement is to be made. The hearing shall be held not less than ten nor more than thirty days after the filing of such petition.

At the time and place set for hearing protests the county commission may examine witnesses and consider other evidence to show that said petition was filed in good faith; that the signatures thereto are genuine; and that the proposed improvement, paving, repaving, or sewering, will result in special benefits to all owners of property abutting on said street, alley or sidewalk in an amount at least equal in value to the cost thereof. The commission shall within ten days thereafter enter a formal order stating its decision and if the petition be granted shall proceed after due advertisement, reserving the right to reject any or all bids, to let a contract for such work and materials to the lowest responsible bidder.

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

All assessments made under this section shall be certified to the county clerk and recorded in a proper trust deed book and indexed in the name of the owner of any lot or fractional part of a lot so assessed. The assessment so made shall be a lien on the property liable therefor, and shall have priority over all other liens except those for taxes, and may be enforced by a civil action in the name of the contractor performing the work in the same manner as provided for other liens for permanent improvements. Such assessment shall be paid in not more than ten equal annual installments, bearing interest at a rate not to ex-ceed eight percent per annum as follows: The first install-ment, together with interest on the whole assessment, shall be paid not later than one year from the date of such assessment, and a like installment with interest on the whole amount remaining unpaid each year thereafter until the principal and all interest shall have been paid in full.

The county commission may issue coupon-bearing certificates payable in not more than ten equal annual installments for the amount of such assessment and the interest thereon, to be paid by the owner of any lot or fractional part thereof, fronting on such street, alley or sidewalk which has been improved, paved, or repaved or in which a sewer has been laid, as aforesaid, and the holder of said certificate shall have a lien having priority over all other liens except those for taxes upon the lot or part of lot fronting on such street, alley or sidewalk, and such certificate shall likewise draw interest from the date of assessment at a rate not to exceed eight percent per annum, and payment thereof may be enforced in the name of the holder of said certificate by proper civil action in any court having jurisdiction to enforce such lien.

Certificates authorized under this section may be issued, sold or negotiated to the contractor doing the work, or to his assignee, or to any person, firm, or corporation: *Provided*, That the county commission in issuing such certificates shall not be held as a guarantor, or in any way liable for the payment thereof. Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one or more of said installments, when due, said default continuing for a period of sixty days, all unpaid installments shall thereupon become due and payable, and the owner of said

216 certificates may proceed to collect the unpaid balance 217 thereof in the manner hereinbefore provided.

218 In all cases where petitioners request paving or re-219 paving, or the laying of sewers under the provisions of 220 this section, the county commission shall let the work of 221 grading, paving, curbing or sewering to contract to the 222 lowest responsible bidder. In each such case the county 223 commission shall require a bond in the penalty of the 224 contract price guaranteeing the faithful performance of 225 the work and each such contract shall require the con-226 tractor to repair any defects due to defective workman-227 ship or materials discovered within one year after the 228 completion of the work.

Upon presentation to the clerk of the county commission of the certificates evidencing the lien, duly canceled and marked paid by the holder thereof, or evidence of payment of the assessment if no certificates have been issued, said clerk shall execute and acknowledge a release of the lien which release may be recorded, as other releases in the office of the clerk of the county commission.

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

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

No county commission shall be under any duty after

256 the paving, repaving or improvement of any street, alley 257 or sidewalk or the laying of any sanitary sewer under the provisions of this section, to maintain or repair the same, 258 259 but any such commission shall have authority upon peti-260 tion duly verified, signed by at least sixty percent of the owners of property abutting upon any improvement made 261 262 under this section, to maintain or repair such improvement **26**3 or 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.

Chairman Senate Committee

Chairman House Committee

Chairman House Committee

Originated in the Senate.

To take effect 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 39th day of March, 1976

Auch A. Maray,

Governor

GOVERNOR

Time 3:45 p.m.