

No. 2046

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

HOUSE BILL No. 2046

(By ~~the~~ Delegate Faircloth)



Passed April 8, 1989

In Effect from Passage

ENROLLED
H. B. 2046

(By DELEGATE FAIRCLOTH)

[Passed April 8, 1989; 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 county commissions generally; construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; and providing for the assessment of cost of sanitary sewers, and maintenance of roads not in the state road system.

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, improved streets and maintenance of roads not in the state road system.

1 In addition to all other powers and duties now
2 conferred by law upon county commissions, such
3 commissions are hereby authorized and empowered to
4 install, construct, repair, maintain and operate water-
5 works, water mains, sewer lines and sewage disposal
6 plants in connection therewith within their respective
7 counties: *Provided*, That the county commission of

8 Webster County is authorized to expend county funds in
9 the opening of, and upkeep of a sulphur well now situate
10 on county property: *Provided, however,* That such
11 authority and power herein conferred upon county
12 commissions shall not extend into the territory within
13 any municipal corporation: *Provided further,* That any
14 county commission is hereby authorized to enter into
15 contracts or agreements with any municipality within
16 the county, or with a municipality in an adjoining
17 county, with reference to the exercise of the powers
18 vested in such commissions by this section.

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

50 event, the said county commission may order such
51 improvements as one single unit and project, upon
52 petition in writing duly verified of the persons, firms or
53 corporations owning not less than sixty percent of the
54 frontage of the lots abutting on both sides of all streets
55 or alleys, or portions thereof included by said county
56 commission in said unit and project.

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

73 Upon petition in writing duly verified, of the persons,
74 firms or corporations owning not less than sixty percent
75 of the frontage of the lots abutting on one side of any
76 county or subdivision road or roads between any two
77 cross-roads, all used by the public but not in the state
78 road system or street between any two cross-streets or
79 between a cross-street and an alley in any unincorpor-
80 ated community requesting the county commission so
81 to do according to plans and specifications submitted
82 with such petition and offering to have their property
83 so abutting assessed with the total cost thereof, the
84 county commission may cause any sidewalk to be
85 improved, or paved, or repaved, substantially with such
86 materials according to such plans and specifications and
87 the total cost including labor and materials, engineering
88 and legal service of improving, grading, paving or
89 repaving such sidewalk and assessing the cost thereof
90 shall, when the work is completed and accepted, be

91 assessed against the owners of the lots or fractional part
92 of lots abutting on such sidewalk, in such portion of the
93 total cost as the frontage in feet of each owner's land
94 so abutting bears to the total frontage of all lots so
95 abutting on such sidewalk so paved or improved, as
96 aforesaid, which computation shall be made by the
97 county engineer or surveyor and certified by him to the
98 clerk of said commission.

99 Upon petition in writing duly verified, of the persons,
100 firms or corporations owning not less than sixty percent
101 of the frontage of the lots abutting on both sides of any
102 street or alley, in any unincorporated community
103 requesting the county commission so to do according to
104 plans and specifications submitted with such petition
105 and offering to have their property so abutting assessed
106 with the cost, as hereinafter provided, the county
107 commission may lay and construct sanitary sewers in
108 any street or alley with such materials and substantially
109 according to such plans and specifications and when
110 such sewer is completed and accepted, the county
111 engineer or surveyor shall report to the county commis-
112 sion, in writing, the total cost of such sewer and a
113 description of the lots and lands, as to the location,
114 frontage, depth and ownership liable for such sewer
115 assessment, so far as the same may be ascertained,
116 together with the amount chargeable against each lot
117 and owner, calculated in the following manner: The total
118 cost of constructing and laying the sewer including
119 labor, materials, legal and engineering services shall be
120 borne by the owners of the land abutting upon the
121 streets and alleys, in which the sewer is laid according
122 to the following plan: Payment is to be made by each
123 landowner on either side of such portion of a street or
124 alley in which such sewer is laid, in such proportions
125 as the frontage of his land upon said street or alley bears
126 to the total frontage of all lots so abutting on such street
127 or alley. In case of a corner lot, frontage is to be
128 measured along the longest dimensions thereof abutting
129 on such street or alley in which such sewer is laid. Any
130 lot having a depth of two hundred feet or more, and
131 fronting on two streets or alleys, one in the front and
132 one in the rear of said lot, shall be assessed on both of

133 said streets or alleys if a sewer is laid in both such
134 streets and alleys. Where a corner lot has been assessed
135 on the end it shall not be assessed on the side for the
136 same sewer and where it has been assessed on the side
137 it shall not be assessed on the end for the same sewer.

138 If the petitioners request the improvement of any such
139 county road or subdivision road, street, alley or sidewalk
140 in a manner which does not require the permanent
141 paving or repaving thereof, the county commission shall
142 likewise have authority to improve such county road or
143 subdivision road, street, alley or sidewalk, substantially
144 as requested in such petition, and the total cost thereof
145 including labor, materials, engineering and legal
146 services shall be assessed against the abutting owners
147 in the proportion which the frontage of their lots
148 abutting upon such county road or subdivision road,
149 street, alley or sidewalk bears to the total frontage of
150 all lots abutting upon such street, alley or sidewalk so
151 improved.

152 Upon the filing of such petition and before work is
153 begun, or let to contract, the county commission shall
154 fix a time and place for hearing protests and shall
155 require the petitioners to post notice of such hearing in
156 at least two conspicuous places on the county road or
157 subdivision road, street, alley or sidewalk affected, and
158 to give notice thereof by publication of such notice as
159 a Class I legal advertisement in compliance with the
160 provisions of article three, chapter fifty-nine of this code,
161 and the publication area for such publication shall be
162 the county in which the improvement is to be made. The
163 hearing shall be held not less than ten nor more than
164 thirty days after the filing of such petition.

165 At the time and place set for hearing protests the
166 county commission may examine witnesses and consider
167 other evidence to show that said petition was filed in
168 good faith; that the signatures thereto are genuine; and
169 that the proposed improvement, paving, repaving or
170 sewerage will result in special benefits to all owners of
171 property abutting on said county road or subdivision
172 road, street, alley or sidewalk in an amount at least
173 equal in value to the cost thereof. The commission shall

174 within ten days thereafter enter a formal order stating
175 its decision and if the petition be granted shall proceed
176 after due advertisement, reserving the right to reject
177 any or all bids, to let a contract for such work and
178 materials to the lowest responsible bidder.

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

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

209 The county commission may issue coupon-bearing
210 certificates payable in not more than ten equal annual
211 installments for the amount of such assessment and the
212 interest thereon, to be paid by the owner of any lot or
213 fractional part thereof, fronting on such county road or
214 subdivision road, street, alley or sidewalk which has

215 been improved, paved, or repaved or in which a sewer
216 has been laid, as aforesaid, and the holder of said
217 certificate shall have a lien having priority over all other
218 liens except those for taxes upon the lot or part of lot
219 fronting on such county road or subdivision road, street,
220 alley or sidewalk, and such certificate shall likewise
221 draw interest from the date of assessment at a rate not
222 to exceed twelve percent per annum, and payment
223 thereof may be enforced in the name of the holder of
224 said certificate by proper civil action in any court
225 having jurisdiction to enforce such lien.

226 Certificates authorized under this section may be
227 issued, sold or negotiated to the contractor doing the
228 work, or to his assignee, or to any person, firm or
229 corporation: *Provided*, That the county commission in
230 issuing such certificates shall not be held as a guarantor,
231 or in any way liable for the payment thereof.
232 Certificates so issued shall contain a provision to the
233 effect that in the event of default in the payment of any
234 one or more of said installments, when due, said default
235 continuing for a period of sixty days, all unpaid
236 installments shall thereupon become due and payable,
237 and the owner of said certificates may proceed to collect
238 the unpaid balance thereof in the manner hereinbefore
239 provided.

240 In all cases where petitioners request paving or
241 repaving, or the laying of sewers under the provisions
242 of this section, the county commission shall let the work
243 of grading, paving, curbing or sewerage to contract to
244 the lowest responsible bidder. In each such case the
245 county commission shall require a bond in the penalty
246 of the contract price guaranteeing the faithful perfor-
247 mance of the work and each such contract shall require
248 the contractor to repair any defects due to defective
249 workmanship or materials discovered within one year
250 after the completion of the work.

251 Upon presentation to the clerk of the county commis-
252 sion of the certificates evidencing the lien, duly canceled
253 and marked paid by the holder thereof, or evidence of
254 payment of the assessment if no certificates have been
255 issued, said clerk shall execute and acknowledge a

256 release of the lien which release may be recorded, as
257 other releases in the office of the clerk of the county
258 commission.

259 The owner of any lot or fractional part of a lot
260 abutting upon such county road or subdivision road,
261 street, alley or sidewalk so improved, paved, repaved, or
262 sewerred shall have the right to anticipate the payment
263 of any such assessment or certificate by paying the
264 principal amount due, with interest accrued thereon to
265 date of payment, and also to pay the entire amount,
266 without interest at any time, within thirty days follow-
267 ing the date of the assessment.

268 Nothing in this section contained shall be construed
269 to authorize the county commissions of the various
270 counties to acquire any road construction, ditching or
271 paving equipment. The county commissions are hereby
272 authorized to rent from the state road commissioner or
273 any other person, firm or corporation such equipment
274 as may be necessary from time to time, to improve any
275 county road or subdivision road used by the public but
276 not in the state road system, street or sidewalk which
277 petitioners do not desire to have paved in a permanent
278 manner, and for such purpose to employ such labor as
279 may be necessary but no expense connected therewith
280 shall be charged to any county funds.

281 No county commission shall be under any duty after
282 the paving, repaving or improvement of any county road
283 or subdivision road used by the public but not in the
284 state road system, street, alley or sidewalk or the laying
285 of any sanitary sewer under the provisions of this
286 section, to maintain or repair the same, but any such
287 commission shall have authority upon petition duly
288 verified, signed by at least sixty percent of the owners
289 of property abutting upon any improvement made under
290 this section, to maintain or repair such improvement or
291 sewer and to assess the cost thereof against the owners
292 of such abutting property in the same manner as the
293 cost of the original improvement.

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

Fredrick L. Perren
Chairman Senate Committee

J. L. Satter
Chairman House Committee

Originating in the House.

Takes effect from passage.

Joel C. Welch
Clerk of the Senate

Donald L. Foy
Clerk of the House of Delegates

Sam R. Tucker
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *is approved* this the *27th*
day of *April*, 1989.

Walter Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/89

Time 10:15