WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED

HOUSE BILL No. 2046

(By Delegate Fawcett)

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.

In addition to all other powers and duties now conferred by law upon county commissions, such commissions are hereby authorized and empowered to install, construct, repair, maintain and operate water-works, water mains, sewer lines and sewage disposal plants in connection therewith within their respective counties: Provided, That the county commission of
Webster County is authorized to expend county funds in the opening of, and upkeep of a sulphur well now situate on county property: Provided, however, That such authority and power herein conferred upon county commissions shall not extend into the territory within any municipal corporation: Provided further, 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.

In addition to the foregoing, the county commission shall have the power to improve streets, sidewalks and alleys and lay sewers and enter into contracts for maintenance of county roads and subdivision roads used by the public but not in the state road system as follows:

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, between any two cross-streets, or between a cross-street and an alley in any unincorporated community, requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed not only with their portion of the cost of such improvement abutting upon their respective properties, but also offering to have their said properties proportionately assessed with the total cost of paving, grading and curbing the intersections of such streets and alleys, or the total cost of maintenance of county roads or subdivision roads used by the public but not in the state road system, the county commission may cause any such street or alley to be improved or paved or repaved substantially with the materials and according to such plans and specifications as hereinafter provided: Provided, That the county commission is further authorized, if the said county commission so determines by a unanimous vote of its constituted membership, that two or more intersecting streets, sidewalks, alleys and sewers, should be improved as one project, in order to satisfy peculiar problems resulting from access as well as drainage problems, then, in that
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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 specifications submitted with such petition
and offering to have their property so abutting assessed
with the cost, as hereinafter provided, the county
commission may lay and construct sanitary sewers in
any street or alley with such materials and substantially
according to such plans and specifications and when
such sewer is completed and accepted, the county
engineer or surveyor shall report to the county commis-
sion, in writing, the total cost of such sewer and a
description of the lots and lands, as to the location,
frontage, depth and ownership liable for such sewer
assessment, so far as the same may be ascertained,
together with the amount chargeable against each lot
and owner, calculated in the following manner: The total
cost of constructing and laying the sewer including
labor, materials, legal and engineering services shall be
borne by the owners of the land abutting upon the
streets and alleys, in which the sewer is laid according
to the following plan: Payment is to be made by each
landowner on either side of such portion of a street or
alley in which such sewer is laid, in such proportions
as the frontage of his land upon said street or alley bears
to the total frontage of all lots so abutting on such street
or alley. In case of a corner lot, frontage is to be
measured along the longest dimensions thereof abutting
on such street or alley in which such sewer is laid. Any
lot having a depth of two hundred feet or more, and
fronting on two streets or alleys, one in the front and
one in the rear of said lot, shall be assessed on both of
said streets or alleys if a sewer is laid in both such streets and alleys. Where a corner lot has been assessed on the end it shall not be assessed on the side for the same sewer and where it has been assessed on the side it shall not be assessed on the end for the same sewer.

If the petitioners request the improvement of any such county road or subdivision road, street, alley or sidewalk in a manner which does not require the permanent paving or repaving thereof, the county commission shall likewise have authority to improve such county road or subdivision road, street, alley or sidewalk, substantially as requested in such petition, and the total cost thereof including labor, materials, engineering and legal services shall be assessed against the abutting owners in the proportion which the frontage of their lots abutting upon such county road or subdivision road, street, alley or sidewalk bears to the total frontage of all lots abutting 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 require the petitioners to post notice of such hearing in at least two conspicuous places on the county road or subdivision road, street, alley or sidewalk affected, and to give notice thereof by publication of such notice as a Class I legal advertisement in compliance 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 county road or subdivision road, 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 county road
or subdivision road, 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 exceed twelve percent
per annum, as follows: The first installment, 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 county road or
subdivision road, 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 county road or subdivision road, street,
alley or sidewalk, and such certificate shall likewise
draw interest from the date of assessment at a rate not
to exceed twelve 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 certificates may proceed to collect
the unpaid balance thereof in the manner hereinbefore
provided.

In all cases where petitioners request paving or
repaving, or the laying of sewers under the provisions
of this section, the county commission shall let the work
of grading, paving, curbing or sewering to contract to
the lowest responsible bidder. In each such case the
county commission shall require a bond in the penalty
of the contract price guaranteeing the faithful perfor-
ance of the work and each such contract shall require
the contractor to repair any defects due to defective
workmanship or materials discovered within one year
after the completion of the work.

Upon presentation to the clerk of the county commis-
sion 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.

The owner of any lot or fractional part of a lot
abutting upon such county road or subdivision road,
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 follow-
ing the date of the assessment.

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

No county commission shall be under any duty after
the paving, repaving or improvement of any county road
or subdivision road used by the public but not in the
state road system, street, alley or sidewalk or the laying
of any sanitary sewer under the provisions of this
section, to maintain or repair the same, but any such
commission shall have authority upon petition duly
verified, signed by at least sixty percent of the owners
of property abutting upon any improvement made under
this section, to maintain or repair such improvement or
sewer and to assess the cost thereof against the owners
of such abutting property in the same manner 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

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor