

HB# 4357

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GOVERNMENT SERVICE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



# ENROLLED

*Com. Sub. For*

HOUSE BILL No. *H357*

(By Delegate *s. Mezzatista, Nicol and Evans*)



Passed *March 12* ..... 1994

In Effect *90 Days From* ..... Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4357**  
(By DELEGATES MEZZATESTA, NICOL AND EVANS)

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[Passed March 12, 1994; in effect ninety days from passage.]

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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; and to amend article nineteen, chapter eight of said code by adding thereto a new section, designated section twenty-one, all relating to specifications for water mains are newly installed or upgraded.

*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; and that article nineteen, chapter eight of said code be amended by adding thereto a new section, designated section twenty-one, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS  
AND OFFICERS.**

**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 Considering the importance of public fire protection,  
20 any county commission, public service district, public or  
21 private utility which installs, constructs, maintains, or  
22 upgrades water mains shall ensure that all new mains  
23 specifically intended to provide fire protection are  
24 supplied by mains which are not less than six inches in  
25 diameter. A permit or other written approval shall be  
26 obtained from the Department of Health and Human  
27 Resources for each hydrant or group of hydrants  
28 installed in compliance with section nine, article one,  
29 chapter sixteen of the West Virginia Code as amended:  
30 *Provided*, That all newly constructed water distribution  
31 systems transferred to a public or private utility shall  
32 have mains at least six inches in diameter where fire  
33 flows are desired or required by the public or private  
34 utility: *Provided, however*, That the utility providing  
35 service has sufficient hydraulic capacity as determined  
36 by the Department of Health and Human Resources. In  
37 addition to the foregoing, the county commission shall  
38 have the power to improve streets, sidewalks and alleys  
39 and lay sewers and enter into contracts for maintenance

40 of county roads and subdivision roads used by the public  
41 but not in the state road system as follows: Upon petition  
42 in writing duly verified, of the persons, firms or  
43 corporations owning not less than sixty percent of the  
44 frontage of the lots abutting on both sides of any street  
45 or alley, between any two cross-streets, or between a  
46 cross-street and an alley in any unincorporated com-  
47 munity, requesting the county commission so to do  
48 according to plans and specifications submitted with  
49 such petition and offering to have their property so  
50 abutting assessed not only with their portion of the cost  
51 of such improvement abutting upon their respective  
52 properties, but also offering to have their said properties  
53 proportionately assessed with the total cost of paving,  
54 grading and curbing the intersections of such streets  
55 and alleys, or the total cost of maintenance of county  
56 roads or subdivision roads used by the public but not  
57 in the state road system, the county commission may  
58 cause any such street or alley to be improved or paved  
59 or repaved substantially with the materials and accord-  
60 ing to such plans and specifications as hereinafter  
61 provided: *Provided*, That the county commission is  
62 further authorized, if the said county commission so  
63 determines by a unanimous vote of its constituted  
64 membership, that two or more intersecting streets,  
65 sidewalks, alleys and sewers, should be improved as one  
66 project, in order to satisfy peculiar problems resulting  
67 from access as well as drainage problems, then, in that  
68 event, the said county commission may order such  
69 improvements as one single unit and project, upon  
70 petition in writing duly verified of the persons, firms or  
71 corporations owning not less than sixty percent of the  
72 frontage of the lots abutting on both sides of all streets  
73 or alleys, or portions thereof included by said county  
74 commission in said unit and project.

75 The total cost including labor and materials, engineer-  
76 ing, and legal service of grading and paving, curbing,  
77 improving any such road, street or alley (including the  
78 cost of the intersections) and assessing the cost thereof  
79 shall be borne by the owners of the land abutting upon  
80 such road, street or alley when the work is completed  
81 and accepted according to the following plan, that is to

82 say, payment is to be made by all landowners on either  
83 side of such road, street or alley so paved or improved  
84 in such proportion of the total cost as the frontage in  
85 feet of each owner's land so abutting bears to the total  
86 frontage of all the land so abutting on such road, street  
87 or alley, so paved or improved as aforesaid, which  
88 computation shall be made by the county engineer or  
89 surveyor and certified by him to the clerk of said  
90 commission.

91 Upon petition in writing duly verified, of the persons,  
92 firms or corporations owning not less than sixty percent  
93 of the frontage of the lots abutting on one side of any  
94 county or subdivision road or roads between any two  
95 cross-roads, all used by the public but not in the state  
96 road system or street between any two cross-streets or  
97 between a cross-street and an alley in any unincorporated  
98 community requesting the county commission so  
99 to do according to plans and specifications submitted  
100 with such petition and offering to have their property  
101 so abutting assessed with the total cost thereof, the  
102 county commission may cause any sidewalk to be  
103 improved, or paved, or repaved, substantially with such  
104 materials according to such plans and specifications and  
105 the total cost including labor and materials, engineering  
106 and legal service of improving, grading, paving or  
107 repaving such sidewalk and assessing the cost thereof  
108 shall, when the work is completed and accepted, be  
109 assessed against the owners of the lots or fractional part  
110 of lots abutting on such sidewalk, in such portion of the  
111 total cost as the frontage in feet of each owner's land  
112 so abutting bears to the total frontage of all lots so  
113 abutting on such sidewalk so paved or improved, as  
114 aforesaid, which computation shall be made by the  
115 county engineer or surveyor and certified by him to the  
116 clerk of said commission.

117 Upon petition in writing duly verified, of the persons,  
118 firms or corporations owning not less than sixty percent  
119 of the frontage of the lots abutting on both sides of any  
120 street or alley, in any unincorporated community  
121 requesting the county commission so to do according to  
122 plans and specifications submitted with such petition

123 and offering to have their property so abutting assessed  
124 with the cost, as hereinafter provided, the county  
125 commission may lay and construct sanitary sewers in  
126 any street or alley with such materials and substantially  
127 according to such plans and specifications and when  
128 such sewer is completed and accepted, the county  
129 engineer or surveyor shall report to the county commis-  
130 sion, in writing, the total cost of such sewer and a  
131 description of the lots and lands, as to the location,  
132 frontage, depth and ownership liable for such sewer  
133 assessment, so far as the same may be ascertained,  
134 together with the amount chargeable against each lot  
135 and owner, calculated in the following manner: The total  
136 cost of constructing and laying the sewer including  
137 labor, materials, legal and engineering services shall be  
138 borne by the owners of the land abutting upon the  
139 streets and alleys, in which the sewer is laid according  
140 to the following plan: Payment is to be made by each  
141 landowner on either side of such portion of a street or  
142 alley in which such sewer is laid, in such proportions  
143 as the frontage of his land upon said street or alley bears  
144 to the total frontage of all lots so abutting on such street  
145 or alley. In case of a corner lot, frontage is to be  
146 measured along the longest dimensions thereof abutting  
147 on such street or alley in which such sewer is laid. Any  
148 lot having a depth of two hundred feet or more, and  
149 fronting on two streets or alleys, one in the front and  
150 one in the rear of said lot, shall be assessed on both of  
151 said streets or alleys if a sewer is laid in both such  
152 streets and alleys. Where a corner lot has been assessed  
153 on the end it shall not be assessed on the side for the  
154 same sewer and where it has been assessed on the side  
155 it shall not be assessed on the end for the same sewer.

156 If the petitioners request the improvement of any such  
157 county road or subdivision road, street, alley or sidewalk  
158 in a manner which does not require the permanent  
159 paving or repaving thereof, the county commission shall  
160 likewise have authority to improve such county road or  
161 subdivision road, street, alley or sidewalk, substantially  
162 as requested in such petition, and the total cost thereof  
163 including labor, materials, engineering and legal  
164 services shall be assessed against the abutting owners

165 in the proportion which the frontage of their lots  
166 abutting upon such county road or subdivision road,  
167 street, alley or sidewalk bears to the total frontage of  
168 all lots abutting upon such street, alley or sidewalk so  
169 improved.

170 Upon the filing of such petition and before work is  
171 begun, or let to contract, the county commission shall  
172 fix a time and place for hearing protests and shall  
173 require the petitioners to post notice of such hearing in  
174 at least two conspicuous places on the county road or  
175 subdivision road, street, alley or sidewalk affected, and  
176 to give notice thereof by publication of such notice as  
177 a Class I legal advertisement in compliance with the  
178 provisions of article three, chapter fifty-nine of this code,  
179 and the publication area for such publication shall be  
180 the county in which the improvement is to be made. The  
181 hearing shall be held not less than ten nor more than  
182 thirty days after the filing of such petition.

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

197 Any owner of property abutting upon said county road  
198 or subdivision road, street, alley or sidewalk aggrieved  
199 by such order shall have the right to review the same  
200 on the record made before the county commission by  
201 filing within ten days after the entry of such order a  
202 petition with the clerk of the circuit court assigning  
203 errors and giving bond in a penalty to be fixed by the  
204 circuit court to pay any costs or expenses incurred upon  
205 such appeal should the order of the county commission

206 be affirmed. The circuit court shall proceed to review  
207 the matter as in other cases of appeal from the county  
208 commission.

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

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

244 Certificates authorized under this section may be  
245 issued, sold or negotiated to the contractor doing the  
246 work, or to his assignee, or to any person, firm or

247 corporation: *Provided*, That the county commission in  
248 issuing such certificates shall not be held as a guarantor,  
249 or in any way liable for the payment thereof. Certifi-  
250 cates so issued shall contain a provision to the effect that  
251 in the event of default in the payment of any one or more  
252 of said installments, when due, said default continuing  
253 for a period of sixty days, all unpaid installments shall  
254 thereupon become due and payable, and the owner of  
255 said certificates may proceed to collect the unpaid  
256 balance thereof in the manner hereinbefore provided.

257 In all cases where petitioners request paving or  
258 repaving, or the laying of sewers under the provisions  
259 of this section, the county commission shall let the work  
260 of grading, paving, curbing or sewerage to contract to  
261 the lowest responsible bidder. In each such case the  
262 county commission shall require a bond in the penalty  
263 of the contract price guaranteeing the faithful perfor-  
264 mance of the work and each such contract shall require  
265 the contractor to repair any defects due to defective  
266 workmanship or materials discovered within one year  
267 after the completion of the work.

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

276 The owner of any lot or fractional part of a lot  
277 abutting upon such county road or subdivision road,  
278 street, alley or sidewalk so improved, paved, repaved, or  
279 sewerage shall have the right to anticipate the payment  
280 of any such assessment or certificate by paying the  
281 principal amount due, with interest accrued thereon to  
282 date of payment, and also to pay the entire amount,  
283 without interest at any time, within thirty days follow-  
284 ing the date of the assessment.

285 Nothing in this section contained shall be construed  
286 to authorize the county commissions of the various

287 counties to acquire any road construction, ditching or  
288 paving equipment. The county commissions are hereby  
289 authorized to rent from the state road commissioner or  
290 any other person, firm or corporation such equipment  
291 as may be necessary from time to time, to improve any  
292 county road or subdivision road used by the public but  
293 not in the state road system, street or sidewalk which  
294 petitioners do not desire to have paved in a permanent  
295 manner, and for such purpose to employ such labor as  
296 may be necessary but no expense connected therewith  
297 shall be charged to any county funds.

298 No county commission shall be under any duty after  
299 the paving, repaving or improvement of any county road  
300 or subdivision road used by the public but not in the  
301 state road system, street, alley or sidewalk or the laying  
302 of any sanitary sewer under the provisions of this  
303 section, to maintain or repair the same, but any such  
304 commission shall have authority upon petition duly  
305 verified, signed by at least sixty percent of the owners  
306 of property abutting upon any improvement made under  
307 this section, to maintain or repair such improvement or  
308 sewer and to assess the cost thereof against the owners  
309 of such abutting property in the same manner as the  
310 cost of the original improvement.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

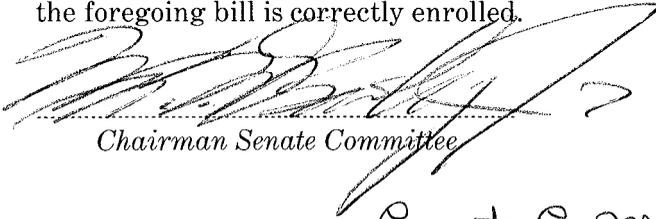
### ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

#### **§8-19-21. Specifications for water mains and water service pipes.**

1 Considering the importance of public fire protection,  
2 any state or local government, public service district,  
3 public or private utility which installs, constructs,  
4 maintains, or upgrades water mains, shall ensure that  
5 all new mains specifically intended to provide fire  
6 protection are supplied by mains which are not less than  
7 six inches in diameter. A permit or other written  
8 approval shall be obtained from the Department of  
9 Health and Human Resources for each hydrant or group  
10 of hydrants installed in compliance with section nine,  
11 article one, chapter sixteen of the West Virginia Code

12 as amended: *Provided*, That all newly constructed water  
13 distribution systems transferred to a public or private  
14 utility shall have mains at least six inches in diameter  
15 where fire flows are desired or required by the public  
16 or private utility: *Provided, however*, That the utility  
17 providing service has sufficient hydraulic capacity as  
18 determined by the Department of Health and Human  
19 Resources.

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



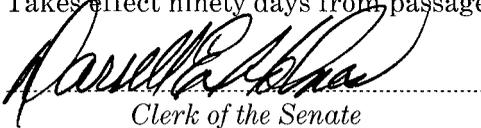
Chairman Senate Committee



Chairman House Committee

Originating in the House.

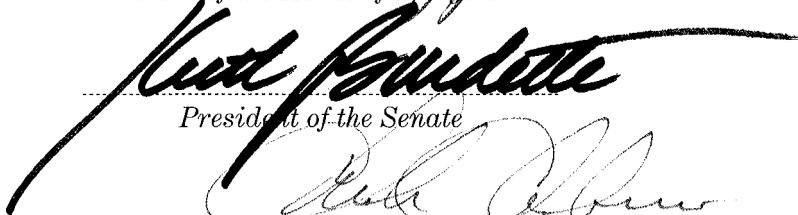
Takes effect ninety days from passage.



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 29<sup>th</sup> day of March, 1994.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/94

Time 9:42 am