



Sub. H.B. 368

123rd General Assembly
(As Passed by the General Assembly)

Reps. Schuler, Hollister, Logan, Schuring, Allen, Vesper, Corbin, Netzley, Britton, Terwilleger, Krupinski, Trakas, Hoops, Verich, O'Brien, Buchy, Harris, Roman, Mettler, Roberts, Willamowski

Sens. Blessing, Schafrath, Gardner, Watts

Effective date: *

ACT SUMMARY

- Clarifies when church property is included in or excluded from a special improvement district.
- Changes from 20 days to 60 days prior to the filing of a petition for the creation of a special improvement district, the date on which the property owners of the district are identified for the purpose of validating that the required percentage of them signed the petition, and for certain other purposes.
- Expands the types of provisions that may be included in a special improvement district's initial plan for public services or public improvements.
- Requires the owner of an interest in real property in a special improvement district who has contracted to transfer that interest, to provide certain notices the owner receives regarding the district to the intended transferee within a specified time.
- Increases from four years to ten years the time in which a special assessment may be levied by a political subdivision to pay for the costs of the initial plan for a special improvement district.

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Permits a proxy or designee to be designated by and vote for more than one member or board of directors member of a special improvement district.

CONTENT AND OPERATION

Creation of special improvement districts

Prior law

Under law unaffected by the act, one or more special improvement districts may be created in a political subdivision (municipal corporation or township), or in a combination of political subdivisions, as long as the territory within each special improvement district is contiguous. Special improvement districts are created by a petition of the property owners within the proposed district, for the purpose of developing and implementing plans for public improvements and public services that benefit the district. *Church property*, property of the federal or state government, or property of a county, township, or municipal corporation is *not* included in a special improvement district, unless the church or the county, township, or municipal corporation specifically requests in writing that the property be included within the district. (Sec. 1710.02(A).)

Special improvement districts are governed by the board of trustees of a *nonprofit corporation*, generally are not considered to be political subdivisions, and are considered public agencies and public authorities only for certain purposes.¹ The directors, officers, and employees of a district, along with other specified individuals, are considered public officials or employees only for certain purposes. (Sec. 1710.02(A), (B), and (C).)

The articles of incorporation for a nonprofit corporation that will govern a special improvement district must be submitted to the municipal executive, if any, and the legislative authority of each municipal corporation or township within which the proposed district will be located, accompanied by a *petition* signed by the owners of at least (1) 60% of the front footage of certain real property located in the proposed district, or (2) 75% of the area of all real property located within the proposed district, *excluding government property* not expressly requested to be

¹ *The board of trustees is statutorily denoted as "the board of directors" of a special improvement district (sec. 1710.02(A)). Members of the board of directors are not considered as holding a public office (sec. 1710.02(C)). The act changes former law to eliminate inconsistencies in referring to the board of directors.*

included in the district.² Under prior law, determination that a petition complied with the 60% or 75% signature requirement was based on the most current records available in the county recorder's office and county engineer's office *20 days prior to the date* on which the petition was filed. A municipal corporation or township had 60 days after the filing of a petition (including the articles of incorporation) for a special improvement district to approve or disapprove the petition by resolution. (Sec. 1710.02(D) and (E).)

Changes made by the act

The act generally retains the provisions for the creation of a special improvement district, including the requirement that church property not be included in a special improvement district unless the church requests in writing that the church property be included within the district (sec. 1710.02(A)). But prior law was *inconsistent* in its references to "church" exclusions/inclusions in a special improvement district. Thus, the act amends several statutes to clarify "church" exclusion/inclusion provisions.

Under prior law, "church property" meant real property occupied by buildings used exclusively for public worship and any real property owned and operated by a church that was used primarily for church retreats or church camping and that was not used as a permanent residence. The act changes the definition to mean property that is (1) described as being exempt from taxation under the property tax exemption law (besides the house used exclusively for public worship, it includes books and furniture in the house, and ground attached to it that is not leased or otherwise used for profit and that is necessary for the house's proper occupancy, use, and enjoyment) and (2) entered on the county auditor's "exempt list" (a list of real estate that is exempt from taxation) compiled under the real estate assessment law. (Sec. 1710.01(C).)

The act also changes the date on which property records will be considered for the purpose of determining compliance with the provisions requiring that either 60% or 75% of specified property owners in the proposed district sign a petition proposing the creation of the district. Rather than 20 days prior to the date of the filing of a petition, the act provides that the most current records available in the county recorder's and county engineer's offices *60 days* prior to the filing date of a

² *The 60% is of the front footage of all real property located in the proposed district that abuts upon any street, alley, public road, place, boulevard, parkway, park entrance, easement, or other existing public improvement within the proposed district. The excluded "government" property is that of the state, federal government, counties, townships, and municipal corporations.*

petition proposing a special improvement district must be used to determine if the requisite percentage of signatures is included in the petition. (Sec. 1710.02(E).)

Initial plans for a special improvement district

Under prior law, the persons proposing to create and operate a special improvement district could propose an initial services plan for the district as part of the petition proposing creation of the district. The initial services plan could include provisions for only the following:

(1) Creation and operation of the district and of the nonprofit corporation to govern the district;

(2) Hiring employees and professional services;

(3) Contracting for insurance;

(4) Purchasing or leasing office space and office equipment;

(5) Other actions necessary initially to form, operate, or organize the district and the nonprofit corporation to govern the district. (Sec. 1710.02(F).)

Once the initial services plan is approved by all of the municipal corporations and townships involved and the district is created, continuing law requires each participating political subdivision to levy a special assessment to pay for the costs of the initial services plan. Under prior law, the levy was required to be for no more than *four years* from the date of the approval of the initial services plan. (Sec. 1710.02(F).)

The act changes the name of the "initial services plan" to "initial plan." In addition to the five provisions identified above, the act permits an initial plan to include a *plan for public improvements or public services* that benefit all or part of the special improvement district, and that complies with existing law that permits the board of directors of the district to adopt written plans for public improvements or public services. Pursuant to that law, the act permits an initial plan to include, but does not limit it to, provisions for the following:

(1) The planning, design, construction, reconstruction, enlargement, or alteration of any public improvements and the acquisition of land for the improvements;

(2) Creating and operating the district and the nonprofit corporation under the Special Improvement District Law, including hiring employees and professional services, contracting for insurance, and purchasing or leasing office space and office equipment and other requirements of the district;

(3) Planning, designing, and implementing a public improvements or public services plan, including hiring architectural, engineering, legal, appraisal, insurance, and planning services, and, for public services, managing, protecting, and maintaining public and private facilities, including public improvements;

(4) Conducting court proceedings to carry out the Special Improvement District Law;

(5) Paying damages resulting from the provision of public improvements or public services and implementing the plans;

(6) Paying the costs of issuing, paying interest on, and redeeming notes and bonds issued for funding public improvements and public services plans. (Sec. 1710.06(A).)

The act also permits the special assessment levy to pay for the costs of the initial plan to be for no more than *ten* years, rather than the four years permitted by prior law. (Sec. 1710.02(F).)

Special requirement for transferors of property in the district

The act requires any owner of an interest in real property located within a proposed or existing special improvement district who enters into a contract to transfer that interest to give to the transferee both of the following:

(1) Within five days after entering into the contract, each notice that the owner received under the Special Improvement District Law within 90 days prior to entering into the contract;

(2) Within five days after its receipt, each notice that the owner receives under the Special Improvement District Law after entering into the contract, until the contract is completely performed or terminated. (Sec. 1710.021.)

Proxies and designees

Continuing law allows a member of a special improvement district to file with the district's secretary at least three days prior to any meeting of the district membership a written statement to appoint a proxy to carry out the member's rights and responsibilities at that meeting, or to appoint by filing a written designation form with the district's secretary a designee to carry out those rights and responsibilities generally. The same procedure allows a member of the board of directors of the district to name a proxy or designee with respect to that director's rights and responsibilities. But in either case, prior law did not permit a proxy or designee to be designated by or vote for more than one district member or director.

The act permits a proxy or designee to be designated by and vote for more than one district member or director. (Secs. 1710.03(D) and 1710.04(B).)

Determination of membership

The real property owners who are special improvement district members and thus subject to the actions of the nonprofit organization governing the district, such as the levying of assessments, and who are to receive notification of district meetings and annual reports, were identified under prior law on the basis of their ownership of property in the district 20 days prior to the action, as indicated in the most current records of the county auditor.³ Under the act, district membership is to be determined on the basis of property ownership 60, rather than 20, days before the particular action. Additionally, the act provides that persons shown on those records as having common or joint ownership interests in a parcel of real property collectively constitute the owner of the property. (Sec. 1710.03.)

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced Reported, H. Local Gov't | 06-01-99 | p. 736 |
| & Townships | 10-27-99 | pp. 1324-1325 |
| Passed House (92-0) | 11-10-99 | pp. 1350-1351 |
| Reported, S. Ways & Means | 01-20-00 | pp. 1319-1320 |
| Passed Senate (32-0) | 01-25-00 | pp. 1336-1337 |
| House concurred (96-0) | 01-26-00 | PP. 1553-1554 |

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³ *The members of the district are the owners of real property within the special improvement district, except governmental property owners that have not requested in writing to have their property included in the district. The act again technically clarifies that a church that has not so requested to have church property included in a special improvement district is not a "member of the district." (Sec. 1710.03(A).)*