



Bethany Boyd

Bill Analysis
Legislative Service Commission

Am. H.B. 368
123rd General Assembly
(As Passed by the House)

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

BILL SUMMARY

- Clarifies when church property is included in or excluded from a special improvement district.
- Changes the date on which the property owners of the district will be determined for the purpose of validating that the required percentage of them signed the petition. The date is changed from 20 days to 60 days prior to the filing of a petition for the creation of a special improvement district.
- Expands the types of public improvement or service provisions that may be included in a special improvement district's initial services plan.
- 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 services plan for a special improvement district.
- Changes the date on which the district's membership will be determined for the purpose of notifying district members of the action. The date is changed from 20 days to 60 days prior to any action by the nonprofit corporation that governs a special improvement district.

- 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

Current law

Under law unaffected by the bill, 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).)

Under current law, "church property" means real property occupied by buildings used exclusively for public worship and any real property owned and operated by a church that is used primarily for church retreats or church camping and that is not used as a permanent residence. (Sec. 1710.01(B) and (C).)

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

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)).*

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 included in the district.² Under current law, determination that a petition complies with the 60% or 75% signature requirement is 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 is filed. A municipal corporation or township has 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 proposed by the bill

The bill 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 existing law is *inconsistent* in its references to "church" exclusions/inclusions in a special improvement district. Thus, the bill amends several statutes to clarify "church" exclusion/inclusion provisions: section 1710.02(E) (determination of the property considered in connection with the 60% or 75% of property owners who must be associated with a petition to establish a special improvement district); section 1710.06(C) (special assessments upon benefited property); and section 1710.13 (dissolution of a special improvement district or repeal of an improvement or services plan by district member petition).

Under the bill, the definition of "church property" is changed 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).)

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.*

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

Initial services plans for a special improvement district

Current law

The persons proposing to create and operate a special improvement district may propose an initial services plan for the district as part of the petition proposing the creation of the district. Under current law, an initial services plan may 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, current law requires each participating political subdivision to levy a special assessment to pay for the costs of the initial services plan. The levy is required to be for no more than *four years* from the date of the approval of the initial services plan. (Sec. 1710.02(F).)

Changes proposed by the bill

The bill adds a provision to the list of those that may be included in an initial services plan. In addition to the five provisions identified above, the bill permits an initial services 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 bill permits an initial services plan to include, but does not limit it to, all of 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 bill also permits the special assessment levy to pay for the costs of the initial services plan to be for no more than *ten* years, rather than the four years permitted by current law. (Sec. 1710.02(F).)

Notifications to members of a special improvement district

Current law

No more than *20 days* prior to the date of any particular action of the nonprofit corporation that governs a special improvement district, including providing meeting notices to members of the district, the members are required to be determined from the most current records available at the county auditor's office.³ Members of the district may file with the district's secretary at least three

³ *The "members of the district" currently 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 bill again technically clarifies that a church that has not so requested to have church property*

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 may appoint by filing a written designation form with the district's secretary a *designee* to carry out the member's rights and responsibilities generally. Current law provides that a proxy or designee may be designated by and vote *for no more than one member* of the district. (Sec. 1710.03.)

Similarly, a member of the board of directors of a special improvement district may file with the district's secretary at least three days prior to any meeting of the board a written statement to appoint a proxy to carry out the board member's rights and responsibilities at that meeting, or may appoint by filing a written designation form with the district's secretary a designee to carry out the board member's rights and responsibilities generally. A proxy or designee may be designated by and vote for *no more than one member of the board*. (Sec. 1710.04.)

Changes proposed by the bill

The bill generally retains the statutory provisions requiring notice to district members prior to any action of the nonprofit corporation that governs a special improvement district, but changes the date on which the members of the district will be determined for each action, including notification to district members of meetings of the district. Membership of the district, under the bill, is identified from the most current records available at the county auditor's office *60* days prior to the date of the action, rather than 20 days as specified in current law (sec. 1710.03(A)).

Proxies and designees continue to be permitted under the bill. The prohibition on proxies or designees being designated by and voting for more than one person is removed by the bill for both district members and members of the district board of directors. Thus, under the bill, a proxy or designee is permitted to be designated by and vote *for more than one* district member or director. (Secs. 1710.03(D) and 1710.04(B).)

Special requirement for transferors of property in the district

The bill includes a new provision regarding notice to district members. It 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:

included in a special improvement district is not a "member of the district." (Sec. 1710.03(A).)

(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.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-01-99	p. 736
Reported, H. Local Gov't & Townships	10-27-99	pp. 1324-1325
Passed House (92-0)	11-10-99	pp. 1350-1351

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