
Local Government Committee

HB 1964

Brief Description: Concerning clean energy financing.

Sponsors: Representatives Doglio, Appleton and Tarleton.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Authorizes the creation of clean energy districts, which may finance projects by imposing special assessments and issuing revenue bonds.
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Hearing Date: 2/14/17

Staff: Desiree Omli (786-7383)

Background:

Special Purpose Districts.

A special purpose district is created to provide a limited number of public facilities or services. All special purpose districts are subject to the plenary power of the state, and some regulatory control by the county or city if the district is located within their boundaries. Each special purpose district has specified boundaries, its own governing body, a limited number of authorized functions or duties; independent authority to carry out its limited functions or duties; and permanent existence until it is dissolved or altered. A special purpose district may be created by citizens or local governments taking actions prescribed in the statute authorizing that type of special purpose district.

Creation of a Special Purpose District.

Special purpose districts are typically created by voter approval. A ballot proposition authorizing the creation of the special purpose district is submitted to voters when: (1) a petition that has been signed by a certain percentage of voters in the proposed district is filed; or (2) a resolution of the legislative authority submits the ballot proposition to the voters.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Normally, the governing body of the new special purpose district is elected at the same election as when the ballot proposition authorizing creation of the special purpose district is submitted to local voters for their approval or rejection. Members of special purpose district governing bodies are usually elected to office, appointed, or serve in *ex officio* capacities as the result of holding other offices.

There are a few types of voting rights in special purpose districts: (1) regular voting rights with the district electorate being composed of registered voters residing within the district; and (2) limited or restricted voting rights, with district voters being restricted to people and entities that own real property located in the special district.

Special Assessments.

Special purpose districts may be taxing districts with taxing authority. Some special purpose districts may also impose special assessments in addition to part of, or in lieu of, property taxes.

Special assessments, or benefit assessments, may be imposed on benefitted property to pay for local improvements or to finance their activities and public facilities. Special assessments are not property taxes, but rather special charges created to recover funds to pay for services or improvements that have a particular, direct benefit to land and their owners. Unlike property taxes that are based on the assessment value of the property, special assessments are generally determined by an assessment plan that is meant to charge amounts to a parcel of property that reflect the actual benefit the property will receive. These assessments are usually based on a flat-fee per parcel, an amount per acre, or a combination of characteristics. Properties may typically be charged in different amounts if the district authorities find that different classes of property benefit in different ways. Special assessments are not subject to the same limitations and procedures that govern property tax levies.

Summary of Bill:

Clean Energy Defined.

Clean energy includes:

- energy produced using renewable energy resources, including wind, solar, tidal, and geothermal resources;
- energy efficiency and conservation;
- hydroelectric generation from a generation facility located in irrigation pipes, irrigation canals, municipal water pipes, and wastewater pipes; and
- use of nonfossil fuel and renewable energy resources for transportation.

Clean Energy District–Powers.

Subject to the terms and condition of an approved petition, a clean energy district (district) has the powers necessary to carry out its specific authorized purposes including the authority to:

- acquire, purchase, hold, lease, finance, manage, occupy, construct, and sell real and personal property;
- finance and construct projects, borrow money, and issue revenue bonds and assessment bonds;
- enter into and perform all necessary contracts;
- levy and enforce the collection of special assessments;
- enter into lease-purchase agreements;

- sue and be sued;
- hire staff; and
- do all other lawful acts required to carry out the express authority provided.

Clean Energy District–Proposed Creation by Petition or Resolution.

A district may be established by either: (1) a petition initiated by qualified voters located within the proposed clean energy district; or (2) a resolution of the county legislative authority within which the proposed district will be located.

A petition to create a clean energy district that is initiated by voters must be signed by at least 10 qualified voters. A “qualified voter” (voter) is a natural person who is a voter under the general state election laws, registered to vote in the state prior to 30 days before the election, and a resident of the clean energy district for at least 30 days before the election. The petition must be filed with the appropriate county legislative authority. If the proposed district is located within more than one county, the county legislative authority that receives the petition must notify the legislative authority of the other pertinent counties.

The petition must set forth specified details pertaining to the district including the projects proposed to be completed. It must be submitted with proof of voter registration of the petitioners, and be accompanied by a bond of \$5,000 to cover the costs incurred by the counties in considering the creation of a district.

Via a separate process, a county legislative authority may propose to create a district by resolution. A district proposed by a county legislative authority must include the same specified details pertaining to the district that is required to be set forth in a voter petition.

Investigation by the County Engineer and Public Hearing.

Upon filing of a petition or adoption of a resolution, the county legislative authority must direct the county engineer (engineer) to investigate the proposed boundaries of the district, and the feasibility of its proposed projects. The engineer must report to the county legislative authority within 90 days. In situations where the proposed district covers multiple counties, each county must direct the engineer to investigate and report on parts of the proposal that are located within its boundary.

If the engineer’s report indicates that the proposed projects are feasible, the county must schedule a public hearing on the proposed district. If the engineer reports that the proposed projects are not feasible, a county may schedule a public hearing. All public hearings require that notice be given.

Each county may alter the boundaries of the proposed district, but if boundaries are expanded to include territories not described in the original proposed boundaries, additional hearings must be held with notice provided.

Special Election on the Creation of the Clean Energy District.

After testimony at the public hearing, a county legislative authority must cause a special election on the question of creating a district if it finds that:

- creation of the district will be conducive to the public health, convenience, and welfare, especially in regards to reductions in greenhouse gas emissions;

- creation of the district will be of special benefit to residents and businesses within the district; and
- the proposed projects are feasible and economical, and that the benefits of these projects exceed the costs of the projects.

Notice for the election must be provided, and the county auditor must conduct the election and prepare a list of presumed eligible voters. Only qualified voters of the district are allowed to vote.

A majority vote of the voters voting on the proposition is sufficient to create the clean energy district. If a district is created, the county may charge the district for costs incurred by the engineer and auditor. These costs will be paid through the imposition of special assessments.

The district may begin operations when the initial members of the governing body are appointed.

Governing Body.

A district is governed by a three-member governing body, each of whom serves six years. The initial members of the governing body of a newly created district must be appointed by the legislative authority of a county within which the district, or the largest portion of the district, is located. The initial members serve until the next district general election, which is held in even-numbered years. At the first election, the three candidates receiving the most votes, in descending order, serve for a term of six years, four years, and two years.

Each member of the governing body may receive a capped amount of compensation for actual attendance at official meetings of the governing body, or in performance of other official services or duties on behalf of the district. This compensation is adjusted every five years based on changes in the consumer price index.

Each member of the governing body must enter into a bond payable to the district, in an amount between \$1,000 and \$5,000 set by the county legislative authority. The bond is conditioned on the faithful performance of his or her duties as a member of the governing body and must be filed with the county clerk.

Financing—Special assessments.

The district may finance all or a portion of its costs with revenue derived through special assessments and bonds.

A district created after July 1, 2017, may have special assessments measured and imposed. The special assessments imposed and collected on property within the district cannot exceed the amount set forth in the petition or amended petition. The term of the assessment is limited to 28 years or two years less than the term of any bonds issued on behalf of the district, whichever is lesser.

Special assessments are computed pursuant to the computation requirements and methods established in statute for local improvements. This may include a rate of assessment per square foot in each subdivision fixed on the basis of the special benefits conferred on the square foot of land in the subdivision.

A petition proposing the creation of the district may provide for the reduction or waiver of special assessments for low-income households. The governing body must set a date, time, and place for hearing objections to the assessment roll, which must occur within 120 days from final approval of formation of the district. Within 30 days of the hearing, the governing body may adopt a resolution approving the assessment roll, or correcting it.

All assessments imposed on property within the district are a lien upon the property and are paramount and superior to any other lien or encumbrance, except a lien for general taxes.

Financing—Bonds.

The governing body may also issue bonds, the proceeds from which may be used to pay costs related to the district's projects, including expenses incurred in connection with issuance of bonds. Bonds issued by or on behalf of a district are not the obligation of any city, town, county, or state.

Clean Energy District Projects.

District revenue derived through special assessments and bonds may be used to finance all or a portion of the following costs, expenses, and projects whether located inside or outside the boundaries of an approved district:

- the cost of the purchase, finance, lease, sublease, construction, expansion, improvement, or rehabilitation of any project with an estimated life of 5 years or longer;
- the planning and design work that is directly related to the purchase, construction, expansion, improvement or rehabilitation of a project, including engineering, architectural planning, and inspection costs;
- programs and incentives to encourage private investment in clean energy; and
- technical assistance and incentives to encourage residents, businesses, and nonprofit organizations to make clean energy improvements

Clean Energy District—Treasurer.

The treasurer of the district must either be the treasurer of the county in which the district is located, or a treasurer from a surrounding local jurisdiction who is appointed by the board of supervisors to be the treasurer of the district. The treasurer must create a clean energy district fund and deposit all district revenues in that fund, unless otherwise directed by adoption of a resolution. The duties of the treasurer are as provided under applicable law.

Appropriation: None.

Fiscal Note: Requested on February 6, 2017.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.