
Local Government Committee

HB 1197

Brief Description: Concerning water-sewer districts.

Sponsors: Representatives Takko and Kochmar.

Brief Summary of Bill

- Modifies water-sewer district (district) provisions governing the sale of real estate.
- Modifies district provisions governing objections and appeals related to the formation of improvement districts.
- Authorizes districts meeting specified annual operating budget criteria to issue warrants for payments of claims and other district obligations.

Hearing Date: 1/20/15

Staff: Ethan Moreno (786-7386).

Background:

Water-Sewer Districts - General Information.

Water-sewer districts (districts) may purchase, construct, maintain, and supply waterworks to furnish water to inhabitants within and outside of the district. Districts may also develop and operate systems of sewers and drainage, and are authorized to create facilities, systems, and programs for the collection, interception, treatment, disposal, and pollution control of wastewater. Districts may also fix rates and charges for services, enter into contracts, levy taxes, and issue bonds and instruments evidencing indebtedness. Water-sewer districts are governed by boards of elected commissioners (boards).

Sales of Real Property.

A board may sell district property at a public or private sale if it: (1) determines that the property is not and will not be needed for district purposes; and (2) provides notice of the sale in accordance with specific requirements, including the estimated value of the property or, if an appraisal has been made, the property's appraised value.

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.

The authority to engage in the private sale of real property is limited to property with an estimated value of \$5,000 or less. In conducting such a sale, the board may, as it deems appropriate, determine the estimated value based upon the advice of real estate brokers and appraisers.

If the estimated value of the property to be sold exceeds \$5,000, the value must be established by a written broker price opinion from three licensed and disinterested real estate brokers, or by a professionally designated real estate appraiser. A signed broker price opinion or appraisal must be filed with the secretary of the board and available to open public inspection.

With limited exceptions, district property may not be sold for less than 90 percent of its value. However, if after 120 days of offering the property for sale it cannot be sold at 90 percent or more of its estimated or appraised value, the board may adopt a resolution stating that the district has been unable to sell the property at the 90 percent amount. The district may then, subject to public notice requirements and right of refusal authorizations, sell the property at the highest price it can obtain at public auction. The applicable notice must, among other requirements, describe the property, state the time and place at which it will be offered for sale, and state the terms of sale.

Establishment of Improvement Districts - Authority, Process, and Objections.

A district may establish a local improvement district or utility local improvement district within its territory to wholly or partially implement a comprehensive plan of improvements, or a plan of additions and betterments to an original general comprehensive plan. If established, the properties within the improvement district will have special assessments levied against them in proportion to the special benefits derived by the improvement.

The process of creating an improvement district may be initiated with a resolution by the board or by a petition signed by the owners of at least 51 percent of the land area within the proposed improvement district. Whether a proposed improvement is initiated by petition or resolution, the board must conduct a public hearing at the time and place designated in a notice to property owners. At this hearing the board must hear any objections from persons affected by the formation of the improvement, and may, subject to certain limitations, modify the proposed boundaries or the plans for the proposed improvement as it deems necessary.

After the public hearing and the expiration of a 10-day period for filing objections to the creation of the improvement district, the board may overrule protests and proceed with the process of establishing the improvement district. However, the authority of the board to proceed with any improvement district initiated by resolution can be divested by a timely and sufficient protest petition signed by the owners of at least 40 percent of the area of land within the proposed improvement district.

If the board finds that the improvement district should be formed, they must, by resolution, form the improvement district and order the improvement, and publish a notice indicating that a resolution has been passed forming the improvement district. The notice must also:

- indicate and that a lawsuit challenging the jurisdiction or authority of the district to proceed with the improvement and create the improvement district must be filed, and notice to the district served, within 30 days of its publication; and
- require potentially aggrieved parties to set forth the nature of their appeal.

Property owners bringing the appeal are obligated to follow specific court review procedures governing appeals of assessments for improvement districts established by districts.

Except for timely lawsuits filed in accordance with superior court review procedures governing appeals of improvement districts established by districts, the formation of an improvement district by resolution is conclusive in all things upon all parties, and cannot be contested or questioned in any manner in any proceeding.

If an appeal is unsuccessful or if no proper appeal is made, the board may create the improvement district, provide the improvement, and file with the county treasurer its roll to levy special assessments for the improvement. The roll may not take effect until a notice, which must include a specified timeframe for filing protests against any proposed assessments, has been published according to delineated requirements. If protests are filed, the board must hold a public hearing on the protests. The board may subsequently elect to modify the roll, order a new roll, or proceed with the roll in its original form.

Court Review Procedures Governing Appeals of Improvement Districts, Same Process for Cities.

A board decision to establish an improvement district may be reviewed by the superior court. The appeal, which must adhere to numerous procedural requirements, must be filed with the secretary of the board and the applicable superior court clerk within 10 days of the publication of a notice indicating that the resolution confirming an assessment roll has been adopted.

Within 10 days of the filing of the notice of appeal, the appellant must file certain materials with the court, including a transcript from the district of the assessment roll and the appellant's objection. The appellant must satisfy other requirements, including paying applicable transcript fees, filing a surety bond, and satisfying notice requirements.

The superior court must hear and determine the appeal without a jury, and the matter must, with limited exceptions, have preference over all civil cases before the court. The court must confirm the roll unless it determines that the assessment was founded upon a fundamentally wrong basis, that the board's decision was arbitrary or capricious, or both. If the court finds that the board's decision was improper, the court must correct, modify, or annul the assessment as it affects the property of the appellant. The judgment of the superior court may be appealed, but the appeal must be sought within 15 days after judgment of the superior court is issued.

The procedures governing court review of a board decision to establish an improvement district are substantively the same as the procedures established for court reviews of improvement districts established by cities, including first-class cities. "First-class cities" are cities with a population of 10,000 or more at the time of organization or reorganization that have adopted a charter for their governance.

Treasurer Duties, Warrants.

The applicable county treasurer is the treasurer of the district. However, with the approval of the county treasurer, the board of any district with more than 2,500 water or sewer customers or sewer customers may designate another person to act as the district treasurer. The district treasurer must have experience in financial or fiscal matters.

All taxes and revenue collected by the district, except those funds received for specified obligations, must be maintained in a maintenance or general fund created and maintained by the district treasurer. Disbursements from the general fund are authorized only by warrants of the county auditor issued with the authority of the board or upon a resolution of the board. The district treasurer must also maintain special funds as prescribed by the district, and similarly, disbursements may occur by warrants of the county auditor.

Summary of Bill:

Sales of Real Property.

Provisions governing the sale of real property by districts are modified. The estimated value of all property to be sold by the district must be determined by the board, and based on a written appraisal report by a state-licensed or state-certified real estate appraiser, or a written broker's price opinion. The appraisal report or broker's price report must have been prepared less than six months before the date of sale. Provisions that apply to notices of and for district intentions to sell real property are modified to specify that the notices must also refer to the appraisal report or the broker's price opinion, as applicable.

If no purchaser can be found for real property within 120 days of publication of the initial notice of intention to sell, the board may adopt a resolution stating that the district has been unable to sell the real property at 90 percent or more of the estimated value. The district may then, subject to public notice requirements and right of refusal authorizations, sell the property at the highest price it can obtain at public auction. The applicable auction notice, among other requirements, must describe the real property, state the time and place of the public auction and the minimum opening bid, if any, and specify the terms and conditions of sale.

Establishment of Improvement Districts - Objection Provisions.

Provisions governing objections to the establishment of improvement districts by boards are modified. The notice required by a board that indicates that a resolution has been passed forming an improvement district is not required to obligate potentially aggrieved parties to set forth the nature of their appeal.

Whenever a resolution forming an improvement district has been adopted, the action and decision of the board as to all matters passed upon by it in relation to any petition or resolution is final and conclusive. A lawsuit challenging the jurisdiction or authority of the district to proceed with the improvement and create the improvement district, or challenging the validity of or any proceedings relating to the improvement, may not be maintained unless the lawsuit is served and filed no later than 30 days after the publication of the notice of the execution of the resolution ordering the improvement and creating the improvement district.

Following the expiration of the time within which a lawsuit challenging the formation of the improvement district must be filed, or if the lawsuit is unsuccessful, the board may create the

improvement district, provide the improvement, and file with the applicable county treasurer its roll to levy special assessments for the improvement.

Court Review Procedures Governing Appeals of Improvement Districts, Same Process for Cities.

A person aggrieved by an assessment must perfect an appeal to the superior court of the county in which the district resides within 10 days after an improvement district approval action by the board. The aggrieved person also must use the process for appeals of assessments levied by first-class cities. Additionally, persons bringing an appeal related to an assessment for the creation of an improvement district are no longer obligated to follow district-specific court review procedures, but instead must follow comparable court appeal procedures for cities.

Treasurer Duties, Warrants.

The board of a district with an annual operating budget of \$5 million or more in each of the preceding three years is authorized to adopt a policy to issue its own warrants for the payment of claims or other obligations of the district.

Similarly, the board of a district with an annual operating budget greater than \$250,000 and less than \$5 million in each of the preceding three years is authorized to adopt a policy to issue its own warrants for the payment of claims or other district obligations. Prior to adoption of the policy, the district must also obtain an appropriate agreement between the county treasurer and the board.

For both categories of districts, the board may authorize the issuing of one general certificate that permits the county treasurer to pay all warrants specified in the general certificate. The district may then issue the warrants specified in the general certificate.

Appropriation: None.

Fiscal Note: Not requested.

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