

SPECIAL ASSESSMENT DISTRICT ACT

Section 1. Purpose

It is the intent and purpose of this Act to:

- (1) Authorize local government to finance public facilities through the levying and collection of special assessments;
- (2) Provide a mechanism for local government to levy and collect special assessments from property to recover the cost of providing public facilities that peculiarly benefit the property upon which they are imposed;
- (3) Define the procedural and substantive requirements for special assessments and special assessment districts for capital costs and service charges of public facilities covered in a comprehensive [or master] plan element of a local government;
- (4) Shift the financing of public facilities from all taxpayers to those who specifically benefit from such public facilities; and
- (5) Authorize local government to establish special assessment districts and levy special assessments for the purpose of providing public facilities to benefit property owners in such designated special assessment districts.

Section 2. Definitions

As used in this Act, the term:

- (1) "Comprehensive [or master] plan " means a plan adopted pursuant to the [insert statutory authority for comprehensive or master plan].
- (2) "Development" means any construction or expansion of a building or structure, any change in the use of a building or structure, or any land use change that affects a local government's need for public facilities.
- (3) "Governing body" means the legislative body of the local government, however designated.
- (4) "Local government" means any county or municipality or any special district or governmental entity established pursuant to law which is authorized to prepare, adopt, and implement comprehensive [or master] plans pursuant to [insert statutory authority for comprehensive [or master] planning].
- (5) "Proportionate share of the benefits " means that share, or portion, of the value of the total public facilities and service which specially and peculiarly benefits the property upon which they are imposed, and in no event shall such share or portion be in excess of the benefits such property receives by reason of such improvement.
- (6) "Public facilities " means capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities that have a life expectancy of three (3) or more years.
- (7) "Public services " means the performance by employees, consultants, or agents of functions, operations, design, engineering, planning and maintenance, and repair activities in order to provide public facilities.
- (8) "Special assessment" means a charge imposed upon property located within a designated special assessment district by [insert local government] to pay for public facilities and services which peculiarly and specially benefit the property upon which they are imposed.
- (9) "Special assessment district" means the district in which public facilities and services are to be provided and in which special assessments and charges may be levied and collected pursuant to this act to pay for those public facilities and services.

Section 3. Authority

Consistent with the provisions of this Act, any local government may adopt provisions authorizing that government to establish, and subsequently merge or abolish those created hereunder, special assessment districts for any part or all of the area of such local government, within which may be provided public facilities and services from funds derived from service charges, special assessments, or other charges within such special assessment district.

- (1) For the purpose of providing public facilities and services within any special assessment district, the local government may levy and collect service charges, special assessments, or other charges within such special assessment district, and borrow and expend money, issue bonds, revenue certificates, and other obligations of indebtedness, which powers shall be exercised in such manner, and subject to such limitations, as may be provided by general law, in furtherance of the provision of the public facilities and services authorized by this Act.
- (2) The provisions of this Act shall not affect or limit any other provisions of law authorizing or providing for the furnishing of public facilities and services or the raising of revenue for these purposes. A local government may use the provisions of this Act instead of, or in conjunction with, any other method of financing part or all of the cost of providing the public facilities and services authorized under this Act.

Section 4. Requirements for Special Assessment Districts

A special assessment district must meet the following requirements:

- (1) Public facilities and services for which special assessments are levied and collected must peculiarly and specially benefit the property upon which the special assessments are imposed.
- (2) Special assessments levied and collected pursuant to a designated special assessment district must not exceed a proportionate share of the benefits received by the property upon which the special assessments are imposed.
- (3) The proportionate share of the benefits received by the property upon which a special assessment is imposed shall be calculated and apportioned by using any equitable means of assessment and apportionment which the governing body of a local government may prescribe including, but not limited to, square footage, front-footage, increased value, number of dwelling units, distance from the public facility, traffic generation or other impact generation factors, or any combination thereof.

Section 5. Procedures for Special Assessment Districts

- (1) *Initiation of Proceeding.* Proceedings for the establishment of a special assessment district may be instituted by the governing body of a local government on its own initiative and shall be instituted by the governing body when either of the following occurs:
 - (a) A written request therefore is filed with the governing body, signed by two members of the governing body, describing the boundaries of the territory which is proposed for inclusion in the special assessment district and specifying the type or types of public facilities and services to be provided within the special assessment district.
 - (b) A petition requesting the institutions of such proceeding and signed by the number of registered voters required by Sec. 5(2)(d) hereof is filed with the clerk of the governing body. The petition may consist of any number of separate instruments, each of which shall comply with all the requirements of the petition, except as to the number of signatures.
- (2) *Contents of Petition.* A petition requesting institution of proceedings for the establishment of a special assessment district shall:
 - (a) Request the governing body of a local government to institute proceedings to establish a special assessment district pursuant to this Act.
 - (b) Describe the boundaries of the territory which is proposed for inclusion in the special assessment district.
 - (c) State the type or types of public facilities and services to be provided within the special assessment district.
 - (d) Be signed by not less than -% of the registered voters residing within the territory proposed to be included within the special assessment district. If the governing body finds that the petition is signed by the requisite number of registered voters residing within the territory proposed to be included within the special assessment district, that finding shall be final and conclusive.

- (3) *Ordinance Establishing Special Assessment District.* Within -days after either a written request by two members of the governing body of a local government or a petition requesting the institution of proceedings for the establishment of a special assessment district is filed with it, the governing body of a local government shall adopt an ordinance establishing a special assessment district in the form hereinafter specified.
- (4) *Contents of Ordinance.* Proceedings for the establishment of a special assessment district shall be instituted by the adoption of an ordinance establishing the special assessment district which shall:
- (a) State that a special assessment district is established under the terms of this Act and describe the boundaries of the territory proposed for inclusion in the special assessment district.
 - (b) State the name proposed for the special assessment district in substantially the following form: "_____ Special Assessment District."
 - (c) State the type or types of public facilities and services proposed to be provided within the special assessment district pursuant to this Act.
 - (d) State that, except to the extent that funds are otherwise available and committed, a special assessment sufficient to pay for all such public facilities and services will be annually levied and collected within such special assessment district. The ordinance shall specify the rate and method of apportionment of the special assessment in sufficient detail to allow each landowner or resident within the special assessment district to estimate the annual amount that he or she will have to pay.
- (5) *Public Hearing and Notice.*
- (a) A public hearing shall be held by the governing body at least ten (10) days prior to the adoption, amendment, merger, or abolition of a special assessment district.
 - (b) Notice shall be provided in accordance with the provisions of -at least fifteen (15) days but no more than thirty (30) days prior to the public hearing. Notice shall:
 - 1. Contain the text of the ordinance.
 - 2. State the time and place of the hearing.
 - 3. State that at the hearing testimony will be heard of all interested persons or taxpayers for or against the establishment of the special assessment district, the extent of the district, or the furnishing of specified types of public facilities or services.
- (6) *Protests.*
- (a) At the public hearing, protests against the establishment of the special assessment district, the extent of the district, or the furnishing of specified types of public facilities or services within the special assessment district may be made orally or in writing by any interested person or taxpayer. Any protests pertaining to the regularity or sufficiency of the proceeding shall be in writing and shall 1 clearly set forth the irregularities and defects to which objection is made. All J written protests shall be filed with the clerk of the governing body on or before the time fixed for the hearing. The governing body may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing.
 - (b) If 50% or more of the registered voters residing within the territory proposed to be included in the special assessment district, or the owners of 1/2 or more of the area of the land in the territory proposed to be included in the special assessment district, file written protests against the establishment of the special assessment district, the governing body shall abandon the proposed establishment of the special assessment district.
 - (c) If such majority protests of the registered voters or of the landowners are only against the furnishing of a specified type or types of public facilities or services within the special assessment district, or against levying a specified rate or special assessment, those types of public facilities or services or the specified

rate or special assessment shall be eliminated from the ordinance finally establishing the special assessment district.

- (7) *Boundaries of District.* In establishing the boundaries of a special assessment district, the governing body may alter the exterior boundaries of a special assessment district to include less territory than that described in the notice of the public hearing, but it may not include any territory not described in the notice of the public hearing.
- (8) *Types of Public Facilities and Services Provided.* In designating the types of public facilities to be provided in a special assessment district, the governing body may eliminate one or more of the types of public facilities and services specified in the ordinance establishing the special assessment district, but it may not include any types of public facilities and services not specified in the ordinance.

Section 6. Collection of Special Assessments and Service Charges

The special assessment may be collected in the same manner as ordinary ad valorem property taxes are collected and may be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ad valorem property taxes, or another procedure may be adopted if the governing body of a local government prefers. The tax collector or the appropriate local government official responsible for collecting the special assessments may deduct a service charge for the reasonable administrative costs incurred in collecting the special assessment.

Section 7. Use of Proceeds

Any special assessments collected pursuant to this Act may only be used, in whole or in part, for public facilities and services authorized by this Act or for the payment of the principal and interest of bonds, revenue certificates, and other obligations of indebtedness for such public facilities and services.

Section 8. Issuance of Bonds and Other Indebtedness

After the public hearing establishing a special assessment district and approving the levying and collection of the special assessments for public facilities and services as provided by this Act, and as soon as a contract for the public facilities and services has been finally let, the governing body may, by resolution or ordinance, authorize the issuance of bonds, revenue certificates, or other indebtedness in an amount not in excess of the aggregate amount of the liens levied for such public facilities and services. [Insert appropriate state requirements and provisions for issuance of bonds, revenue certificates or other indebtedness].

Section 9. Priority of Lien

A special assessment shall be payable at the time and in the manner indicated in the ordinance providing for the special assessment; shall remain a lien, co-equal with the lien of all state, county, district, and municipal taxes, superior in dignity to all other liens, " titles, and claims until paid; shall bear interest, at a rate not to exceed ___% per year," or, if bonds are issued pursuant to this Act, at a rate not to exceed ___% above the rate "of interest at which the improvement bonds authorized pursuant to this Act and used for the improvement are sold, from the date of the acceptance of the improvement; and may, by the ordinance aforesaid and only for public facilities, be made payable in equal installments over a period not to exceed twenty (20) years to which, if not paid when due, there shall be added a penalty at the rate of ___% per month, until paid. However, the special assessments may be paid without interest at any time within 30 days after the public facility is completed and a resolution accepting the same has been adopted by the governing body.

EXPLANATORY NOTES ON SPECIAL ASSESSMENT

DISTRICT ACT

Section 1.

This section specifies the purposes of the act. Those purposes include providing the authority for local governments to levy and collect special assessments and to establish special assessment districts for the purpose of providing public facilities to benefit property owners in those districts. Special assessments have typically been levied to provide for streets and sidewalks, sewers, drains, and water and gas main improvements. ALA. Code § 11-48-4 (1975) (construction, reconstruction of sewers, water and gas mains, opening, widening, and extending of streets, highways); ALASKA STAT. § 29.46.010 (Supp. 1985) (any capital improvements); ARK. STAT. ANN. § 20-1501 (1968) (street improvements, including grading, paving, curbing, guttering, and drainage and storm sewers); COLO. REV. STAT. ANN. § 31-25-503(1) (1977) (grading, paving, curbing, constructing, extending guttering or otherwise improving all or part of any street, sidewalk, water mains, and sewers); CONN. GEN. STAT. ANN. § 7-194 (West 1964) (layout, construct, reconstruct, alter, maintain, repair, control or operate streets, alleys, boulevards, bridges, underpasses, sidewalks, curbs, gutters, public walks, cemeteries, parks, swimming areas, hospitals, parking lots and business or plane terminals); FLA. STAT. ANN. § 170.01 (1978) (construction, reconstruction, repair, paving, repaving, lengthening and widening streets, roads, boulevards, sidewalks, sewers and drainage systems, parking); GA. Code ANN. § 36-39-1 (1981) (construction, reconstruction, altering, grading, paving, repaving, macadamizing of streets, alleys, sidewalks, curbing, gutters, storm sewers, water, gas, and sanitary sewers); HAWAII REV. STAT. § 67-1(3) (1976) (construction, repair, establishment, opening, widening, grading, paving, curbing or otherwise improving any street, alley, sidewalk, storm drain, sewer, lighting or water system); IDAHO CODE § 50-1703 (1980) (construct, repair, improve; grade, pave, extend and maintain streets, alleys, sidewalks, parking, curbs, gutters, sewers, landscaping, culverts, drains, lighting systems, canals, reservoirs, and irrigation systems); ILL. ANN. STAT. § 9-2-1 (1971) (any local improvement); IND. Code ANN. §§ 36-9-18-2, 36-9-1-2(3)(5)(2)(4) and (7) (Burns 1981) (construction, improvement, extension, remodeling and betterment of sidewalks, curbs, streets, and alleys); IOWA CODE ANN. § 384.38 (1976) (construction and repair of streets, sewers, drains, lighting, gas, water, sidewalks or water-works); KAN. STAT. § 12-601 (1982) (grade, regrade, pave, curb, gutter or otherwise improve streets or avenues), § 12 6a02 (1982) (open, widen, improve, construct, reconstruct, maintain, restore, replace, renew, repair or otherwise enhance streets, alleys, gutters, curbs, sidewalks, storm drains, sewers, waterworks, parks, dikes, tunnels, parking or retaining walls); Ky. REV. STAT. ANN. § 91A-210(1) (Bobbs-Merrill 1982) (any facility for public use or any addition thereto, which is of special benefit to specified properties), § 107.020(4) (construction or reconstruction of public ways, sewers, fire hydrants and water mains); LA. REV. STAT. ANN. § 33:771 (West 1951) (construction, reconstruction, repair, and maintenance of all things in the nature of local improvements (streets, sidewalks, water, sewer); ME. REV. STAT. ANN. § 3601 (1980) (layout, widen, alter or discontinue any new street or public way); MD. ANN. STAT. § 92 (1981) (construction, installation, paving of public ways, sidewalks, curbs, gutters, sewers, and water mains); MASS. ANN. LAWS § 1 (Michie/Law. Co-op 1978) (any public improvement where an area receives special benefit); MICH. STAT. ANN. § 5.1807 (Callaghan 1978) (layout, open, widen, extend, straighten, alter, close, vacate, abolish any highway, street, or alley), § 5.1810 (establish, change or alter the grade of any street, alley or public highway), § 5.2770(52) (construction, improvement, maintenance of public highways, water mains, sewers, parks, garbage collection, bike paths, dikes, and elevated structures for foot travel over highways); Miss. CODE ANN. § 21-413 (1972) (construction, reconstruction, opening, reopening, widening, grading, paving and surfacing of roads, streets, alleys, squares, sidewalks, sewers and drainage systems); Mo. ANN. STAT. § 88-812 (1971) (grading, paving, excavating, macadamizing, curbing and guttering of streets, alleys, highways or parts thereof, sidewalks, sewers or other improvements); NEB. REV. STAT. § 14-385 (1983) (pave, repave, surface, widen, improve, regutter, landscape streets, alleys, boulevards, public grounds and parts thereof), § 701.01 (to grade partially or to an established grade, curb, recurb, gutter, construct sidewalks or otherwise improve or repair streets, alleys,

public grounds, ways or parts thereof), § 701.02 (to grade, change a grade, pave, repave, macadamize, curb, recurb, gravel, regravell, open and widen streets, roads, public ways or parts thereof), § 16-609 (open, control, name, rename, extend, widen, narrow, vacate, grade, curb, gutter, park, pave or otherwise improve and repair streets, alleys, public parks and squares), § 17-509 (grade, curb, recurb, gutter, regutter, pave, gravel, macadamize, remacadamize, widen, narrow, re- surface, relay or otherwise improve any street, alley, public ways or parts thereof; to construct or reconstruct pedestrian walks, plazas, malls, landscaping, fountains, lighting systems or side- walks); NEV. REV. STAT. § 271.121 *et seq.* (1979) (extension, widening, lengthening, bettering, altering, repair or other improvement on a facility, property, project or interest including parks, sewers, parking, security walls, streets, avenues, alleys or water projects); N. H. REV. STAT. § 231.28 (1982) (construction, reconstruction of streets, highways, and roads); N. I. STAT. ANN. § 40:56-1 (1967) (construction, reconstruction, maintenance, repair, grading or alterations of streets, alleys, curbs, gutters, bridges, beach front, public works, sewers, water, gas, heat or lighting systems, waterways, bulkheads, and parking); N. M. STAT. ANN. § 3-33-3 (1978) (construct, improve, repair streets, sidewalks, sewer projects, flood control improvements); N. C. GEN. STAT. § 160A-216 (1982) (construction, reconstruction, paving, extending or otherwise building and improving streets, water systems, curbs, gutters, sewage systems, drainage systems); N. D. CENT. CODE § 40-22-01 (1983) (construction, improvement of water supply or sewage systems, municipal streets and road systems, landscaping, flood protection and parking); OHIO REV. CODE tit. 7, § 727.01 (Page 1976) (construct, reconstruct, grade, lay, light and repair streets, sidewalks, docks, sewers, reservoirs, retaining walls, and water treatment plants); ORE. REV. STAT. § 223.387 (1985) (construction, reconstruction, grading, paving, laying out or extending any street, side- walk, street lights, sewers, water main, parking dams, parks or any local improvement where special benefits are conferred); PA. STAT. ANN. tit. 53, §§ 1721,1081 (Purdon 1974) (construct, reconstruct, pave, grade, alter or renew streets, alleys, footwalks, parking, landscaping, bridges, sewers, drains and piers), § 37930 (grade, pave, macadamize or otherwise improve or lengthen streets and highways or parts thereof); R. I. GEN. LAWS § 24- 3-1 (1979) (layout, enlarge, improve or alter any street, highway or part therein); S. c. CODE ANN. § 5-27-310 (Law. Co-op 1977) -- (permanent improvements of streets and sidewalks); South Dakota L. § 9-43-5 (1981) (all public buildings, public works and improvements or repairs on the foregoing); TENN. Code ANN. § 7-32-101 (1985) (construction, improvement, or reconstruction of streets, alleys, avenues, highways, or public places); UTAH CODE ANN. § 10-16-4 (1985 Supp.) (establish, improve, repair, construct streets, alleys, bridges, sewers, lighting facilities, landscaping, covering canals and ditches, parking and recreational facilities); VT. STAT. ANN. tit. 24, § 3252 (1975) (purchase, construction, repair or extension of a water or sewage system or any other improvement of benefit to a limited area); V A. CODE § 15.1-239 (1981) (construction, improvement, repair of alleys, sewers, lighting, retaining walls, streets); W ASH. REV. CODE ANN. § 35.43.040 (1965) (includes but not limited to construction, reconstruction, repair, cultivation, maintenance or landscaping of streets, alleys, water systems, recreational facilities, bridges, retaining walls, dikes, sewers, escalators, parks, sidewalks, street lights, water mains and fences); w. V A. CODE § 8172 (1984) (grading, regrading, repairing, building and renewing streets, alleys, sewers and sidewalks), § 8-18-1 (construct, improve, provide, renew, grade or pave streets, alleys, public ways and sewers); WIS. STAT. ANN. § 66.60 (1965) (municipal work or improvement, including service charges for cur- rent services if they confer special benefit); Wyo. STAT. § 15- 16-101 (1985) (any type or extent of improvement that the governing body finds to be of special benefit to an area).

Special assessment have also been applied towards fire protection and other means of public safety. ARIZ. REV. STAT. ANN. § 48-572(A) (1985) (improve or re-improve streets, construct, reconstruct tunnels, subways, sidewalks, gutters, curbs, drainage ditches, waterworks, lighting), § 48-575(A) (enhanced municipal services, public safety); CAL. CODE § 5101 (1969) (construction, reconstruction, improvement, grading, lengthening, widening of streets, public ways, squares, sidewalks, sew ers, drains, lighting, fire and flood protection, water and gas supplies, fallout and bomb shelters, retaining walls, landscaping and all other necessary or auxiliary work); MICH. STAT. ANN. § 5-2401 (Callaghan 1982) (construction, reconstruction, paving, graveling, macadamizing and otherwise improving streets, bridges, sewers, destroying weeds, street lights,

garbage systems, sidewalks, fire protection, breakwaters and chemical beach treatment); MINN. STAT. ANN. § 429.021 (1986) (acquire open, widen, construct, reconstruct, maintain and extend roads, alleys, sidewalks, gutters, parking, sewers, waterworks, parks, lighting systems, dikes, retaining walls, skyways, malls, and fire protection); MONT. CODE ANN. § 7-12-4102 (1985) (construction, reconstruction, repair of streets, alleys, recreational sites, sidewalks, waterworks, sewers, fire protection, tunnels, breakwaters and landscaping); TEX. REV. CIV. STAT. ANN. § 2 (Vernon 1986 Supp.) (improving, widening, narrowing, closing, construction or improvement of streets, sidewalks, landscaping, parks, fountains, parking, similar improvements, supplemental services for improvement and promotion of district, including public safety, health, and sanitation).

Section 2.

This section contains definitions of terms found in the act. "Proportionate share of the benefits" may be determined by a variety of equitable means. The courts have not required mathematical accuracy and have allowed flexibility to local governments in making this legislative decision.

Section 3.

This section grants to local government the powers necessary for the establishment and enforcement of special assessments or charges to finance the cost of public facilities and services. When determining whether a development exaction is valid under state law, a court first characterizes the exaction regulated by the ordinance and then determines whether that type of exaction is authorized by state law. The grant of authority not only expressly states the intention of the state to authorize local government to enact and enforce special assessments, but also sets the parameters of that authority. See also Special Assessment District Act, Sec. 4. Thus, the grant of authority assures local governments that if they exercise their authority in accordance with this statutory provision, their actions will be valid under state law.

Section 3(2) allows for supplemental financing of public facilities and services authorized under this act by means of other instruments of indebtedness. Local governments have used a variety of financing methods to reduce the burden of the assessment on individual property owners. The common method followed by local government is to prepare an estimated project budget and issue one or another type of bonds in order to raise construction funds. See Miscznski, "Special Assessments" in *Windfalls for Wipeouts* (D. Hagman and D. Miscznski, eds. 1978) at 333-34.

Section 4.

This section reflects judicially developed requirements for special assessment districts. The requirement that public facilities and services for which special assessments are levied must specially benefit the property assessed means that the benefit to the property assessed must be substantially greater than the public benefit. *A.G. Sisters of Saint Mary v. Beaverton*, 478 P.2d 412 (Ore. Ct. App. 1970). The requirement that special assessments not exceed a proportionate share of the benefits received by the assessed property adheres to the United States Supreme Court pronouncement that special assessments be "substantially proportionate" to the benefit received. *Norwood v. Baker*, 172 U.S. 269 (1898).

Professor Mandelker has summarized the use of special assessments in the following way:

All such assessments have one common element: they are for construction of local improvements that are appurtenant to specific land and bring a benefit substantially more intense than is yielded to the rest of the municipality. The benefit to the land must be actual, physical and material, and not merely speculative or conjectural.

Mandelker, Daniel; Metsch, Dawn Clark; and Salsrich, Peter W. , *State and Local Government in a Federal System: Cases and Material*, (2d ed. Charlottesville, Va., Michie Co. 1983), at 251.

This section also contains methods of calculating and apportioning special assessments that local governments have developed. The variety of methods reflects Supreme Court doctrine that local government be allowed flexibility in assuring the required proportionality. The Supreme Court does not require mathematical accuracy. *Norwood v. Baker*, 172 U.S. 269 (1898). Similarly, the Supreme Court views the amount of the assessment as a legislative decision. *Parsons v. District of Columbia*, 170 U.S. 45 (1898); *Williams v. Eggleston*, 170 U.S. 304 (1898). Table B-I summarizes the various methods used by states.

Table B-I. Methods of Apportioning Special Assessments

	Benefits Assessed	Zones	Increased Value	Assessed Value Before Improvements	Frontage	Acreage	Other
Alabama				X			
Alaska	X						
Arizona	X						
Arkansas	X						
California	X						
Colorado		X			X		X
Connecticut	X						
Delaware							
Florida					X		X
Georgia					X		X
Hawaii					X	X	X
Idaho	X				X	X	X
Illinois	X						
Indiana				X			
Iowa							X
Kansas				X	X	X	X
Kentucky				X	X	X	X
Louisiana				X	X		X
Maine			X				
Maryland							X
Massachusetts	X						
Michigan	X						
Minnesota	X						
Mississippi					X	X	
Missouri	X				X		
Montana					X	X	
Nebraska	X						
Nevada		X			X	X	X
New Hampshire	X						
New Jersey	X		X				
New Mexico			X				
New York							
North Carolina			X	X	X	X	
North Dakota	X	X				X	
Ohio				X	X		

Oklahoma					X		
Oregon							X
Pennsylvania	X		X				
Rhode Island	X						
South Carolina	X				X	X	
South Dakota					X	X	
Tennessee					X		
Texas			X		X	X	
Utah				X	X	X	
Vermont			X	X	X		X
Virginia	X			X			
Washington		X				X	
West Virginia					X		
Wisconsin	X						
Wyoming		X			X	X	X

Section 5.

The procedures described in this section reflect procedures developed by state legislatures for the establishment of a special assessment district.

This section specifies that proceedings for establishment of a special assessment district may be instituted by the governing body on its own initiative or on petition of a percentage of the registered voters residing within the assessment district. A majority of the states contain this dual method of initiating proceedings which grants the power to initiate the establishment of special assessment districts to both the governing body and the property owners affected. ALASKA STAT. § 29.46.010 (Supp. 1985) (governing body or owners of half of the valuation of the benefited property); ARIZ. REV. STAT. ANN. §§ 48-572(A), 48- 575(C) (1984) (governing body or all property owners); GA. CODE ANN. § 36-39-3 (1981) (governing body or owners of majority of lineal feet of frontage of land liable for assessment); HAWAII REV. STAT. §§ 67-2, 67-14 (1976) (County Board of Supervisors or owners of 60 percent of frontage or area designated as district); IDAHO CODE § 50-1706 (1980) (governing body or 60 percent of resident owners of property subject to assessment); ILL. ANN. STAT. §§ 9-2-40,9-2-9,9-2-11,9-2-43 (Smith-Hurd 1962) (governing body or owners of half of property abutting improvement); IOWA CODE ANN. § 384.41 (1976) (City councilor all owners of record of property affected); KAN. STAT. § 12-602 (1982) (governing body or majority of resident owners of real property liable for assessment), KAN. STAT. §§ 6a04(l), 6a04(2) (f) (1982) (governing body or majority of resident owners liable for assessment, resident owners of more than half of the area liable for assessment, and owners of more than half of the area liable for assessment); ME. REV. STAT. ANN. §§ 3601, 3606 (1980) (city government or a majority of the abutters in amount of property and value); MINN. STAT. ANN. § 429.031 (1986) (4/5 vote of council required when no petition; or all owners of real property who agree to pay total cost or 35 percent of owners abutting the improvement and majority votes of the Council required); NEB. REV. STAT. §§ 14- 387, 14-388, 14-390 (1983) (City Councilor record owners of a majority of frontage of property abutting on improvement), NEB. REV. STAT. §§ 16-617, 16-624 (1983) (1st Class Cities) (Mayor / City Councilor owners of property representing 75 percent of front footage abutting or adjacent to improvement), NEB. REV. STAT. §§ 17-509, 17-510 (1983) (2nd Class Cities) (governing body or owners of more than 60 percent of front footage abutting or adjacent to street or alleys specially benefited by improvement); NEV. REV. STAT. §§ 271.280,271.285 (1979) (governing body or owners of land to be assessed for not less than 90 percent of the entire cost of the improvement constituting 66-2fJ percent of frontage; N.J. STAT. ANN. §§ 40:56-1, 40:56-3 (1967) (governing body or petitioners who agree to pay all of the cost); N. M. STAT. ANN. §§ 3-33-1, 3-33-14 (1978) (governing body or owners of 66-2fJ percent of front footage of land); N. D. CENT. CODE §§ 40-22-08, 40-22-09 (1983) (governing body or ¼4 of owners of the area to be added to the district); OHIO REV. STAT. §§ 727.01,727.06 (Page 1976) (legislative authority or 60 percent of property

owners where assessment is based on front footage, otherwise, owners of 75 percent of area to be assessed); OKLA. STAT. ANN. §§ 11-39-103, 11-39-106, 11-39-110 (West 1978) (governing body or majority of resident owners of record of property subject to assessment, or resident owners of record of more than half of the area liable for assessment, or owners of record of more than half of the area liable to be assessed); PA. STAT. ANN. tit. 53, §§ 1725, 1722 (Purdon 1974) (Municipal Corporations) (City Council and Mayor/City Recorder or majority of property owners in interest and number abutting the proposed improvement), 53 PA. STAT. ANN. §§ 37935, 37934 (Purdon 1974) (3d Class Cities) (City Councilor majority in amount or interest of owners of property abutting on the improvement); TENN. CODE ANN. §§ 7-32-101, 7-32-118 (1985) (governing body or owners of at least 75 percent of frontage of property abutting on the improvement); TEX. REV. CIV. STAT. ANN. §§ 1(a), 5(b) (Vernon 1986 Supp.) (governing body or owners of more than 50 percent of taxable land area representing more than 50 percent of appraised value of taxable real property within affected area/ more than 50 percent of property owners of affected area); WASH. REV. CODE ANN. §§ 35.43.060, 35.43.070, 35.43.120 (1965) (city councilor owners of property aggregating a majority of the lineal frontage upon the improvement of the area within the proposed district); W. V A. CODE § 8-18-2 (1984) (governing body or property owners of greater amount of frontage abutting on improvement).

Regarding notice and hearing requirements currently applied, see e.g., HAWAII REV. STAT. §§ 67-10, 67-16 (1976) (describing requirements of investigation and report of preliminary data, adoption of preliminary resolution, notice, hearing, and determination by governing body). Cf *Utey v. St. Petersburg*, 292 U.S. 106, 109 (1934) (property owner has no right to be heard in opposition to launching of project that may end in assessment, but only to hearing upon amount to be paid); *St. Louis Land Co. v. Kansas City*, 241 U.S. 419, 430 (1916) (property owner is entitled to be heard as to the amount of his assessments and upon all questions properly entering into their determination); *Detroit v. Parker*, 181 U.S. 399 (1901) (failure to provide fast hearing and review of assessments based on front foot rule do not violate due process requirements).

With regard to protests by affected property owners, this section reflects statutory law as it has developed in most states. This section specifies that "[i]f 50% or more of the registered voters residing within the territory proposed to be included in the special assessment district, or the owners of ~ or more of the area of the land in the territory proposed to be included in the special assessment district, file written protests against the establishment of the special assessment district, the governing body shall abandon the proposed establishment of the special assessment district." ARIZ. REV. STAT. ANN. § 48-579 (1984) (owners of a majority of property fronting the improvement or within the improvement district); Miss. CODE ANN. § 21-41-9 (1972) (majority of owners owning more than 50 percent of the property involved); MONT. CODE ANN. § ~ (owners of property in the district which accounts for the assessment of more than 50 percent of the cost of the proposed work or if it is an assessment within an extended district, objections by the owners of more than 50 percent of the area of the property to be assessed within the district); NEB. REV. STAT. § 14-3, 127 (1983) (Metropolitan Class Cities-majority of owners of frontage to be affected); NEB. REV. STAT. § 16-620 (1983) (1st Class Cities- owners of record title representing greater than 50 percent of the front footage of property abutting or adjacent to the improvement); NEB. REV. STAT. § 17-511 (1983) (2nd Class Cities--owners of record title representing greater than 50 percent of the front footage of property abutting or adjacent to the improvement); N. H. REV. STAT. § 231.28 (1982) (regarding a new thoroughfare, a majority of owners served by an existing road); N. D. CENT. CODE §§ 40-23-15, 40-22-18 (1983) (majority of owners of area of property included within the district, then bar to proceeding within that area. If majority of owners within the district, then bar to entire improvement.); OKLA. STAT. ANN. § 39-108 (West 1978) (owners of 50 percent or more in area of property or 50 percent or more of the owners of property object, then district shall not be created); TEX. REV. CIV. STAT. ANN. §§ 8(b), 8(c) (more than 50 percent of property owners or more than 50 percent of taxable land representing more than 50 percent of the appraisal value of the taxable real property); Wyo. STAT. § 15-16-203 (1985) (owners of more than half of the area of property which is subject to assessment).

Section 6.

In this section, the act allows for collection of assessments in the same manner as the collection of ad valorem property taxes. The reason for using the ad valorem method is simplicity. All states have ad valorem taxes and, therefore, it simplifies implementation of this system of collection.

This section also reflects the common characterization of the special assessment as a special use of the government's taxing or revenue-raising power. See 14 E. McQuillin, *Municipal Corporations* § 38-01 (special assessments are sustained under exercise of power of taxation) (3d ed. 1979); 4 C. Sands and M. Libonati, *Local Government Law* § 4.05 n.l (citing cases sustaining power to levy special assessment under rubric of taxation from 19 jurisdictions) (1982). Special assessments may be distinguished from taxes in several ways. For example, the special assessment is usually exempt from constitutional provisions requiring uniformity of taxation. See, e.g., *Eaton v. McCuen*, 273 Ark. 154,617 S.W.2d 341 (1981); *Lake Howell Water & Reclamation Dist. v. State*, 268 So.2d 897 (Fla. 1972); *Martin v. Ben Davis Conservancy Dist.*, 238 Ind. 502, 153 N.E.2d 125 (1958); *McNally v. Township of Teaneck*, 75 N.J. 33, 379 A.2d 446 (1977); *Berglund v. Tacoma*, 70 Wash.2d 475,423 F.2d 922 (1967). See also 2 Antieu, *Municipal Corporation Law* § 14.00; 14E. McQuillin, *Municipal Corporations*, § 38.161 (3ded.1979).

Section 7.

This section reflects the nature of the special assessment as providing a special benefit to those properties assessed. The use of special assessment funds for other than their designated purpose would charge assessed properties for benefits that do not necessarily specially benefit them. Such a use would be invalid. See Sec. 4 explanatory notes, *supra*.

Section 8.

This section provides for the use of special assessment proceeds to retire indebtedness created by the provision of special facilities or services authorized under this act.

Section 9.

This section reflects common practice that liens be filed against benefited property, and property owners be allowed to repay amounts due immediately or on a staggered basis at relatively moderate rates of interest. See, e.g., ALASKA STAT. § 29- 46.080 (1985) ("Assessments are liens on property and are prior and paramount to all liens except municipal tax lien"; governing body to fix times of payment, penalties, and rate of interest; payment in lump sum or by installments permitted).

Special assessments generally do not give rise to personal liability on the part of property owners because a secured interest in the land is seen as a sufficient repayment guarantee. There has also been some doubt whether personal liability could, in fact, be imposed. Many early cases invalidated efforts to impose personal liability on grounds that statutory authority for such a remedy was lacking or that legislation authorizing personal liability was unconstitutional. See Annotation, Personal Liability of Property Owner to Pay Assessments for Local Improvements, 127 A.L.R. 551 (1940). However, a growing number of cases have approved personal liability of resident owners. See *Werninger v. Stephenson*, 82 W. Va. 367,95 S.E. 1035 (1918). Personal liability for nonresident owners may also be imposed where express statutory authorization and an adequate jurisdictional basis can be cited. See Rubin, *Collection of Delinquent Real Property Taxes by Action in Personam*, 3 LAW & CONTEMP. PROBS. 410, 422 (1936).