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SENATE BILL 554

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

John M. Sapien

AN ACT

RELATING TO MUNICIPALITIES; REVISING PROCEDURES FOR THE
CREATION OF IMPROVEMENT DISTRICTS; LIMITING ASSESSMENTS TO
DIRECT BENEFIT OF IMPROVEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 3-33-11 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-32-4, as amended) is amended to read:

"3-33-11. IMPROVEMENT DISTRICT--PROVISIONAL ORDER
METHOD--PROCEDURE--PRELIMINARY LIEN--NOTICE OF PENDENCY OF
DISTRICT--EFFECT.--

A. Whenever ~~the~~ a governing body determines that
the creation of an improvement district is necessary by the
provisional order method, the governing body shall by
resolution direct the engineer to prepare preliminary plans and
an estimate of cost for the proposed improvement district.

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B. The resolution shall:

(1) describe in general terms the property to be included in the improvement district;

(2) require the engineer to prepare:

(a) an assessment plat showing the area to be included in the improvement district; and

(b) an addendum to the assessment plat showing the amount of maximum benefit estimated to be assessed against each tract or parcel in the improvement district on a front-foot, zone, area or other equitable basis, which shall be set forth in the resolution ~~[and]~~; provided that, if the benefit to a tract or parcel is derived from a combination of improvements, the amount of maximum benefit estimated to be assessed against such tract or parcel may be based upon an appraisal or determination of the value of the improvements as a whole; and

(3) require the engineer to prepare preliminary plans for one or more types of construction showing:

(a) for each type of road, curb, gutter, sidewalk and street, a typical section of the contemplated improvement, the type of material to be used and the approximate thickness and width of the material;

(b) for each type of storm sewer or drain, sanitary sewer or water line, the type of material and

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1 approximate diameter of any trunk lines, mains, laterals or
2 house connections; or

3 (c) for each other type of project or
4 other major component of the foregoing types of projects, a
5 general description.

6 C. The engineer shall include in the total cost
7 estimate for the improvement district all expenses, including
8 but not limited to advertising, appraising, tax reimbursement,
9 capital improvement, expansion, construction period interest,
10 reserve fund, financing, engineering and printing expenses that
11 the engineer deems necessary to pay the complete cost of the
12 improvement.

13 D. The engineer shall submit to the municipal clerk
14 the:

- 15 (1) assessment plat;
16 (2) preliminary plans of the type of
17 construction; and
18 (3) estimate of costs for the improvement.

19 E. After the governing body examines the assessment
20 plat, preliminary plans and estimates of cost for the
21 improvement district, the governing body may adopt a
22 provisional order ~~[which]~~ that:

- 23 (1) orders the improvement to be constructed;
24 (2) instructs the municipal clerk or
25 ~~[engineer]~~ the clerk's deputy to give notice of a hearing on

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1 the provisional order; and

2 (3) orders, if deemed necessary by the
3 governing body and with the consent of all of the owners of the
4 tracts or parcels to be encumbered with a preliminary
5 assessment lien, as stated in the records of the county
6 assessor updated within thirty days prior to the date of the
7 provisional order, the immediate placement of a preliminary
8 assessment lien on tracts or parcels in the improvement
9 district based on the estimated maximum benefit to be assessed
10 against such tracts or parcels in order to facilitate interim
11 financing of the improvement and that provides for times and
12 terms of paying the preliminary assessment lien, for the
13 adjustment of the preliminary assessment lien and for the
14 placement of a final assessment lien upon each such tract or
15 parcel pursuant to the provisions of Sections 3-33-22 and
16 3-33-23 NMSA 1978. Both the preliminary and the final
17 assessment liens shall be coequal with the lien for general ad
18 valorem taxes and the lien of other improvement districts and
19 are superior to all other liens, claims and titles. The
20 consent of any owner in an improvement district to the
21 placement of a preliminary assessment lien on the owner's
22 property shall not alter the assessment on any other tracts or
23 parcels in the improvement district.

24 F. Upon the adoption of the provisional order by
25 the governing body, the estimated maximum benefit roll showing

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1 the legal description of the property to be included in the
2 district and the owners thereof may be recorded with the clerk
3 of the county in which the property is located, which recording
4 shall constitute notice of the pendency of the special
5 assessment district and shall be constructive notice to the
6 owner, purchaser or encumbrancer of the property concerned; and
7 any person whose conveyance is subsequently recorded shall be
8 considered a subsequent purchaser or encumbrancer and shall be
9 subject to and bound by all the proceedings taken after the
10 recording of the notice to the same extent as if [~~he~~] the
11 person were made a party to such special assessment
12 proceedings.

13 G. This notice need not be acknowledged to entitle
14 it to be recorded.

15 H. Nothing [~~herein~~] in this section shall be
16 construed to affect the priority of special assessment liens."

17 SECTION 2. Section 3-33-12 NMSA 1978 (being Laws 1965,
18 Chapter 300, Section 14-32-5) is amended to read:

19 "3-33-12. IMPROVEMENT DISTRICT--NOTICE OF ASSESSMENT--
20 PROTESTS.--

21 A. The notice of the provisional order creating an
22 improvement district shall:

23 (1) contain the time and place when the
24 governing body shall hold a hearing on the provisional order
25 creating the improvement district;

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1 (2) describe [~~the improvement to be~~
2 ~~constructed and the general location thereof~~] in layman's terms
3 understandable to the general public:

4 (a) the procedures for creating the
5 improvement district, including the requirements for a public
6 hearing and actions by property owners necessary to preserve
7 their right to challenge the creation of an improvement
8 district pursuant to Section 39-3-1.1 NMSA 1978;

9 (b) the specific purpose and nature and
10 the general location of the proposed improvements within the
11 proposed improvement district; and

12 (c) the estimated total cost of the
13 proposed improvements, the time period over which the cost of
14 those improvements are to be paid and the proposed method of
15 determining assessments on properties within the proposed
16 improvement district; and

17 (3) state that any interested person may
18 ascertain in the office of the municipal clerk:

19 (a) a description of the property to be
20 assessed; and

21 (b) the specific nature and maximum
22 amount of benefit estimated to be conferred on each tract or
23 parcel of land within the proposed district.

24 B. Not more than [~~thirty~~] forty-five days nor less
25 than [~~ten~~] twenty days before the day of the hearing, the

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1 municipal clerk [~~his~~] or the clerk's deputy [~~or the engineer~~]
2 shall mail the notice of the hearing on the provisional order
3 to the owner of the tract or parcel of land being assessed the
4 cost of the improvement at [~~his~~] the owner's last known
5 address. The name and address of the owner of each tract of
6 land shall be obtained from the records of the county assessor
7 [~~or any other source the municipal clerk or engineer deems~~
8 reliable], which records shall have been updated within thirty
9 days prior to the date the notice is mailed. Proof of the
10 mailing is to be made by affidavit of the municipal clerk [~~his~~]
11 or the clerk's deputy [~~or the engineer~~], which shall be filed
12 in the office of the municipal clerk. [~~Failure to mail any~~
13 ~~notice shall not invalidate any of the proceedings authorized~~
14 ~~in Sections 14-32-1 through 14-32-38 New Mexico Statutes~~
15 ~~Annotated, 1953 Compilation.~~]

16 C. Notice of the hearing shall also be published
17 once each week for three consecutive weeks, and the last
18 publication shall be at least one week prior to the day of the
19 hearing. Such service by publication shall be verified by an
20 affidavit of the publisher, which is to be filed in the office
21 of the municipal clerk.

22 D. Notices of the hearing shall also be posted in
23 three public places within the boundaries of the proposed
24 improvement district not more than forty-five days nor less
25 than twenty days before the hearing."

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1 SECTION 3. Section 3-33-13 NMSA 1978 (being Laws 1965,
2 Chapter 300, Section 14-32-6, as amended) is amended to read:

3 "3-33-13. IMPROVEMENT DISTRICT--PROVISIONAL ORDER--
4 PROTEST--APPEAL TO DISTRICT COURT.--

5 A. At the hearing of the governing body on the
6 provisional order creating an improvement district, an
7 interested person or owner of property to be assessed for the
8 improvement may file a written protest or objection questioning
9 the:

- 10 (1) propriety and advisability of constructing
- 11 the improvement;
- 12 (2) estimated cost of the improvement;
- 13 (3) manner of paying for the improvement; or
- 14 (4) estimated specific nature and maximum
- 15 amount of direct benefit to [~~each~~] an individual tract or
- 16 parcel of land.

17 B. The governing body may recess the hearing from
18 time to time so that all protestants may be heard.

19 C. Within thirty days after the governing body has,
20 by adoption of a resolution:

- 21 (1) concluded the hearing;
- 22 (2) determined:
 - 23 (a) the advisability of constructing the
 - 24 improvement; and
 - 25 (b) the type and character of the

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1 improvement; and

2 (3) created the improvement district, [~~a~~
3 ~~person who during the hearing filed a written protest with the~~
4 ~~governing body protesting the construction of the improvement~~
5 ~~may appeal the determination of the governing body]~~ an owner of
6 a tract or parcel of land assessed or upon which it is proposed
7 to impose an improvement district property tax, whether the
8 owner appeared at the hearing or not, may commence an appeal in
9 district court pursuant to the provisions of Section 39-3-1.1
10 NMSA 1978.

11 D. Where no person has filed a written protest
12 during the hearing and all owners of property to be assessed,
13 upon conclusion of the hearing, submit to the governing body
14 written statements in favor of the creation of the improvement
15 district for the types and character of improvements indicated
16 in the provisional order, those owners shall be deemed to have
17 waived their right to bring any action challenging the validity
18 of the proceedings or the amount of benefit to be derived from
19 the improvements."

20 SECTION 4. Section 3-33-21 NMSA 1978 (being Laws 1965,
21 Chapter 300, Section 14-32-14) is amended to read:

22 "3-33-21. IMPROVEMENT DISTRICT--ASSESSMENT ROLL--NOTICE
23 OF ASSESSMENT HEARING.--

24 A. After the contract has been awarded and the
25 governing body determines the total cost of the improvement to
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1 the municipality, the governing body shall determine what
2 portion of the total cost of the improvement shall be assessed
3 against the benefitted tract or parcel of land. The
4 assessment, including the cost of the improvement at an
5 intersection, shall not exceed the estimated direct benefit to
6 the tract or parcel of land assessed.

7 B. With the engineer, the governing body shall
8 prepare and cause to be filed in the office of the municipal
9 clerk an assessment roll containing among other things:

10 (1) the name of the last known owner of the
11 tract or parcel of land to be assessed or, if [~~his~~] the name is
12 unknown, [~~state~~] the notation "unknown";

13 (2) a description of the tract or parcel of
14 land to be assessed; and

15 (3) the amount of the assessment against each
16 tract or parcel of land.

17 C. After the filing of the assessment roll, the
18 governing body shall, by resolution, set a time and place for
19 the assessment hearing when an owner may object to the amount
20 of the assessment.

21 D. Not more than [~~thirty~~] forty-five days nor less
22 than [~~ten~~] twenty days before the day of the hearing, the
23 municipal clerk [~~his~~] or the clerk's deputy [~~or the engineer~~]
24 shall mail the notice of the hearing on the assessment roll to
25 the owner of the tract or parcel of land being assessed the

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1 cost of the improvement at [~~his~~] the owner's last known
2 address. The name and address of the owner of each tract of
3 land shall be obtained from the records of the county assessor
4 [~~or any other source the municipal clerk or engineer deems~~
5 ~~reliable~~], which records shall have been updated within thirty
6 days prior to the date the notice is mailed. Proof of the
7 mailing is to be made by affidavit of the municipal clerk [~~his~~]
8 or the clerk's deputy [~~or the engineer~~], which shall be filed
9 in the office of the municipal clerk. [~~Failure to mail any~~
10 ~~notice shall not invalidate any of the proceedings authorized~~
11 ~~in Sections 14-32-1 through 14-32-38 New Mexico Statutes~~
12 ~~Annotated, 1953 Compilation.~~] The notice of the hearing shall
13 also be published once each week for three consecutive weeks,
14 and the last publication shall be at least one week prior to
15 the day of the hearing. Such service by publication shall be
16 verified by an affidavit of the publisher, which is to be filed
17 in the office of the municipal clerk.

18 E. The notice of the assessment hearing required
19 pursuant to Subsection D of this section shall include, for
20 each tract or parcel of land to be assessed, the amount of the
21 proposed assessment for that tract or parcel of land and the
22 method by which the proposed assessment was determined."

23 SECTION 5. Section 3-33-22 NMSA 1978 (being Laws 1965,
24 Chapter 300, Section 14-32-15, as amended) is amended to read:

25 "3-33-22. IMPROVEMENT DISTRICT--FILING OF OBJECTIONS--

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1 ASSESSMENT HEARING--ACTION OF THE GOVERNING BODY--APPEAL TO
2 DISTRICT COURT.--

3 A. Not later than three days before the date of the
4 hearing on the assessment roll, an objecting owner of a tract
5 or parcel of land that is listed on the assessment roll [~~may~~]
6 shall file [~~his~~] specific objections in writing with the
7 municipal clerk. Unless presented as required in this section,
8 an objection to the regularity, validity and correctness of:

9 (1) the proceedings;

10 (2) the assessment roll;

11 (3) each assessment contained on the
12 assessment roll; [~~or~~]

13 (4) the method by which the assessment was
14 determined; or

15 [~~(4)~~] (5) the amount of the assessment levied
16 against each tract or parcel of land, is deemed waived.

17 B. At the hearing, the governing body shall hear
18 all objections that have been filed as provided in this section
19 and may recess the hearing and, by resolution, revise, correct,
20 confirm or set aside an assessment and order that another
21 assessment be made de novo.

22 C. The governing body by ordinance shall, by
23 reference to the assessment roll as so modified, if modified,
24 and as confirmed by the resolution, levy the assessments
25 contained in the assessment roll. The assessments may be

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1 levied in stages if preliminary liens are established pursuant
2 to Section 3-33-11 NMSA 1978. The decision, resolution and
3 ordinance of the governing body is:

4 (1) a final determination of the regularity,
5 validity and correctness of:

6 (a) the proceedings;

7 (b) the assessment roll;

8 (c) each assessment contained on the
9 assessment roll; and

10 (d) the amount of the assessment levied
11 against each tract or parcel of land; and

12 (2) conclusive upon the owners of the tract or
13 parcel of land assessed.

14 D. An owner who has filed an objection as provided
15 in this section may commence an appeal in district court
16 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."