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HOUSE BILL 708

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Bengie Regensberg

AN ACT

**RELATING TO COUNTIES; AMENDING CERTAIN SECTIONS OF THE NMSA
1978 PERTAINING TO ASSESSMENTS FOR IMPROVEMENT DISTRICTS AND
ASSESSMENTS FOR THE MAINTENANCE OF LOCAL COUNTY ROADS.**

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

**Section 1. Section 4-55A-7 NMSA 1978 (being Laws 1980,
Chapter 91, Section 7, as amended) is amended to read:**

**"4-55A-7. IMPROVEMENT DISTRICT--PROVISIONAL ORDER
METHOD--PROCEDURE--PRELIMINARY LIEN--NOTICE OF PENDENCY OF
DISTRICT--EFFECT. --**

**A. Whenever the board determines that the creation
of an improvement district is necessary by the provisional
order method, the board 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; and

(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~~] an equitable basis, which shall be set forth in the resolution [and]; provided, 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. As used in this subparagraph, "equitable basis" includes an assessment based on a front-foot, improved or unimproved property, zone or area basis or an assessed valuation basis where each tract or parcel bears the same percentage of total costs as the percentage that the tract's or parcel's assessed value bears to the total assessed value of the property included in the improvement district; and

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

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

5 (b) for each type of storm sewer or
6 drain, sanitary sewer or waterline, the type of material and
7 approximate diameter [~~or diameters~~] of any trunk lines, mains,
8 laterals or house connections; or

9 (c) for each other type of project or
10 other major component of the foregoing types of projects, a
11 general description.

12 C. The engineer shall include in the total cost
13 estimate for the improvement district all expenses, including
14 but not limited to advertising, appraising, tax reimbursement,
15 capital improvement, expansion, construction period interest,
16 reserve fund, financing, engineering and printing expenses,
17 which the engineer deems necessary to pay the complete cost of
18 the improvement.

19 D. The engineer shall submit to the county clerk
20 the:

- 21 (1) assessment plat;
22 (2) preliminary plans of the type of
23 construction; and
24 (3) estimate of costs for the improvement.

25 E. After the board examines the assessment plat,

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1 preliminary plans and estimates of cost for the improvement
2 district, the board may adopt a provisional order which:

3 (1) orders the improvement to be constructed;

4 (2) instructs the county clerk or engineer to
5 give notice of a hearing on the provisional order; and

6 (3) orders, if deemed necessary by the board
7 and with the consent of the owners of the tracts or parcels to
8 be encumbered with a preliminary assessment lien, the
9 immediate placement of a preliminary assessment lien on tracts
10 or parcels in the improvement district based on the estimated
11 maximum benefit to be assessed against such tracts or parcels
12 in order to facilitate interim financing of the improvement
13 and provides for times and terms of paying the preliminary
14 assessment lien, for the adjustment of the preliminary
15 assessment lien and the placement of a final assessment lien
16 upon each such tract or parcel pursuant to the provisions of
17 Sections 4-55A-18 and 4-55A-19 NMSA 1978. Both the
18 preliminary and the final assessment liens shall be coequal
19 with the lien for general ad valorem taxes and the lien of
20 other improvement districts and are superior to all other
21 liens, claims and titles. The consent of any owner in an
22 improvement district to the placement of a preliminary
23 assessment lien on the owner's property shall not alter the
24 assessment on any other tracts or parcels in the improvement
25 district.

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

15 G. This notice need not be acknowledged to entitle
16 it to be recorded.

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

19 Section 2. Section 67-4-20 NMSA 1978 (being Laws 1969,
20 Chapter 167, Section 1, as amended) is amended to read:

21 "67-4-20. LOCAL COUNTY ROADS--ASSESSMENT FOR
22 MAINTENANCE-- LIEN. --

23 A. Any board of county commissioners may adopt a
24 resolution determining that any streets totally within a
25 subdivided area approved by the county commission, outside the

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1 corporate limits of any municipality, and which the board
2 determines to have such a prospective population density as to
3 require extraordinary street maintenance shall be maintained
4 in part at the expense of the owner of any property which
5 abuts upon the streets. The resolution shall only be adopted
6 after a public hearing, notice of which has been advertised in
7 a newspaper of general circulation within the county for two
8 consecutive weeks, the first such advertisement being at least
9 ten days prior to the date of hearing. In the resolution, the
10 board of county commissioners shall determine:

11 (1) the expense of maintaining the streets;

12 (2) the proportion of the expense to be borne
13 by the property which abuts the streets;

14 (3) the charge to be assessed against each
15 lineal foot of frontage of the abutting property which shall
16 not exceed one-half of the average cost per lineal foot of
17 county road maintenance for the prior fiscal year nor be less
18 than one dollar (\$1.00) for each assessment billing; and

19 (4) the assessment ~~[according to its~~
20 ~~frontage, of each tract, lot or parcel of abutting property],~~
21 on an equitable basis, of each parcel or tract within the
22 subdivided area according to its proportionate share of the
23 expense of maintaining the streets. As used in this
24 paragraph, "equitable basis" includes an assessment based on a
25 front-foot, improved or unimproved property, zone or area

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1 basis or an assessed valuation basis where each tract or
2 parcel bears the same percentage of total costs as the
3 percentage that the tract's or parcel's assessed value bears
4 to the total assessed value of the property included in the
5 improvement district.

6 B. The assessment for the expense of maintaining
7 the streets shall be billed and collected by the county
8 treasurer at the same time as the property taxes and shall
9 become delinquent thirty days after the date of billing. All
10 delinquent assessments shall be a lien against the tract or
11 parcel of property abutting the street, and the lien shall be
12 enforced as provided in Section [~~55-3-25 NMSA 1953~~] 67-4-21
13 NMSA 1978.

14 C. As used in this section, the term "streets"
15 shall include both improved and unimproved streets, roads,
16 thoroughfares, curbs, divider strips and median strips or any
17 combination of the foregoing."