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SENATE BILL 575

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

INTRODUCED BY

Patrick H. Lyons

AN ACT

RELATING TO PUBLIC WORKS; PROVIDING FOR EQUITABLE ASSESSMENT  
ALTERNATIVES.

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.

B. The resolution shall:

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

3 (2) require the engineer to prepare:

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

6 (b) an addendum to the assessment plat  
7 showing the amount of maximum benefit estimated to be assessed  
8 against each tract or parcel in the improvement district on [~~a~~  
9 ~~front-foot, zone, area or other equitable basis~~] an equitable  
10 basis such as front-foot, improved or unimproved property,  
11 zone, area or assessed valuation where each tract or parcel  
12 bears the same percentage of total costs as the percentage  
13 that the tract or parcel's assessed value bears to the total  
14 assessed value of the property included in the improvement  
15 district, which shall be set forth in the resolution [~~and~~];  
16 provided, if the benefit to a tract or parcel is derived from  
17 a combination of improvements, the amount of maximum benefit  
18 estimated to be assessed against such tract or parcel may be  
19 based upon an appraisal or determination of the value of the  
20 improvements as a whole; and

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

24 (a) for each type of road, curb,  
25 gutter, sidewalk and street, a typical section of the

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1 contemplated improvement, the type of material to be used and  
2 the approximate thickness and width of the material;

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

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

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

17 D. The engineer shall submit to the county clerk  
18 the:

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

23 E. After the board examines the assessment plat,  
24 preliminary plans and estimates of cost for the improvement  
25 district, the board may adopt a provisional order which:

1 (1) orders the improvement to be constructed;

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

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

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

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1 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  
4 recording shall constitute notice of the pendency of the  
5 special assessment district and shall be constructive notice  
6 to the owner, purchaser or encumbrancer of the property  
7 concerned; and any person whose conveyance is subsequently  
8 recorded shall be considered a subsequent purchaser or  
9 encumbrancer and shall be subject to and bound by all the  
10 proceedings taken after the recording of the notice to the  
11 same extent as if he were made a party to such special  
12 assessment 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 67-4-20 NMSA 1978 (being Laws 1969,  
18 Chapter 167, Section 1, as amended) is amended to read:

19 "67-4-20. LOCAL COUNTY ROADS--ASSESSMENT FOR  
20 MAINTENANCE-- LIEN. --

21 A. Any board of county commissioners may adopt a  
22 resolution determining that any streets totally within a  
23 subdivided area approved by the county commission, outside the  
24 corporate limits of any municipality, and which the board  
25 determines to have such a prospective population density as to

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

9 (1) the expense of maintaining the streets;

10 (2) the proportion of the expense to be borne  
11 by the property [~~which abuts the streets~~] within the  
12 subdivided area;

13 (3) the charge to be assessed [~~against each~~  
14 ~~lineal foot of frontage of the abutting property~~] for each  
15 lineal foot of each street within the subdivided area, which  
16 shall not exceed one-half of the average cost per lineal foot  
17 of county road maintenance for the prior fiscal year nor be  
18 less 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 of each parcel or tract within the subdivided area according  
22 to its proportionate share of the expense of maintaining [~~the~~  
23 ~~streets~~] on an equitable basis such as front-foot, improved or  
24 unimproved property, zone, area or assessed valuation where  
25 each tract or parcel bears the same percentage of total costs

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1 as the percentage that the tract or parcel's assessed value  
2 bears to the total assessed value of the entire subdivided  
3 area.

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

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