

AN ACT

RELATING TO FLOOD CONTROL AND DRAINAGE; ENACTING THE FLOOD CONTROL AND DRAINAGE IMPROVEMENT DISTRICT ACT; AUTHORIZING CERTAIN FLOOD CONTROL AUTHORITIES TO RAISE REVENUES FOR IMPROVEMENTS BY AN ASSESSMENT LEVY ON IMPROVED LANDS.

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

Section 1. SHORT TITLE. -- This act may be cited as the "Flood Control and Drainage Improvement District Act".

Section 2. IMPROVEMENT DISTRICT--DEFINITIONS. -- As used in the Flood Control and Drainage Improvement District Act:

A. "adjustment of assessment" means the adjustment in the estimated maximum benefit or assessment resulting from the division of the property to be assessed or assessed into smaller tracts or parcels or the combining of smaller parcels into one or more larger parcels or the changing of the configuration or legal description of such parcels. "Adjustment of assessment" may also include the real location of the assessment lien, without loss of priority, among parcels under single ownership that are subject to the assessment lien in order to permit the removal of the lien from one or more parcels where adequate security for the lien is demonstrated by the assessed parcels under such single ownership or provided by the owner;

B. "authority" means a flood control authority created pursuant to Chapter 72, Articles 16 and 19 NMSA 1978;

C. "board" means the board of directors of the authority;

D. "construct" or "construction" means to plan, design, engineer, construct, reconstruct, install, extend, better, alter, build, rebuild, improve, purchase or otherwise acquire any project authorized in the Flood Control and Drainage Improvement District Act;

E. "engineer" means any person who is a professional engineer licensed to practice in New Mexico and who is a permanent employee of an authority or employed by an authority in connection with an improvement;

F. "improvement" means any one or any combination of projects in one or more locations authorized in the Flood Control and Drainage Improvement District Act;

G. "improvement district" means one or more locations wherein the improvement is to be constructed and one or more tracts or parcels of land to be assessed for the cost of the improvement; and

H. "premature subdivision" means a subdivision that has been platted and sold into multiple private ownership prior to installation or financial guarantee of all required improvements for land development. Such

subdivisions contain one or more of the following developmental inadequacies under current local government standards and requirements:

(1) a lack of drainage easements of right-of-way;

(2) a lack of an overall grading and drainage plan; or

(3) a lack of adequate subdivision grading both on and off the public right-of-way.

Section 3. IMPROVEMENT DISTRICT--AUTHORIZATION--
LIMITATION.--

A. Whenever the board determines that the creation of an improvement district is necessary for the public safety, health or welfare, the board may create an improvement district for any one or any combination of projects authorized in the Flood Control and Drainage Improvement District Act by the:

(1) provisional order method; or

(2) petition method.

B. The board may adopt any resolution necessary or proper to accomplish the purposes of the Flood Control and Drainage Improvement District Act.

C. The improvement district shall include for the purpose of assessment all the property that the board determines is benefited by the improvement authorized by the

Flood Control and Drainage Improvement District Act, including property utilized for public, governmental, charitable or religious purposes, except that of the United States or any agency, instrumentality or corporation thereof in the absence of a consent of congress, but shall not include any property within the exterior boundaries of a municipality except as provided in Section 6 of that act.

Section 4. IMPROVEMENT DISTRICT--PURPOSE. -- An improvement district may be created as authorized in the Flood Control and Drainage Improvement District Act in order to construct, acquire, repair or maintain in one or more locations any one or any combination of the following projects, including without limitation any right-of-way, easement or privilege appurtenant or related thereto:

A. a bridge, walkway or gutter project, including without limitation ramps and stairways, arches, support structures and pilings and the grading, regrading, surfacing, graveling, excavating, macadamizing, paving, repairing, laying, backfilling, leveling, lighting, landscaping, beautifying or in any manner improving of all or any part of one or more bridges, walkways, pathways, gutters or any combination of the foregoing;

B. any storm sewer project, including without limitation investigating, planning, constructing, acquiring, excavating, laying, leveling, backfilling or in any manner

improving all or any part of one or more storm sewers, drains and property connections and acquiring or improving valves, catch basins, inlets, outlets, lift or pumping stations and machinery and equipment incidental thereto or any combination of the foregoing; or

C. a flood control or storm drainage project, including without limitation the investigation, planning, construction, improvement, replacement, repair or acquisition of dams, dikes, levees, ditches, canals, basins and appurtenances such as spillways, outlets, syphons and drop structures, channel construction, diversions, rectification and protection with appurtenant structures such as concrete linings, banks, revetments, culverts, inlets, bridges, transitions and drop structures, rundowns and retaining walls, storm sewers and related appurtenances such as inlets, outlets, manholes, catch basins, syphons and pumping stations, appliances, machinery and equipment and property rights connected therewith or incidental thereto convenient and necessary to control floods or to provide drainage and lessen their danger and damages.

Section 5. IMPROVEMENT DISTRICT--ADDITIONAL PURPOSE. --
An improvement district may also be created as authorized in the Flood Control and Drainage Improvement District Act in order to construct, repair or maintain improvements in one or more locations or to construct, acquire, repair, operate

or maintain one or more of the following items necessary to bring a premature subdivision into compliance within an improvement district within an authority:

- A. drainage easements or rights of way;
- B. overall grading and drainage plan; or
- C. adequate subdivision grading either on or off

the public right of way.

Section 6. IMPROVEMENT DISTRICT--POWERS OF AN AUTHORITY.--An authority shall have the power to construct improvements authorized by the Flood Control and Drainage Improvement District Act on any location within the boundaries of the authority or a municipality or county outside the authority's boundaries. Improvements shall be constructed pursuant to the powers granted in the Flood Control and Drainage Improvement District Act only if the governing body of a municipality or the board of county commissioners of a county outside the boundaries of the authority in which such improvements are to be made has, by resolution submitted to the authority, determined:

A. that the construction of such improvements is in the best interests of the municipality or the county;

B. that the maximum amount of benefit estimated to be conferred on the tracts or parcels of land lying within the municipality or county is determined in the same manner as the maximum amount of benefit estimated to be

conferred on the tracts or parcels of land lying within the authority; and

C. that the owners of real property representing at least fifty-one percent of the total assessed valuation of the property benefited, which lies within the municipality or county, have not objected in writing to such improvements within thirty days after having received written notice of the adoption of the provisional order described in Subsection E of Section 8 of the Flood Control and Drainage Improvement District Act by the authority. The authority may enter into a joint powers agreement with the governing body of the municipality or the board of county commissioners of the county to provide for joint administration of any such improvement district.

Section 7. IMPROVEMENT DISTRICT--LIMITATIONS ON POWERS OF AUTHORITY WITH RESPECT TO STREET OR RIGHT OF WAY UNDER JURISDICTION OF STATE HIGHWAY COMMISSION.--The authority shall not construct improvements on or through any street or right of way under the jurisdiction of the state highway commission unless it receives prior written approval from the state highway commission to undertake such improvements.

Section 8. 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:

(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 equitable basis, which shall be set forth in the resolution; 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; and

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

(a) for each type of storm sewer or drain, the type of material and approximate diameter of any

trunk lines, mains, laterals or house connections; or

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

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

D. The engineer shall submit to the board the:

(1) assessment plat;

(2) preliminary plans of the type of construction; and

(3) estimates of costs for the improvement.

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

(1) orders the improvement to be constructed;

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

(3) orders, if deemed necessary by the board and with the consent of the owners of the tracts or

parcels to be encumbered with a preliminary assessment lien, the immediate placement of a preliminary assessment lien on tracts or parcels in the improvement district based on the estimated maximum benefit to be assessed against such tracts or parcels in order to facilitate interim financing of the improvement and provides for times and terms of paying the preliminary assessment lien, for the adjustment of the preliminary assessment lien and the placement of a final assessment lien upon each such tract or parcel pursuant to the provisions of Sections 19 and 20 of the Flood Control and Drainage Improvement District Act. Both the preliminary and the final assessment liens shall be coequal with the lien for general ad valorem taxes and the lien of other improvement districts and are superior to all other liens, claims and titles. The consent of any owner in an improvement district to the placement of a preliminary assessment lien on the owner's property shall not alter the assessment on any other tracts or parcels in the improvement district.

F. Upon the adoption of the provisional order by the board, the estimated maximum benefit roll showing the legal description of the property to be included in the district and the owners thereof may be recorded with the clerk of the county in which the property is located, which recording shall constitute notice of the pendency of the

special assessment district and shall be constructive notice to the owner, purchaser or encumbrancer of the property concerned; and any person whose conveyance is subsequently recorded shall be considered a subsequent purchaser or encumbrancer and shall be subject to and bound by all the proceedings taken after the recording of the notice to the same extent as if he were made a party to such special assessment proceedings.

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

H. Nothing in this section shall be construed to affect the priority of special assessment liens.

Section 9. IMPROVEMENT DISTRICT--NOTICE OF ASSESSMENT--PROTESTS. --

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

(1) contain the time and place when the board shall hold a hearing on the provisional order creating the improvement district;

(2) describe the improvement to be constructed and the general location thereof; and

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

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

(b) the maximum amount of benefit estimated to be conferred on each tract or parcel of land.

B. Not more than thirty days nor less than ten days before the day of the hearing, the county clerk, his deputy or the engineer shall mail the notice of the hearing on the provisional order to the owner of the tract or parcel of land being assessed the cost of the improvement at his last known address. The name and address of the owner of each tract of land shall be obtained from the records of the county assessor or any other source the county clerk or engineer deems reliable. Proof of the mailing is to be made by affidavit of the county clerk, his deputy or the engineer and shall be filed in the office of the county clerk. Failure to mail any notice shall not invalidate any of the proceedings authorized in the Flood Control and Drainage Improvement District Act.

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

Section 10. IMPROVEMENT DISTRICT--PROVISIONAL ORDER--
PROTEST--ACTION IN DISTRICT COURT.--

A. At the hearing of the board on the provisional

order creating an improvement district, any interested person or owner of property to be assessed for the improvement may file a written protest or objection questioning the:

- (1) propriety and advisability of constructing the improvement;
- (2) estimated cost of the improvement;
- (3) manner of paying for the improvement;

or

- (4) estimated maximum benefit to each individual tract or parcel of land.

B. The board may recess the hearing from time to time so that all protestants may be heard.

C. Within thirty days after the board, by adoption of a resolution, has:

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

(3) created the improvement district, any person who during the hearing filed a written protest with the board protesting the construction of the improvement may commence an action in district court to correct or set aside

the determination of the board. After the lapse of thirty days after adoption of the resolution by the board, any action attacking the validity of the proceedings and the amount of benefit to be derived from the improvement is perpetually barred. Where no person has filed a written protest during the hearing and all owners of property to be assessed, upon conclusion of the hearing, submit to the governing body written statements in favor of the creation of the improvement district for the types and character of improvements indicated in the provisional order, such owners shall be deemed to have waived their right to bring any action challenging the validity of the proceedings or the amount of benefit to be derived from the improvements.

**Section 11. IMPROVEMENT DISTRICT--PETITION METHOD--
REQUIREMENTS--DISTRIBUTION OF COSTS--NOTICE OF HEARING.--**

A. Whenever the owners of sixty-six and two-thirds percent or more of the total assessed valuation of the property to be benefited, exclusive of any land owned by the United States or New Mexico, petition the board in writing to create an improvement district and construct the improvement described in the petition, the board may:

- (1) create the improvement district;
- (2) select the type of material and method of construction to be used; and
- (3) proceed with the construction of the

improvement as authorized in Section 15 of the Flood Control and Drainage Improvement District Act after complying with the requirements for a preliminary hearing required in this section. A governing body of a municipality, board of county commissioners or local board of education may sign a petition seeking the improvement for any land under its control. The submission of separate petitions for any one improvement district within a six-month period shall be considered as a single petition.

B. The board may:

(1) pay the cost of the improvement;

(2) assess the cost of the improvement against the benefiting tracts or parcels of land; or

(3) pay part of the cost of the improvement and assess part of the cost of the improvement against the benefiting tracts or parcels of land.

C. If any part or all of the cost of the improvement sought to be constructed as authorized in this section is to be assessed against the benefiting tracts or parcels of land, the board shall hold a preliminary hearing on the proposed improvement district and give notice of the preliminary hearing.

Section 12. IMPROVEMENT DISTRICT--NOTICE OF PRELIMINARY HEARING.--

A. The notice of the preliminary hearing required

in Section 11 of the Flood Control and Drainage Improvement District Act shall contain:

(1) the time and place when the board will hold a preliminary hearing on the proposed improvement;

(2) the estimated cost of the improvement;

(3) the boundary of the improvement district;

(4) the route of the improvement by streets or roads or location of the improvements;

(5) the location of the proposed improvement;

(6) a description of each property to be assessed;

(7) the estimated amount of the assessment against each tract or parcel of land; and

(8) the amount of the cost to be assumed by the authority, if any.

B. If the owners are found within the authority, the notices shall be personally served on them at least thirty days prior to the day of the hearing. The notice shall also be published in a newspaper published in the county once each week for four successive weeks. The last publication shall be at least three days before the day of the preliminary hearing.

HEARING--PROTEST--ACTION OF THE BOARD--ACTION IN DISTRICT COURT.--

A. At the preliminary hearing of the board on the question of creating an improvement district as authorized in Section 11 of the Flood Control and Drainage Improvement District Act, any owner of a tract or parcel of land to be assessed may contest:

- (1) the proposed assessment;
- (2) the regularity of the proceedings relating to the improvement;
- (3) the benefits of the improvement; or
- (4) any other matter relating to the improvement district.

B. The board shall not assess the tract or parcel of land an amount greater than the actual benefit to the tract or parcel of land by reason of the enhanced value of the tract or parcel of land as a result of the improvement as ascertained at the hearing. The board may allow a fair price, based on its current value, as a setoff against any assessment against a tract or parcel of land if the owner has improved the tract or parcel of land in such a manner that the improvement may be made part of the proposed improvement.

C. At the hearing, the board may:

- (1) correct any mistake or irregularity in

any proceeding relating to the improvement;

(2) correct an assessment made against any tract or parcel of land;

(3) in case of any invalidity, reassess the cost of the improvement against a benefiting tract or parcel of land; or

(4) recess the hearing from time to time.

D. Within thirty days after the hearing, any owner of a tract or parcel of land assessed, whether he appeared at the hearing or not, may commence an action in district court seeking an account of any error or invalidity of the proceedings relating to the improvement district or to set aside or correct the assessment or any proceedings relating to the improvement district. Thereafter, any owner or his heirs, assigns, successors or personal representatives are perpetually barred from any action or any defense of error or invalidity in the proceedings or assessments. Where no owner of a tract or parcel to be assessed has presented a protest during the hearing and all owners of the property to be assessed, upon conclusion of the hearing, submit written statements in favor of the creation of the improvement district for the types and character of improvements indicated in the petition, such owners shall be deemed to have waived their right to bring any action in district court seeking an account of any error

or invalidity of the proceedings relating to the improvement district or to set aside or correct the assessment or any proceedings relating to the improvement district.

Section 14. IMPROVEMENT DISTRICT--LEVY AND COLLECTION OF ASSESSMENTS PRIOR TO COMMENCING IMPROVEMENT--SPECIAL FUND--MISUSE--PENALTY. --

A. Whenever the board:

(1) elects to order the construction of a project as authorized in the Flood Control and Drainage Improvement District Act;

(2) uses authority-owned or -leased equipment to construct the project; and

(3) determines what portion of the estimated cost of the construction shall be paid by each tract or parcel of land benefited or to be benefited by the construction; the assessment may be levied and the installments collected prior to the commencement of work and as work progresses according to the terms of payment fixed by the board.

B. The construction shall commence within sixty days after the payment of the first installment of the assessment and be diligently prosecuted so that the construction is completed within one year from the date of commencement. At the end of the one-year period, any tract or parcel of land that has not received the benefits

provided by this section shall be released of any lien assessed against the tract or parcel of land by reason of this section, and all assessment money collected from each owner of a tract or parcel of land so assessed and not benefited shall be returned.

C. All assessment money collected under this section shall be held by the county treasurer in a special account as a separate fund and used only for constructing the improvement, including the purchasing or leasing of necessary equipment. The use of the special fund for any purpose other than that required under this section by any public official, treasurer or member of the board is prohibited and is a felony punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the penitentiary for not more than two years or by both fine and imprisonment in the discretion of the court.

Section 15. IMPROVEMENT DISTRICT--ADVERTISING FOR BIDS--AUTHORITY MAY DO WORK--CONTRIBUTION BY GOVERNMENTAL AGENCY.--

A. If a continuous area proposed to be improved exceeds five hundred feet in length, the board, before using authority equipment and employees to construct the improvement, shall advertise for bids for the construction of the improvement and award the contract for the construction of the improvement to the lowest responsible

bidder; provided, however, an authority may construct the improvement using the same specifications upon which bids were requested if:

(1) the authority can guarantee to construct the improvement for an amount less than the lowest bid amount and not assess the benefiting tracts or parcels of land an amount in excess of the lowest responsible bid, if a bid is received; or

(2) the authority receives no bids for the construction of the improvement.

B. If using authority-owned or -leased equipment and authority employees in constructing an improvement, an authority may cooperate with another governmental agency that contributes money, labor or a portion of the cost of materials towards completion of the improvement.

Section 16. NOTICE OF BID--ACCEPTANCE OF BID. --

A. After the board creates an improvement district, the board may proceed as authorized in Section 14 or 15 of the Flood Control and Drainage Improvement District Act or call for sealed bids on the proposed improvement. The notice of the call for bids shall be made in accordance with the provisions of Section 13-1-104 NMSA 1978.

B. After advertising for bids, the authority may make minor alterations or changes in the plans and specifications to correct errors or omissions in the

original plans and specifications.

C. The board shall award the contract to the lowest responsible bidder unless the board:

(1) elects to construct the improvements as authorized in Section 14 or 15 of the Flood Control and Drainage Improvement District Act; or

(2) rejects all bids submitted for the construction of the improvement. Such bids shall be rejected in the following manner:

(a) if less than three bids are received, the purchase may be made without bids at the best documented obtainable price; or

(b) if three or more bids are received, the authority may reject any or all bids but shall readvertise and accept new bids; and

(c) if no new bids are received or if all new bids are rejected, the rejection shall be accompanied by a written statement of the board declaring the reasons for the rejection, and the authority may then purchase the required items on the open market at the best documented obtainable price.

Section 17. IMPROVEMENT DISTRICT--ASSESSMENT OF RAILROAD PROPERTY.--The board may assess the property of any railroad the whole cost of the improvement between or under the rails or tracks and two feet on each side of the rail or

track of the railroad. The assessment shall be levied as other assessments are levied and shall constitute a lien coequal with the lien of other taxes and prior and superior to all other liens, claims and titles and may be enforced by sale of the railroad property or by suit against the owner of the railroad.

Section 18. IMPROVEMENT DISTRICT--ASSESSMENT ROLL--
NOTICE OF ASSESSMENT HEARING. --

A. After the contract has been awarded and the board determines the total cost of the improvement to the authority, the board shall determine what portion of the total cost of the improvement shall be assessed against the benefited tract or parcel of land. The assessment, including the cost of the improvement at an intersection, shall not exceed the estimated benefit to the tract or parcel of land assessed.

B. With the engineer, the board shall prepare and cause to be filed in the office of the county clerk an assessment roll containing, among other things:

(1) the name of the last known owner of the tract or parcel of land to be assessed or, if his name is unknown, state "unknown";

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

(3) the amount of the assessment against

each tract or parcel of land.

C. After the filing of the assessment roll, the board shall, by resolution, set a time and place for the assessment hearing when an owner may object to the amount of the assessment.

D. Not more than thirty days nor less than ten days before the day of the hearing, the county clerk, his deputy or the engineer shall mail the notice of the hearing on the assessment roll to the owner of the tract or parcel of land being assessed the cost of the improvement at his last known address. The name and address of the owner of each tract of land shall be obtained from the records of the county assessor or any other source the county clerk or engineer deems reliable. Proof of the mailing is to be made by affidavit of the county clerk, his deputy or the engineer and shall be filed in the office of the county clerk. Failure to mail any notice shall not invalidate any of the proceedings authorized in the Flood Control and Drainage Improvement District Act. The notice of the hearing shall also be published once each week for three consecutive weeks, and the last publication shall be at least one week prior to the day of the hearing. Such service by publication shall be verified by an affidavit of the publisher, which is to be filed in the office of the county clerk.

Section 19. IMPROVEMENT DISTRICT-- FILING OF
OBJECTIONS-- ASSESSMENT HEARING-- ACTION OF THE BOARD-- APPEAL
TO DISTRICT COURT. --

A. Not later than three days before the date of the hearing on the assessment roll, any owner of a tract or parcel of land that is listed on the assessment roll may file his specific objections in writing with the county clerk. Unless presented as required in this subsection, any objection to the regularity, validity and correctness of:

- (1) the proceedings;
- (2) the assessment roll;
- (3) each assessment contained on the assessment roll; or
- (4) the amount of the assessment levied against each tract or parcel of land, is waived.

B. At the hearing, the board shall hear all objections that have been filed as provided in this section and may recess the hearing from time to time and, by resolution, revise, correct, confirm or set aside any assessment and order another assessment be made de novo.

C. The board by resolution shall, by reference to the assessment roll as so modified, if modified, and as confirmed by the resolution, levy the assessments contained in the assessment roll. The assessments may be levied in stages if preliminary liens are established pursuant to

Section 8 of the Flood Control and Drainage Improvement District Act. The resolution of the board shall be:

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

(a) the proceedings;

(b) the assessment roll;

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

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

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

D. Within fifteen days after the publication of the title and general summary of the resolution or posting of the resolution, any owner who has filed an objection as provided in this section may commence an action in district court to correct or set aside the determination of the board. After the lapse of fifteen days after the publication or posting, all actions that include the defense of confiscation or attack the regularity, validity and correctness of:

(1) the proceedings;

(2) the assessment roll;

(3) each assessment contained on the assessment roll; or

(4) the amount of the assessment levied against each tract or parcel of land, are perpetually barred.

Section 20. IMPROVEMENT DISTRICT--ASSESSMENTS--TERMS OF PAYMENT--LIENS.--

A. The board may, by resolution:

(1) establish the time and terms of paying the assessment or installments on the assessment, including but not limited to any provision for differing optional time periods over which installments of assessments for the same district may be paid and, at the discretion of the board, differing interest rates on the assessments that are payable over different time periods; provided that in the situation where the board provides for optional time periods for payment of assessment installments, the resolution shall set a limit on the time during which the affected property owner must select one of the specified options in writing and shall provide that failure to select one of the options within the time limit conclusively establishes the selection of a specific option designated in the resolution;

(2) set any rate or rates of interest upon deferred payments of the assessment or provide for setting, by resolution, of the rate or rates of interest upon deferred payments after sale of bonds or assignable certificates as provided in Section 21 of the Flood Control

and Drainage Improvement District Act, which shall commence from the date of publication or posting of the resolution levying the assessment; provided that the same interest rate shall be set for assessments that are payable over the same time period; and provided further that no rate or rates of interest in excess of twelve percent a year upon such deferred payments of the assessment shall become effective unless the state board of finance or any successor thereof at any time approves such higher rate or rates in writing based upon the determination of the state board of finance that the higher rate is reasonable under existing or anticipated bond market conditions, which approval shall be conclusive;

(3) fix penalties to be charged for delinquent payment of an assessment; and

(4) establish procedures and standards for an adjustment of assessment in order to allow transfer of a parcel free of an assessment lien, accommodate subdivision of an assessed parcel or accommodate property line corrections and adjustments without changing the original payment schedule, the priority or original amount of the assessment. Such an adjustment of assessment may allow the owner of the original tract of land to pay off any pro rata share of the assessment lien in advance of the schedule of payments. The procedures and standards may also provide for

the method of assessment on the newly created parcels to vary from the method of assessment used on the original tract.

B. After the publication or posting of the resolution levying an assessment as provided in Section 19 of the Flood Control and Drainage Improvement District Act, the assessment, together with any interest or penalty accruing to the assessment, is a lien upon the tract or parcel of land so assessed. Such a lien is coequal with the lien for general ad valorem taxes and the lien of other improvement districts and is superior to all other liens, claims and titles. Unmatured installments are not deemed to be within the terms of any general covenant or warranty. All purchasers, mortgagees or encumbrancers of a tract or parcel of land so assessed shall hold the tract or parcel of land subject to the lien so created unless the assessment lien is adjusted pursuant to this section.

C. Within sixty days after the publication or posting of the resolution ratifying an assessment roll and levying the assessments, the county clerk shall prepare, sign, attest and record in his office a claim of lien for any unpaid amount due and assessed against a tract or parcel of land.

D. Any tract or parcel of land so assessed shall not be relieved from the assessment or lien by the sale of

the tract or parcel of land for general taxes or any other assessment, subject to the provisions of Section 27 of the Flood Control and Drainage Improvement District Act. The statute of limitations shall not begin to run against an assessment until after the last installment of the assessment becomes due.

E. The fact that an improvement is omitted for any benefited tract or parcel of land does not invalidate a lien or assessment made against any other tract or parcel of land.

Section 21. IMPROVEMENT DISTRICT--AUTHORITY TO ISSUE BONDS OR ASSIGNABLE CERTIFICATES. --

A. To pay all or any part of the cost of the improvement, including those items set out in Subsection C of Section 8 of the Flood Control and Drainage Improvement District Act, the board may issue in the name of the authority bonds in such form as the board may determine or assignable certificates in an amount not exceeding the total cost of the improvement and maturing not more than twenty years from the date of issuance. If the bonds or assignable certificates recite that:

(1) the proceedings relating to making the improvement and levying the assessments as provided in Section 19 of that act or placing the preliminary lien as provided in Section 8 of that act to pay for the improvement

have been done in compliance with law; and

(2) all prerequisites to the fixing of the assessment lien or placing the preliminary lien against the tract or parcel of land benefited by the improvement have been performed, such recital shall be conclusive evidence of the facts recited.

B. The assignable certificates shall:

(1) declare the liability of the owner of the tract or parcel of land so assessed or the liability of the tract or parcel of land so assessed for payment of the assessment, interest and penalties;

(2) fix the terms and conditions of the certificates; and

(3) accurately describe the tract or parcel of land covered by the certificate.

C. The bonds shall:

(1) recite the terms and conditions for their issuance;

(2) be payable from money collected from the preliminary assessment lien authorized in Section 8 of the Flood Control and Drainage Improvement District Act and, if so payable, also payable from the proceeds of bonds payable from the final assessment lien authorized in Section 19 of that act; or

(3) be payable from the money collected

from the assessments authorized in Section 19 of that act; provided that if assessments are made payable over more than one period of time as permitted by Section 20 of that act, specified portions of the bonds may be payable from money collected from those assessments payable over that period of time that generally corresponds to the period of time over which such specified portions of the bonds are payable; and

(4) bear a rate or rates of interest that shall not exceed the rate of interest on the deferred installments of the assessments or, if more than one rate of interest is specified for assessments as permitted by Section 20 of that act, on that portion of the deferred installments of assessments from which that specified portion of the bonds may be payable.

D. The bonds may be issued to the contractor in payment for the construction of the improvement or may be issued and sold:

(1) in payment of the authority's proportion of the cost of the improvement;

(2) in payment of the proportionate cost, if the improvement is done in cooperation with another governmental agency;

(3) in payment of the construction of the improvement done under contract; or

(4) in reimbursement to the authority, if

the authority constructed the improvement with authority-owned or -leased equipment and authority employees.

E. Bonds or assignable certificates may be sold at a public or private sale at a discount.

Section 22. IMPROVEMENT DISTRICT-- RIGHTS OF NEGOTIABLE BONDHOLDERS OR ASSIGNABLE CERTIFICATE HOLDERS. --

A. If the board fails or refuses to foreclose and sell a tract or parcel of land for the delinquent assessment or installment of the assessment as required in Section 23 of the Flood Control and Drainage Improvement District Act, any holder of a bond or assignable certificate secured by the assessment may foreclose the assessment lien on such delinquent property in the manner provided by law for the foreclosure of mortgages on real estate.

B. Any person holding two or more assignable certificates issued as authorized in Section 21 of the Flood Control and Drainage Improvement District Act may sue in the same action on all tracts or parcels of land described in the certificate to enforce the lien against the tract or parcel of land described in the certificate unless the assessment lien has been adjusted pursuant to Section 20 of that act.

C. Whenever a governing body of a municipality, board of county commissioners or local board of education is delinquent in the payment of an assessment, the holder of

any assignable certificate issued against the tract or parcel of land of the municipality, county or school district has the rights and remedies for the collection of the assessment as are given by law for the collection of judgments against municipalities, counties and school districts.

Section 23. IMPROVEMENT DISTRICT--ADDITIONAL DUTIES IMPOSED ON AUTHORITY. --

A. Whenever an improvement district has been created and bonds or assignable certificates have been issued to finance the improvement, the authority shall:

(1) act as agent for the collection of the assessments;

(2) collect the assessments when due;

(3) act as trustee for the benefit of the holders of the bonds or assignable certificates;

(4) annually prepare a statement that shall:

(a) be available for inspection in the office of the county treasurer;

(b) reflect the financial condition of the improvement district; and

(c) list all the delinquencies existing at that time; and

(5) institute proceedings to foreclose the

assessment lien against any tract or parcel of land that is delinquent in the payment of the assessment or installment of an assessment for a period of more than one year.

B. If more than one improvement district is created, the money from assessments in each district shall be kept in a separate fund and used for the payment of principal and interest of the bonds or assignable certificates outstanding against that improvement district.

Section 24. IMPROVEMENT DISTRICT--ACCEPTANCE OF DEED IN LIEU OF FORECLOSURE. --In lieu of the foreclosure of a lien against any tract or parcel of land that is delinquent in the payment of an assessment or installment of an assessment for a period of more than one year, the authority may accept a deed to the property subject to the lien if the owner of the property tenders the deed to the authority.

Section 25. IMPROVEMENT DISTRICT--FORECLOSURE--TRUSTEE MAY PURCHASE AT FORECLOSURE OF LIENS--CONTENTS OF BID. --Any delinquent assessment has the effect of a mortgage and shall be foreclosed and sold in the manner provided by law for the foreclosure of mortgages on real estate. In any action seeking the foreclosure of a lien against any tract or parcel of land assessed by the authority for the construction of any project after either or both assignable certificates or bonds have been issued, if there is no other purchaser for the tract or parcel of land having a

delinquent assessment, the authority as trustee of the fund from which the assignable certificates or bonds are to be paid, may:

A. purchase the tract or parcel of land sold at the foreclosure sale; and

B. bid, in lieu of cash, the full amount of the assessment, interest, penalties, attorney fees and costs found by the court to be due and payable under the resolution creating the lien and any cost taxed by the court in the foreclosure proceedings against the property ordered sold.

Section 26. IMPROVEMENT DISTRICT--TITLE SUBJECT TO REDEMPTION VESTS IN TRUSTEE.--Upon the acceptance or purchase of the tract or parcel of land as provided in Sections 24 and 25 of the Flood Control and Drainage Improvement District Act, title to the tract or parcel of land, subject to the right of redemption provided by Subsection A of Section 27 of that act vests in the trustee of the fund from which the assignable certificates or bonds are payable.

Section 27. IMPROVEMENT DISTRICT--PRIVATE OR PUBLIC SALE OF PROPERTY--REDEMPTION PERIOD--APPLICATION FOR AUTHORIZATION--APPRAISEMENT--DISPOSITION OF PROCEEDS.--

A. No real property shall be sold by the trustee to satisfy a delinquent assessment until at least fifteen

days after the date of the order, judgment or decree of the court, within which time the owner of the tract or parcel of land may pay off the decree and avoid the sale. Any real estate sold under any order, judgment or decree of court to satisfy the lien may be redeemed at any time within one year of the date of sale by the owner or mortgage holder or other person having an interest, or their assigns, by repaying to the purchaser or his assign the amount paid with interest from the date of purchase at the rate of twelve percent per year.

B. After expiration of the fifteen-day period, the trustee may sell the property at a public or private sale subject to the right of redemption, and, if not paid from the proceeds of the sale, subject to the indebtedness claimed under the lien, ad valorem taxes and other special assessments having a lien on the property that is coequal with the lien for ad valorem taxes.

C. The proceeds of the sale of the foreclosed tract or parcel of land at either a private sale or a public sale shall be applied as follows:

- (1) first, to the payment of costs in giving notice of the sale and of conducting the sale;
- (2) second, to costs and fees taxed against the tract or parcel of land in the foreclosure proceedings;
- (3) third, on a pro rata basis, to the

indebtedness claimed under the lien and to ad valorem taxes and other special assessments having a lien on the property that are coequal with the ad valorem taxes; and

(4) fourth, after all such costs, liens, assessments and taxes are paid, to the former owner, mortgage holder or other parties having an interest in the tract or parcel, upon such person providing satisfactory proof to the court of such interest and upon approval of the court. Receipts for the satisfaction of the indebtedness claimed under the lien shall be paid into the proper improvement district fund for payment of the interest and the bonds or assignable certificates. In case of the sale of any tract or parcel of land subject to more than one delinquent assessment, such remaining proceeds shall be distributed into the proper improvement district funds for such payment pro rata based upon the total unpaid amount due each such district.

**Section 28. IMPROVEMENT DISTRICT--ASSESSMENT FUNDS--
EXPENDITURES--MISUSE--PENALTIES.--**

A. All money received by the authority from any special assessment or assessment within an improvement district shall be held in a special fund and used to:

(1) pay the cost of the improvement for which the assessment was made;

(2) reimburse the authority for any work

performed by the authority in constructing the improvement and for administrative costs associated with the improvement district; or

(3) pay the interest and principal due on any outstanding bonds or assignable certificates.

B. Any person who uses money in an improvement district fund other than as provided in this section is guilty of a felony and shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state penitentiary for not more than two years or by both such fine and imprisonment in the discretion of the court.

Section 29. TRANSFER OF IMPROVEMENT DISTRICT FUNDS. -- The board may transfer to the general fund of the authority any money obtained from the levy of an assessment for an improvement district if:

A. bonds or assignable certificates were issued to finance the improvement;

B. the proceeds of the bonds or assignable certificates were spent for the improvement;

C. the assessments were levied and collected for the payment of the bonds or assignable certificates; and

D. either the bondholders or assignable certificate holders are barred by the statute of limitations or a court judgment or decree from collecting the

indebtedness; or

E. the bonded indebtedness or assignable certificates have been paid.

Section 30. IMPROVEMENT DISTRICT--REASSESSMENT AFTER VOIDING OF ASSESSMENTS--PROCEDURE.--

A. It is the purpose of Sections 30 through 34 of the Flood Control and Drainage Improvement District Act to:

(1) charge the cost of any improvement payable by the tract or parcel of land benefited by the improvement by making a reassessment for the cost of the improvement; and

(2) permit the making of a reassessment when an original assessment is declared void or the enforcement of the original assessment is refused by a court.

B. Whenever any assessment for improvements is declared void or unenforceable, either directly or indirectly, by a decision of any court for any cause whatever, the board shall reassess the tracts or parcels of land that are benefited or will be benefited by the improvement to the extent of the proportionate share of the cost of the improvement of each tract or parcel of land, together with accrued interest.

C. The reassessment roll shall be prepared, a hearing held on the reassessment roll and a final

determination of the reassessment made by the board, all in the manner provided in Sections 18 through 20 of the Flood Control and Drainage Improvement District Act for the original assessment.

Section 31. IMPROVEMENT DISTRICT--REASSESSMENT--
DEFECTS WAIVED--CREDIT FOR PREVIOUS PAYMENT.--

A. The fact that:

- (1) the contract has been let;
 - (2) an improvement has been wholly or partially constructed;
 - (3) an omission, failure or neglect of the board, authority or county officer to comply with the requirements of Sections 1 through 21 of the Flood Control and Drainage Improvement District Act; or
 - (4) any other matter whatsoever connected with the improvement or initial assessment is invalid;
- shall not invalidate or in any way affect the making of a reassessment as authorized in Section 30 of that act and charging the benefited tract or parcel of land the cost of the improvement.

B. When the reassessment is complete, any money paid on the former attempted assessment against a tract or parcel of land shall be credited to the tract or parcel of land in partial or whole payment of the reassessment.

Section 32. IMPROVEMENT DISTRICT--NOTICE OF APPEAL--

APPEAL TO DISTRICT COURT--APPEAL TO SUPREME COURT.--

A. After an owner has filed a written objection with the authority to any reassessment as provided in Section 19 of the Flood Control and Drainage Improvement District Act and the board has determined the reassessment, any owner of a tract or parcel of land that is reassessed may within ten days after the reassessment roll has been ratified by resolution file a notice of appeal to the district court. The notice to the authority shall describe the tract or parcel of land being reassessed and shall state the objections of the appellant to the reassessment.

B. Within twenty days after the reassessment roll has been ratified by resolution, the appellant shall file with the clerk of the district court copies of the:

- (1) notice of appeal;
- (2) appeal;
- (3) reassessment roll;
- (4) reassessment proceedings, all certified

by the authority; and

(5) a bond to the authority conditioned to pay all costs that may be awarded against the appellant in a sum of not less than two hundred dollars (\$200), with such security as shall be approved by the district court.

C. The case shall:

- (1) be docketed by the clerk of the

district court in the name of the owner taking such appeal against the authority as "an equal appeal from reassessments";

(2) have preference over all civil cases pending in the district court except proceedings under:

(a) the law relating to eminent domain by counties; or

(b) actions of forcible entry and detainer; and

(3) be tried as in the case of equitable causes, except that no pleadings are necessary. The judgment of the district court shall be to confirm, modify or annul the reassessment insofar as the reassessment affects the tract or parcel of land of the appellant. If the reassessment is confirmed, the fees of the authority for copies of the record shall be taxed against the appellant with the other costs.

D. On any judgment of the district court, appeal shall be to the supreme court as in other causes. If an appeal is taken to the supreme court, the transcript of the proceedings in the district court shall be filed in the office of the clerk of the supreme court within thirty days after the rendering of the decree being appealed. If the appeal is not filed within the thirty-day period, the appeal shall be forthwith dismissed upon motion. If the appeal is

properly prosecuted, the supreme court shall advance the cause on the docket and hear the appeal at the earliest possible opportunity.

Section 33. IMPROVEMENT DISTRICT--PAYMENT OF REASSESSMENT--CONTINUING PROCEEDINGS TO COLLECT ASSESSMENT.--

A. The board shall enforce payment of the reassessment of the tract or parcel of land benefiting from an improvement in the manner provided in the Flood Control and Drainage Improvement District Act for the enforcement of the original assessment.

B. If for any reason a reassessment is held to be invalid or uncollectible, the board shall continue to reassess the tract or parcel of land as provided in Sections 30 through 34 of the Flood Control and Drainage Improvement District Act until the benefited tract or parcel of land has paid the cost of any improvement chargeable to the benefited tract or parcel of land.

Section 34. IMPROVEMENT DISTRICT--APPEAL OF REASSESSMENT--PROCEDURE EXCLUSIVE.--

A. The rights and remedies granted in Section 19 of the Flood Control and Drainage Improvement Act to any owner who objects to, contests or appeals the amount, correctness, regularity or validity of the reassessment:

(1) are declared to exclude any other right,

remedy, suit or action either at law or in equity that might otherwise be available; and

(2) do afford the owner a sufficient day in court for the redressing of all rights and grievances that he may have in connection with the reassessment.

B. Any person who fails to file an objection to a reassessment in the manner provided in Section 19 of the Flood Control and Drainage Improvement District Act or fails to appeal to the district court in the manner provided in Section 32 of that act is forever absolutely barred from objecting to or contesting the amount, correctness, regularity or validity of the reassessment.

Section 35. IMPROVEMENT DISTRICT--APPLICATION OF REASSESSMENT FUND TO OUTSTANDING INDEBTEDNESS.--

A. Whenever the authority has:

(1) issued bonds or assignable certificates to obtain money to pay for an improvement that has been constructed; and

(2) reassessed the tract or parcel of land benefiting from the improvement as provided in Sections 30 through 34 of the Flood Control and Drainage Improvement District Act, the authority shall apply all money received from the payment of the reassessment to the payment of the bonds or assignable certificates.

B. Bonds or assignable certificates that have

been issued to obtain money to pay for any improvement that has been constructed are:

- (1) valid and binding obligations of the authority; and
- (2) payable from the payments received from any reassessment that shall be levied until all obligations of indebtedness of the improvement have been paid in full.

Section 36. IMPROVEMENT DISTRICT--REFUNDING IMPROVEMENT BONDS--AUTHORITY.--

A. As used in this section and in Sections 37 through 39 of the Flood Control and Drainage Improvement District Act "bonds", when not modified by the word "refunding", includes assignable certificates.

B. The board may issue refunding improvement district bonds to refund all or any part of improvement district bonds. Refunding bonds may be issued:

- (1) to change the payment schedule for the bonds;
- (2) to fund principal and interest due on bonds that are in default or for which there is not and, in the opinion of the governing body, will not be sufficient money available to pay the principal and interest when due;
- (3) to reduce interest costs on the bonds or on the assessments providing security for the bonds or to provide other savings;

(4) to modify or eliminate restrictive or burdensome contractual limitations concerning the bonds;

(5) to provide enhanced or substitute security for the bonds; or

(6) to provide for any other reasonable and necessary purpose or any combination of the foregoing purposes.

Section 37. REFUNDING BONDS--ESCROW - DETAIL. --

A. Refunding bonds issued pursuant to Sections 36 through 39 of the Flood Control and Drainage Improvement District Act shall be authorized by resolution. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the resolution authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provisions shall be made for paying the refunded bonds at the time or times provided in Subsection A of this section.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the

retirement of the refunded bonds or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the refunded bonds; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the authority may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States or in

certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the refunded bonds as they become due at their respective maturities or due at any designated prior redemption date or dates in connections with which the authority shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 36 through 39 of the Flood Control and Drainage Improvement District Act is in no manner responsible for the application of the proceeds thereof by the authority or any of its officers, agents or employees.

Section 38. IMPROVEMENT DISTRICT--RESOLUTION FOR REFUNDING BONDS--CONDITIONS--SALE OR EXCHANGE.--

A. The resolution authorizing the issuance of refunding bonds for an improvement district shall describe the:

- (1) details of the issue;
- (2) form of the refunding bonds and interest coupons, if any;
- (3) fund from which the principal and interest of the refunding bonds will be paid; and
- (4) manner in which the bonds are to be issued.

B. The refunding bonds may:

- (1) be issued in an amount less than, equal to or greater than the principal amount of improvement district bonds being refunded;
- (2) not bear a rate of interest greater than the rate of interest borne by the assessments providing security for the refunding bonds if secured by assessments;
- (3) become due and payable in regular numerical order;
- (4) not be issued for a period of more than twenty years from the date of issuance; and
- (5) be payable from substitute security or from the same funds that were applicable to the payment of the bonds being refunded.

C. The refunding bonds may be:

- (1) sold at a public or private sale at a discount; or
- (2) exchanged, dollar for dollar, for the

improvement district bonds being refunded.

Section 39. IMPROVEMENT DISTRICT--PAYMENT OF ASSESSMENT FOR REFUNDING BOND--MAXIMUM TERM--INTEREST--PREPAYMENT--LIENS.--

A. In connection with issuance of refunding bonds as provided in Sections 36 through 39 of the Flood Control and Drainage Improvement District Act, the board may by resolution provide that any unpaid assessment and accrued interest on the assessment shall be paid in not more than twenty years with interest at a rate of interest not less than the rate borne by the refunding bonds and with the penalties as lawfully attached to the original assessment. The owner of a tract or parcel of land that is assessed may at any time pay the assessment in full with interest to the time of payment.

B. The assessment may be collected as provided in Section 20 of the Flood Control and Drainage Improvement District Act and the refunding bonds may be secured and enforced as the original lien was established as provided in that section.

Section 40. IMPROVEMENT DISTRICT--CONSTRUCTION OF SECTIONS.--Nothing contained in Sections 36 through 39 of the Flood Control and Drainage Improvement District Act shall be construed as:

A. increasing the burden or liability of any

tract or parcel of land or the owner of any tract or parcel
of land; or

B. except for issuance of the refunding bonds,
creating any additional liability of the authority. _____