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RECALLED

May 27, 2010

**S. 950**

Introduced by Senator Elliott

S. Printed 5/27/10--H.

Read the first time April 13, 2010.

**A** **BILL**

TO AMEND SECTIONS 5‑37‑20, 5‑37‑35, 5‑37‑40, AS AMENDED, 5‑37‑50, AS AMENDED, AND 5‑37‑100, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO THE MUNICIPAL IMPROVEMENT DISTRICT ACT, SO AS TO CLARIFY THAT AN EASEMENT FOR MAINTENANCE IN CHANNELS, CANALS, OR WATERWAYS IS SUFFICIENT PROPERTY INTEREST TO PROCEED WITH AN ASSESSED DISTRICT; TO AUTHORIZE SOME PORTION OF THE BONDS ISSUED TO FUND ASSESSMENTS MAY BE BACKED BY THE TAXING POWER OF A MUNICIPALITY; AND TO PROVIDE AN EXCEPTION OF AN OWNER OF RESIDENTIAL PROPERTY TO BE REQUIRED TO CONSENT TO INCLUSION IN AN IMPROVEMENT DISTRICT WHEN THE SOLE IMPROVEMENTS ARE THE WIDENING AND DREDGING OF CANALS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 5‑37‑20(2) of the 1976 Code is amended to read:

“(2) ‘Improvements’ include open or covered malls, parkways, parks and playgrounds, recreation facilities, athletic facilities, pedestrian facilities, parking facilities, parking garages, and underground parking facilities, and facade redevelopment, the widening and dredging of existing channels, canals, and waterways used specifically for recreational or other purposes provided that the municipality, the State, or other public entity owns fee simple title or an easement for maintenance in these channels, canals, or waterways, the relocation, construction, widening, and paving of streets, roads, and bridges, including demolition of them, underground utilities, all activities authorized by Chapter 1, ~~of~~ Title 31 (State Housing Law), ~~any~~ a building or other facilities for public use, ~~any~~ a public works eligible for financing ~~under~~ pursuant to the provisions of Section 6‑21‑50, services or functions which a municipality in accordance with state law may by law provide, and all things incidental to the improvements, including planning, engineering, administration, managing, promotion, marketing, and acquisition of necessary easements and land, and may include facilities for lease or use by a private person, firm, or corporation. However, improvements as defined in this chapter must comply with all applicable state and federal laws and regulations governing these activities. ~~Any such~~ These improvements may be designated by the governing body as public works eligible for revenue bond financing pursuant to Section 6‑21‑50, and ~~such~~ these improvements, taken in the aggregate, may be designated by the governing body as a ‘system’ of related projects within the meaning of Section 6‑21‑40. The governing body of a municipality, after due investigation and study, may determine that improvements located outside the boundaries of an improvement district confer a benefit upon property inside an improvement district or are necessary to make improvements within the improvement district effective for the benefit of property inside the improvement district.”

SECTION 2. Section 5‑37‑35 of the 1976 Code is amended to read:

“Section 5‑37‑35. (A) Notwithstanding the provisions of Section 5‑37‑30, assessments, revenues, or debt service on bonds which may be used under this chapter to fund municipal improvements ~~shall~~ must not impose or be derived from, in whole or in part, a tax or assessment on property not located in the improvement district. Bonds issued pursuant to Section 5‑37‑30, however, may be made payable from assessments imposed on property located in the improvement district, and may be additionally secured, in whole or in part, by the full faith, credit, and taxing power of the municipality, if the governing body of the municipality certifies on the date of issuance of the bonds that the assessments as imposed are sufficient as to both amount and duration to pay all debt service on these bonds as they become due.

(B) The provisions of this section do not apply to projects or undertakings designated by a municipal governing body as a ‘system’ ~~under~~ pursuant to Section 6‑21‑40.”

SECTION 3. Section 5‑37‑40(A)(5) and (B) of the 1976 Code, as last amended by Act 109 of 2005, are further amended to read:

“(5) it would be fair and equitable to finance all or part of the cost of the improvements by an assessment upon the real property within the district, the governing body may establish the area as an improvement district and implement and finance, in whole or in part, an improvement plan in the district in accordance with the provisions of this chapter. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner‑occupied residential property which is taxed or will be taxed ~~under~~ pursuant to Section 12‑43‑220(c) must not be included within an improvement district unless the owner at the time the improvement district is created gives the governing body written permission to include the property within the improvement district.

(B) If an improvement district is located in a redevelopment project area created ~~under Title 31,~~ pursuant to Chapter 6, Title 31, the improvement district being created under the provisions of this chapter must be considered to satisfy items (1) through (5) of subsection (A). The ordinance creating an improvement district may be adopted by a majority of council after a public hearing at which the plan is presented, including the proposed basis and amount of assessment, or upon written petition signed by a majority in number of the owners of real property within the district which is not exempt from ad valorem taxation as provided by law. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner‑occupied residential property which is taxed or will be taxed ~~under~~ pursuant to Section 12‑43‑220(c) must not be included within an improvement district unless the owner at the time the improvement district is created gives the governing body written permission to include the property within the improvement district.”

SECTION 4. Section 5‑37‑50 of the 1976 Code, as last amended by Act 109 of 2009, is further amended to read:

“Section 5‑37‑50. The governing body ~~shall~~, by resolution ~~duly~~ adopted, shall describe the improvement district and the improvement plan to be effected ~~therein~~, including ~~any~~ a property within the improvement district to be acquired and improved, the projected time schedule for the accomplishment of the improvement plan, the estimated cost ~~thereof~~ and the amount of ~~such~~ the cost to be derived from assessments, bonds, or other general funds, together with the proposed basis and rates of ~~any~~ assessments to be imposed within the improvement district. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner‑occupied residential property which is taxed or will be taxed ~~under~~ pursuant to Section 12‑43‑220(c) must not be included within an improvement district unless the owner at the time the improvement district is created gives the governing body written permission to include the property within the improvement district. ~~Such~~ The resolution ~~shall~~ also shall establish the time and place of a public hearing to be held within the municipality not sooner than twenty days nor more than forty days following the adoption of ~~such~~ the resolution at which ~~any~~ an interested person may attend and be heard either in person or by attorney on ~~any~~ a matter in connection ~~therewith~~ with the improvement district.”

SECTION 5. Section 5‑37‑100 of the 1976 Code is amended to read:

“Section 5‑37‑100. Not sooner than ten days nor more than one hundred twenty days following the conclusion of the public hearing provided in Section 5‑37‑50, the governing body ~~may~~, by ordinance, may provide for the creation of the improvement district as originally proposed or with ~~such~~ the changes and modifications ~~therein~~ in it as the governing body may determine, and provide for the financing ~~thereof~~ by assessment, bonds, or other revenues as ~~herein~~ provided in this chapter. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner‑occupied residential property which is taxed ~~under~~ pursuant to Section 12‑43‑220(c) must not be included within an improvement district unless the owner gives the governing body written permission to include the property within the improvement district. ~~Such~~ The ordinance ~~shall~~ may not become effective until at least seven days after it has been published in a newspaper of general circulation in the municipality. ~~Such~~ The ordinance may incorporate by reference plats and engineering reports and other data on file in the offices of the municipality~~; provided, that~~. The place of filing and reasonable hours for inspection ~~are~~ must be made available to all interested persons.”

SECTION 6. This act takes effect upon approval by the Governor.

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