CHAPTER 35

County Public Works Improvement Act

**SECTION 4‑35‑10.** Short title; counties authorized to exercise powers and provisions.

This chapter may be cited as the “County Public Works Improvement Act”. A county may exercise the powers and provisions of this chapter.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.

**SECTION 4‑35‑20.** Authorizations constitute cumulative and alternative powers.

Nothing contained in this chapter may be construed to limit or restrict the powers of a county. The authorization provided in this chapter is cumulative to those powers and is provided as an alternate means for the provision of public works projects.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.

**SECTION 4‑35‑30.** Definitions.

As used in this chapter:

(1) “Assessment” means an assessment voluntarily agreed upon by a majority of the owners of real property within an improvement district and representing at least sixty‑six percent of the assessed value of all real property within the improvement district. The assessment must be made upon all real property located within the district, other than property constituting improvements within the meaning of this section, and based upon assessed value, front footage, area, per parcel basis, the value of improvements to be constructed within the district, or a combination of them, as the basis is determined by the governing body of the county. An assessment imposed upon real property with the consent of the owner remains valid and enforceable in accordance with the provisions of this chapter even if there is a later subdivision and transfer of the property or a part of it. An improvement plan may provide for a change in the basis of assessment upon the subdivision and transfer of real property.

(2) “Improvements” means recreational facilities, pedestrian facilities, sidewalks, storm drains, or water course facilities or improvements, the relocation, construction, widening, and paving of roads and streets, any building or other facilities for public use, any public works eligible for financing pursuant to Section 6‑21‑50, and may include the acquisition of necessary easements and land and all things incidental to the provision of the above. These improvements may be designated by the governing body as public works eligible for revenue bond financing pursuant to Section 6‑21‑50, and the improvements, taken in the aggregate, may be designated by the governing body as a “system” of related projects within the meaning of Section 6‑21‑15.

(3) “Improvement district” means an area within the county designated by the governing body pursuant to the provisions of this chapter and within which an improvement plan is to be accomplished.

(4) “Improvement plan” means the overall plan by which the governing body proposes to effect improvements within an improvement district to preserve property values, prevent deterioration, and preserve the tax base.

(5) “Owner” means a person twenty‑one years of age or older, or the proper legal representative for a person younger than twenty‑one years of age, and a firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, and future interest) and who owns, at the date of the petition or written consent, at least an undivided one‑tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate, and a duly organized group whose tax interest is at least equal to a one‑tenth interest in a single tract. If a firm or person has a leasehold interest requiring it or him to pay all county taxes, the agreement is not applicable to charges of the assessment of the district as only the owner has the right to petition on the assessment charge for the improvement district.

(6) “Governing body” means the governing body of a county.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993; 1998 Act No. 389, Sections 1, 5, eff June 15, 1998.

Effect of Amendment

The 1998 amendments rewrote subsections (1) and (2); and added subsection (6).

**SECTION 4‑35‑40.** Powers of governing body with respect to improvements; means of financing.

The governing body is authorized to acquire, own, construct, establish, enlarge, improve, expand, operate, maintain and repair, and sell, lease, and otherwise dispose of an improvement and to finance the acquisition, construction, establishment, enlargement, improvement, expansion, operation, maintenance and repair, in whole or in part, by the imposition of assessments in accordance with this chapter and through the issuance of special district bonds, general obligation bonds of the county, or revenue bonds of the county, from general revenues from any source not restricted from that use by law, or by a combination of the funding sources.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993; 1998 Act No. 389, Section 2, eff June 15, 1998.

Effect of Amendment

The 1998 amendment deleted “install,” preceding “enlarge”, deleted “installation,” preceding “enlargement”, substituted “and through the issuance of special district bonds” for “by special district bonds”, inserted “or revenue bonds of the county”, and made nonsubstantive changes throughout the section.

**SECTION 4‑35‑50.** Requisites for establishment of improvement district; power to implement and finance improvement plan.

(A) If the governing body finds that (1) improvements may be beneficial within a designated improvement district, (2) the improvements may preserve property values within the district, (3) in the absence of the improvements, property values within the area would likely depreciate, (4) it would be fair and equitable to finance all or part of the cost of the improvements by an assessment upon the real property located within the district, and (5) written consent for the creation of the improvement district from a majority of the owners of real property within the district and having an aggregate assessed value in excess of sixty‑six percent of the assessed value of all real property within the improvement district has been obtained, 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.

(B) Instead of items (A)(2) and (A)(3), the governing body may find that the improvements are likely significantly to improve property values within the district by promoting the development of the property.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993; 1998 Act No. 389, Section 3, eff June 15, 1998.

Effect of Amendment

The 1998 amendment designated the existing text as subsection (A) and made nonsubstantive changes within that text; and added subsection (B).

**SECTION 4‑35‑60.** Resolution describing improvement district and plan, including costs, assessments, etc.; establishing time and place of hearing.

The governing body, by resolution, shall describe the improvement district and the improvement plan to be affected in it, including property within the improvement district to be acquired and improved, the projected time schedule for the accomplishment of the improvement plan, the estimated cost and the amount of the cost to be derived from assessments, bonds, or other general funds, together with the proposed basis and rates of assessments to be imposed within the improvement district. The resolution also must establish the time and place of a public hearing to be held but the public hearing may not take place sooner than thirty days nor more than forty‑five days following the adoption of the resolution.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.

**SECTION 4‑35‑70.** Publication of resolution providing for improvement district; public hearing.

A resolution providing for an improvement district, when adopted, must be published once a week for three successive weeks in a newspaper of general circulation within the county and the final publication must be at least ten days before the date of the scheduled public hearing. At the public hearing and at any adjournment of it, all interested persons may be heard either in person or by their designees.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.

**SECTION 4‑35‑80.** Improvements financed through assessments, bonds, general revenues, or combination of sources.

The governing body may provide by the resolution for the payment of the cost of the improvements and facilities to be constructed within the improvement district by assessments on the property as defined in Section 4‑35‑30, by the issuance of special district bonds, revenue bonds, or general obligation bonds of the county, from general revenues from a source not restricted from that use by law, or from a combination of the financing sources as may be provided in the improvement plan. The governing body may use the provisions of Chapter 21, Title 6 to issue revenue bonds, and any assessments authorized by this chapter are revenues of the system for that purpose.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993; 1998 Act No. 389, Section 4, eff June 15, 1998.

Effect of Amendment

The 1998 amendment, in the first sentence, inserted the reference to revenue bonds; and added the second sentence relating to the issuance of revenue bonds under the provisions of Chapter 21, Title 6.

**SECTION 4‑35‑90.** Financing discretionary with governing body; assessment rates may vary.

The financing of improvements by assessment, bonds, or other revenues, and the proportions of them, must be in the discretion of the governing body, and the rates of assessments upon property owners within the improvement district need not be uniform but may vary in proportion to improvements made immediately adjacent to or abutting upon the property of each owner in the district as well as other bases as provided in Section 4‑35‑30.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.

**SECTION 4‑35‑100.** Preparation of assessment roll.

If all or a part of improvements and facilities within the district are to be financed by assessments on property in it, the governing body shall prepare an assessment roll in which there must be entered the names of the persons whose properties are to be assessed and the amount assessed against their respective properties with a brief description of the lots or parcels of land assessed.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.

**SECTION 4‑35‑110.** Notice of improvement and assessment; statement of lien; time and place for hearing; opportunity to file written objection; failure to file objection constitutes consent.

As soon as practicable after the completion of the assessment roll provided in Section 4‑35‑100, the governing body shall mail by registered or certified mail, return receipt requested, to the owner or owners of each lot or parcel of land against which an assessment is to be levied, at the address appearing on the records of the county treasurer, a notice stating the nature of the improvement, the total proposed cost of it, the amount to be assessed against the particular property, and the basis upon which the assessment is made, together with the terms and conditions upon which the assessment may be paid. The notice must contain a brief description of the particular property involved, together with a statement that the amount assessed constitutes a lien against the property superior to all other liens except property taxes. The notice also must state the time and place fixed for the hearing of objections in respect to the assessment. A property owner who fails to file with the county council a written objection to the assessment against his property within the time provided for hearing the objections is considered to have consented to the assessment, and the published and written notices prescribed in this chapter shall so state.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.

**SECTION 4‑35‑120.** Hearing of objections and supporting proof; corrections to assessment; confirmation of roll; filing of copy; lien created; assessment and collection together with property taxes.

The governing body shall hear the objection as provided in this chapter of all persons who file written notice of objection within the time prescribed and who may appear and make proof in relation to the objection, either in person or by their attorney. The governing body, at the sessions held to make final decisions on objections, may make corrections in the assessment roll as it considers proper and confirm them, or set it aside and provide for a new assessment. Whenever the governing body confirms an assessment, either as originally prepared or as corrected later, a copy of it must be filed in the office of the clerk of court, and from the time of filing the assessment impressed in the assessment roll constitutes and is a lien on the real property against which it is assessed superior to all other liens and encumbrances, except the lien for property taxes, and must be annually assessed and collected with the property taxes on it.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.

**SECTION 4‑35‑130.** Mailing of notice of confirmation to persons who filed objections; appeal to court; hearing; effect.

Upon the confirmation of an assessment, if any, the governing body shall mail a written notice to all persons who have filed written objections as provided in this chapter of the amount of the assessment finally confirmed. The property owner may appeal the assessment only if he, within twenty days after the mailing of the notice to him confirming the assessment, gives written notice to the governing body of his intent to appeal his assessment to the court of common pleas of the county in which the property is situate, but no such appeal delays or stays the construction of improvements or affect the validity of the assessments confirmed and not appealed. Appeals must be heard and determined on the record in the manner of appeals from administrative bodies in this State.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.

**SECTION 4‑35‑140.** Creation of improvement district by ordinance; filing.

Not sooner than ten days nor more than one hundred twenty days following the conclusion of the public hearing provided in Section 4‑35‑60, the governing body, by ordinance, may provide for the creation of the improvement district as originally proposed or with changes and modifications the governing body may determine, and provide for the financing by assessment, bonds, or other revenues as provided in this chapter. The ordinance may incorporate by reference plats and engineering reports and other data on file in the office of the county. The place of filing and reasonable hours for inspection must be made available to all interested persons.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.

**SECTION 4‑35‑150.** Improvement ownership, removal, additions and alterations; special assessments.

The improvements as defined in Section 4‑35‑30 must be owned by the county, the State, or another public entity for the benefit of the citizens and residents of the improvement district or the entity owning the improvement, and at any time may be removed, altered, changed, or added to, as the governing body of the owner may determine except that during the continuance or maintenance of the improvements, the special assessments on property may be utilized for the preservation, operation, and maintenance of the improvements and facilities provided in the improvement plan, for the management and operation of the improvement district as provided in the improvement plan, and for payment of indebtedness incurred.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993; 1999 Act No. 114, Section 6, eff 20 days after approval by Governor (approved June 30, 1999).

Effect of Amendment

The 1999 amendment rewrote the section.

**SECTION 4‑35‑160.** Abolition of district; notice and hearing.

The governing body may by ordinance abolish the improvement district if there is no outstanding public debt for which assessments have been imposed on property within the improvement district for the payment of the debt. The governing body must first conduct a public hearing. Notice of the hearing must appear in a newspaper of general circulation in the improvement district two weeks before the hearing is held.

HISTORY: 1993 Act No. 99, Section 1, eff June 15, 1993.