

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Senator Hoofman

SENATE BILL 194

As engrossed 2-3-87 As engrossed 2-10-87

"AN ACT TO PROVIDE FOR THE FORMATION OF MUNICIPAL PROPERTY OWNER'S IMPROVEMENT DISTRICTS UPON THE UNANIMOUS APPROVAL OF THE OWNERS OF REAL PROPERTY TO BE LOCATED THEREIN; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. (a) This Act may be known and cited as the "Municipal Property Owner's Improvement District Law".

(b) It is the intent and purpose of this Act to authorize the formation of improvement districts by the unanimous approval of the owners of real property located in the territory to be included in such district, provided that all the real property to be located in such district is owned by twenty-five (25) or fewer persons.

SECTION 2. As used in this Act, the following terms shall have the meanings set forth below:

"Board" -- Any board of commissioners appointed pursuant to this Act.

"Clerk" -- The clerk or recorder of a municipality.

"District" -- Any Improvement District formed under the provisions of this Act.

"Facilities" -- Any properties, real, personal or mixed, tangible or intangible.

"Governing Body" -- Any city council, town council, board of directors or like body having legislative powers for any municipality.

"Improvement" or "Improvements" -- Any lands, structures, improvements, fixtures and appurtenant equipment acquired, constructed, improved and/or equipped by a District.

"Municipality" -- Any city or incorporated town of the State of Arkansas, now or hereafter created.

"Nearby Municipality" -- Any Municipality located within ten (10) miles of any boundary of a District.

"Person" -- An individual, corporation, partnership, association, firm, or other entity recognized by law as having capacity to own real property in the State of Arkansas.

SECTION 3. Upon the petition of all the owners of the record title as reflected by the deed records in the office of the circuit clerk and ex officio recorder of the pertinent county, all the real property of which territory is owned by twenty-five (25) or fewer persons, it shall be the duty of the Governing Body to lay off into an improvement district the territory described in the petition, for the purpose of purchasing, accepting as a gift, constructing or maintaining facilities for waterworks, recreation, drainage, gas pipelines, sanitary sewers, streets and highways (including curbs and gutters), and sidewalks, together with facilities related to any of the foregoing, or for more than one (1) of such purposes, and to name as commissioners of the District the three (3) individuals whose names appear in the petition, if the petition contains such names and, if not, three (3) individuals of integrity and good business ability.

All such Districts shall be numbered consecutively and shall receive names selected by the Governing Body. If the Governing Body does not act promptly in complying with the terms of this section, or of any other section of this Act essential to the creation and operation of the District, it may be compelled to do so by mandamus.

Any number of petitions may be circulated and identical petitions with additional names may be filed at any time until the Governing Body acts.

SECTION 4. Upon the filing of such petition with the Clerk, it shall be the duty of the Clerk to present the petition to the Mayor, and the Mayor shall thereupon set a date and time, not later than fifteen (15) days after the date of the presentation of such petition to the Mayor, for a hearing before the Governing Body, for consideration of the petition. At such hearing it shall be the duty of the Governing Body to hear the petition and to ascertain whether those signing the same constitute all the owners of the real pro-

perty to be located in the District, and if the Governing Body determines that all the owners of the real property to be located in the District have petitioned for the Improvements it shall then be its duty by ordinance to establish and lay off the District as defined in the petition and to appoint the commissioners named in the petition, if commissioners be named therein and are property owners in the District. The petition shall state the specific purpose or purposes for which the District is to be formed, and the ordinance establishing the District shall give it a name which shall be descriptive of the purpose, and it shall also receive a number to prevent its being confused with other districts for similar purposes.

The ordinance establishing the District shall be published within thirty (30) days after its adoption by one (1) insertion, in some newspaper of general circulation in the Municipality in which the District lies; and the findings of the Governing Body shall be conclusive unless attacked by a suit in the chancery court of the County in which the Municipality is located, brought within thirty (30) days after such publication.

SECTION 5. (a) Within thirty (30) days after their appointment the commissioners shall take and file with the Clerk their oath of office, in which they shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas, to discharge faithfully their duties as commissioners, and that they will not be interested, directly or indirectly, in any contract let by the Board except upon the approval of all the owners of real property located in the District. Any commissioner failing to file such oath within such period shall be deemed to have declined the office and the Governing Body shall appoint some property owner his successor, who shall qualify in like manner within a like time. In case of a vacancy on the Board, after the commissioners have organized, except as set forth in Section 23 hereof, the remaining commissioners shall select the successor, and the person so selected shall qualify by taking the oath of office as prescribed for the original commissioners. The Board shall organize by electing one of its members chairman and another as secretary. It may also employ such agents, servants, engineers and attorneys as it deems best and fix their compensation and the compensation of the secretary. Each District shall be a body corporate with power to sue and to be sued on its contracts, and it

shall have a corporate seal. The Board shall also select some solvent bank or trust company as the depository of its funds.

(b) In addition to and not by way of limitation of the above powers, the Board shall have the power to:

(1) Make and execute all contracts, leases, conveyances and other instruments of the District;

(2) Join with any county, municipality, improvement district, or other political subdivision or government agency, local, state or federal, in the acquisition, construction, maintenance, operation and financing of any of the improvements authorized by this Act or as to the performance of any of its functions;

(3) Establish rules and regulations for the transaction of the District's business and for the services, use and right to use of its facilities or services, or both, or to effectuate any purpose of this Act;

(4) Do all things incidental to the exercise of the express powers granted by this Act; and

(5) Perform all acts useful to carry out the purposes of this Act, unlimited by any express provision hereof.

SECTION 6. (a) Any District, in furtherance of any of the purposes set forth in Section 3 hereof shall have the authority to hire managers and other employees and to pay their salaries incident to the operation and maintenance of any of the Improvements herein authorized, and shall also have the authority to acquire and purchase equipment and machinery incident to the operation and maintenance of such improvements, and shall be further authorized to do any and all other acts which shall be deemed necessary in order to purchase, construct, accept as a gift, operate and maintain any and all Improvements herein authorized.

(b) Any District shall have the power to sell or lease any improvements owned by it to any nearby municipality, or District or other improvement district within the nearby municipality serving on behalf of the property owners of the District, or to any other person and may make contracts with any person, or it may operate any such Improvement and may connect any such Improvement with the improvements, systems and transmission lines of any nearby municipality or other District or

improvement district, and with respect to sewers, may carry its sewers to any proper outlet within or without the District.

(c) Any District may accept as a gift any or all of the Improvements and facilities herein authorized upon the assumption of the maintenance and operation of such Improvements and shall have the authority to assess and collect benefits as in this Act provided, in order to provide the revenue for the costs of such maintenance and operation.

SECTION 7. (a) The Board shall form plans relative to the acceptance, purchase or construction of the improvement, and to that end it may employ such engineers, attorneys and other assistants as it may find necessary, and it shall file copies of all pertinent reports and actions of the Board with the Clerk.

(b) In the event that the Board shall have voted to accept any such offer of gift, or have voted to purchase any Improvement, or shall have voted to construct any Improvement, or any facilities therefor, it shall thereupon appoint an assessor to assess the benefits which will accrue to the real property within the District as a result thereof. Such assessor shall take an oath that he will well and truly assess all benefits that will accrue to the landowners of the District by reason of the Improvement. He shall thereupon proceed to assess the real property within the District, and he shall inscribe in a book each tract of real property and shall place in one (1) column his valuation of each tract or parcel of real property prior to such Improvement, which column may be marked "Assessed value of real property prior to Improvements," and in another column he shall place what he thinks will be the value of each tract or parcel of real property after the Improvement, which column may be marked "Assessed value of real property after Improvement." If the "Assessed value of real property after Improvements" is greater than the "Assessed value of real property before Improvement," as assessed by the assessor for the District, the difference between the two shall be the assessed benefits that will accrue to each tract by reason of the Improvement. If the assessed value of real property as assessed by the assessor of the District after the Improvement is less than the assessed value of real property before the Improvements, the difference between the two shall be the assessed damages that will accrue to the particular parcel or tract of real property by reason of the

Improvement. The assessor shall enter such assessment of benefits or damages opposite the description of each piece of property in appropriate columns, one of which may be marked "Assessed Benefits" and the other may be marked "Assessed Damages". In another column the assessor shall show the estimate of the probable cost to the property owner, which may be marked "Estimated Cost." His assessment shall embrace not merely the lands but all railroads, tramroads, telegraph, telephone and pipe lines and other improvements on land that will be benefited by the acquiring or making of the Improvement. Whenever the term "real property" is used in this Act, it shall be construed to embrace all property subject to assessment for the purposes of this Act; provided however, that no assessment shall apply against any pipe lines or other improvements which are owned by any Municipality, county, school district or improvement district. The assessor shall place opposite each tract the name of the supposed owner as indicated by the deed records, but a mistake in name shall not vitiate the assessment. The assessor shall also assess all damages that will accrue to any property owner by reason of the Improvement, including all injury to real property taken or damaged and where he returns no such damages to any tract of real property it shall be deemed a finding by him that no damages will be sustained. The assessor shall hold his office at the pleasure of the Board, which can fill any vacancy in the position of assessor.

SECTION 8. The assessment shall be filed with the Clerk, and the secretary of the Board shall thereupon give notice of its filing by two publications in a newspaper having a general circulation in the Municipality in which the District lies, the first such publication to be not fewer than seven (7) days prior to the date set for the hearing. This notice may be in the following form:

Notice is hereby given that the assessment
of benefits and damages of _____ District
Number _____ has been filed in the office of
the City Clerk (or Town Recorder) of _____,
where it is open to inspection. All persons wishing
to be heard on the assessment will be heard by the
commissioners and the assessor of the District

between the hours of 10 a.m. and 4 p.m., at
_____, in the City of _____,
Arkansas, on the ____ day of _____, 19__.

Secretary

On the day named in the notice it shall be the duty of the commissioners and assessors to meet together at the place named as a board of equalization and to hear all complaints against the assessment and to equalize and adjust the same, and their determination shall be final, unless suit is brought in the chancery court in which the Municipality is located within thirty (30) days to review it.

SECTION 9. The Board may, not more often than once a year, require the assessor to reassess the benefits in the District, but in the event the District shall have incurred any indebtedness or issued bonds, the total amount of assessed benefits shall never be diminished. Such reassessment shall be made, advertised and equalized in the same manner as provided herein for making the original assessment.

SECTION 10. The Board shall at the same time that the assessment of benefits is equalized, or at any time thereafter, enter upon its records an order, which shall have all the force of a judgment, providing that there is levied upon the real property of the District a tax sufficient to pay the estimated cost of the Improvement with ten percent (10%) added for unforeseen contingencies, which tax is to be paid by the real property owners in the District in the proportion to the amount of the assessment of benefits thereon, and which is to be paid in annual installments as provided in such order. The tax so levied shall be a lien upon all the real property in the District from the time the same is levied and shall be entitled to preference over all demands, executions, encumbrances or liens whensoever created, and shall continue until such assessment, with any penalty costs that may accrue thereon, shall have been paid. The Board shall, promptly after entry of an order levying such tax, publish at least one time in some newspaper having general circulation in the Municipality, a notice setting forth such order of levy and warning all persons affected thereby that same

shall become final unless suit is brought to contest same within thirty (30) days of the date of first publication of such notice, and no property owner shall be barred from contest of such levy within such thirty (30) days' publication period. The remedy against such levy of taxes shall be by suit in chancery and such suit must be brought within thirty (30) days from the time of notice that the levy was made and on such appeal the presumption shall be in favor of the legality of the tax.

SECTION 11. The assessment of the benefits shall bear interest at a rate equal to the lesser of the maximum rate permitted by law or the rate of ten percent (10%) per annum from the time it is equalized, but the interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest, or the interest may be first collected.

SECTION 12. When the Board shall make the levy of taxes, it shall be the duty of the assessor to extend the amount levied and set forth such amount in the assessment book opposite each benefit assessed in a column marked "Annual Collection." The assessor shall file a certified copy of the completed assessment book with the County Clerk. It shall be the duty of the county clerk of the county to extend such taxes annually upon the tax books of the county until the levy is exhausted, and for his or her services he or she shall receive a commission of one and one-half percent (1½%) of the amount so extended. It shall then be the duty of the collector of the county to collect each year the taxes extended upon the tax books along with the other taxes until the entire levy is exhausted, and for his or her services in making such collections the collector shall receive a commission of one and one-half percent (1½%), and the taxes shall by the collector be paid over to the district at the same time he or she pays over the county funds. In counties operating under the unit tax ledger system the tax collector shall receive a commission of one and one-half percent (1½%) for extending the taxes and a commission of an additional one and one-half percent (1½%) for collecting the taxes. No property owner shall be required to pay the taxes herein provided as a prerequisite to paying his or her general taxes.

SECTION 13. If the tax first levied shall prove insufficient to pay the bonds, both the principal and interest, issued by the Board on

account of such Improvement, as hereinafter provided, as the same shall become due and payable, they shall from time to time make such further levy or levies upon the property previously assessed for a sum or sums sufficient to complete the Improvement and to pay such bonds and interest, which shall be extended and collected in the same manner as the first levy; provided, that the total levy or levies shall in no case exceed the value of the benefits assessed on such property with interest. The performance of the duties set forth in this section may be enforced by mandamus.

SECTION 14. All taxes levied under the terms of this Act shall be payable in installments at the same time as county, city and school district taxes are now paid, and if any taxes levied by the Board under this Act are not paid at maturity a penalty equal to twenty-five percent (25%) of the unpaid District taxes shall be added thereto and the delinquency shall be treated as a delinquency of general taxes and the real property involved shall be transferred to the Commissioner of State Lands as provided in and shall be subject to the procedures set forth in Act 626 of 1983, as amended.

SECTION 15. In order to meet preliminary expenses and to finance the cost of the Improvements to be accomplished, with costs incidental thereto and to the issuance of the bonds, the Board may issue bonds of the District and may pledge all assessments of benefits to the District, and all or any part of the profits of the District derived from its operation of any Improvements of the District to the payment of such bonds. It may also issue to the contractors who do the work evidences of debt bearing interest at the rate or rates prescribed by the Board and secure the same in the same manner. As for the security for the payment of any such indebtedness the members of the Board may by resolution establish the rates for use of such Improvements to be collected from the users of such Improvements and may mortgage any or all of its property, including improvements.

Bonds issued under the authority of this Act shall bear interest at such rate or rates, shall mature at such time or times, shall be payable, as to principal, premium, if any, and interest, at such places, within or without the State of Arkansas, shall be in such form (whether bearer or registered, negotiable or non-negotiable), shall be subject to such exchange privi-

leges, and shall have such other details as may be set forth in the resolution of the Board authorizing their issuance. The resolution may provide for the execution and delivery of a trust indenture or like instrument by the Board securing the bonds and for the execution and delivery of other writings pertaining thereto. The bonds (and coupons, if any) may be executed by the manual or facsimile signatures of the members of the Board.

Such bonds, and interest thereon, shall be exempt from all state, county and municipal taxes, including income, property and inheritance taxes.

SECTION 16. No member of the Board shall be liable for any damages unless it shall be made to appear that he acted with a corrupt intent.

SECTION 17. (a) Provided that the petition for formation of the District provides therefor or the owners of real property in such District agree thereto, a District shall not cease to exist upon the acquiring, construction or completion of the Improvement but it shall continue to exist for the purpose of preserving, maintaining and operating the Improvement, replacing equipment, paying salaries to employees and performing any other functions or services herein authorized. To this end the Board may, from time to time, make such additional levies based upon the assessment of benefits as may be necessary for such purposes, but the amount of the total levies shall not exceed the assessed benefits and interest thereon.

(b) After all bonds or other evidences of indebtedness, plus all interest thereon, shall have been paid in full, a District may, by unanimous vote of the members of the Board, be dissolved and all further levies and assessments cancelled, the members of the Board relieved from further duties, and the surplus funds of the District distributed in accordance with the procedures set forth in subsection (c) hereof. The Districts are hereby authorized, at the discretion of the respective Boards, to enter into repair and maintenance agreements and to expend funds of the Districts for such purposes.

(c) In the event that the Board shall vote to dissolve a District under subsection (b) hereof, the Board shall convert all assets into cash and shall first pay from such surplus funds all debts of the District, including any reasonable legal and other expenses incurred

in connection with the dissolution; the Board then shall refund all remaining funds of the District pro rata to the property owners who hold title to the property in the District at the time the refund is made. The pro rata refund to the property owners shall be made on the basis of the most recent assessment or reassessment of benefits on the parcel or parcels of property prior to dissolution, and shall be in the same proportion that the assessed benefits of each individual parcel of property bears to the total of the assessed benefits of all the property in the District, except that no property or owner whose property is delinquent in any sum for District assessments, penalties or interest at the time such refund is made shall be counted in calculating the pro rata distribution or receive any portion of such refund. Within ninety (90) days after the distribution of surplus funds has been completed, the Board shall file a copy of the resolution of dissolution and a financial statement of the District, verified by all members of the Board, in the office of the Clerk of the Municipality in which the District was established.

SECTION 18. All bonds issued under the terms of this Act shall be secured by a lien on all real property in the District, and the making of assessments, levies and collections, as authorized by this Act, may be enforced by mandamus. If any bond, or interest thereon, is not paid within thirty (30) days after its maturity, it shall be the duty of the chancery court on application of any holder of such bond (or any interest coupon) so overdue, to appoint a receiver to collect the taxes aforesaid, and an assessor to reassess the benefits, if necessary, and the proceeds of such taxes and collections shall be applied, after payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the District which are then due and payable. The receiver may be directed by suit to foreclose the lien of the taxes on such real property, and the suits so brought by the receiver shall be conducted in all matters as suits by the Board as hereinbefore provided and with like effect, and the decree and deeds therein shall have the same presumption in their favor. When all such sums have been paid the receiver shall be discharged and the affairs of the District conducted by the Board as hereinbefore provided.

SECTION 19. All cases involving the validity of districts or the

assessment of benefits and all suits to foreclose the lien or taxes shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment, and all appeals therefrom must be taken and perfected within thirty (30) days after the order or decree.

SECTION 20. If for any reason the Improvement contemplated by any District organized under this Act is not made, the preliminary expense shall be a first lien upon all the real property in the District and shall be paid by a levy of a tax thereon, which levy shall be made by the chancery court of the county and shall be collected by a receiver to be appointed by the court.

SECTION 21. All Districts organized under this Act shall have the right of eminent domain in order that they may carry out the purposes of their creation, which right shall be exercised in the same manner as in the case of railroads, telegraph and telephone companies, but without the necessity of making a deposit of money before entering into possession of the property condemned.

SECTION 22. Any property that may be acquired by any District organized under this Act may be sold by the Board thereof for the price and on the terms it deems best.

SECTION 23. When the owners of two-thirds (2/3) in assessed value of the real property located within any District shall sign a petition stating that the petitioners believe it to be in the best interest of the District that the Board or any member thereof be removed, and shall file the same with the Governing Body, the Governing Body shall set a date for a hearing thereon and shall give notice thereof by one (1) publication in a newspaper of general circulation in the District at least ten (10) days before the date of such hearing. The purpose of such hearing shall be to determine the sufficiency of such petition, and any property owner of the District may appear and present evidence either in support of or against the sufficiency of the petition. If after hearing the evidence presented, the Governing Body shall determine that the the petition is signed by at least two-thirds (2/3) in assessed value of the real property owners in the District, the Governing Body shall forthwith adopt a resolution or

resolutions removing the member or members of the Board in accordance with the petition, and appoint a successor or successors to fill the vacancy or vacancies thereby created.

SECTION 24. The provisions of this Act shall be liberally construed to accomplish the purposes of this Act and this Act shall be the sole authority necessary to accomplish its purposes. To this end, it shall not be necessary to comply with the requirements of other laws, including, without limitation, those pertaining to notice, consent and like requirements, in acting pursuant to this Act to accomplish its purposes.

SECTION 25. The provisions of this Act shall not repeal but shall be cumulative and supplemental to all other laws now in effect concerning municipal improvement districts.

SECTION 26. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are declared to be severable.

SECTION 27. It has been found and it is hereby declared that the laws of Arkansas pertaining to municipal improvement districts do not at this time provide for the formation and operation of such District on the basis of the consent of all the owners of real property within such District and that this inadequacy is causing the delay of the accomplishment of projects which are greatly needed and in the public interest. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect upon its passage and approval.

/s/ Hoofman

