

**CHAPTER 196**

**H.B. No. 1204**

An Act relating to the financing of street construction and improvements by certain cities.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Sections 5, 6, and 7, Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927 (Article 1105b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 5. (a) If improvements be ordered constructed in any part of the area between and under rails, tracks, double tracks, turn outs and switches, and two feet on each side thereof, of any railway, street railway, or interurban, using, occupying, or crossing any such highway, portion or portions thereof, ordered improved, then the governing body shall have power to assess the whole cost of the improvements in such area against such railway, street railway, or interurban, and shall have power, by ordinance, to levy a special tax upon such railway, street railway, or interurban, and its road-bed, ties, rails, fixtures, rights and franchises, which tax shall constitute a lien thereon superior to any other lien or claim except State, County, and City ad valorem taxes, and which may be enforced either by sale of said property in the manner provided by law for the collection of ad valorem taxes by the city, or by suit in any court having jurisdiction. The ordinance levying such tax shall prescribe the time, terms and conditions of payment thereof, and the rate of interest may ~~not~~ exceed *the greater of the following two rates:*

(1) 8% per annum; or

(2) *the rate payable by the City on its most recently issued general obligation bonds, determined as of the date of the notice provided by Section 9 of this Act.*

(b) *The tax* ~~;~~ ~~and same~~, if not paid when due, shall be collectible, together with interest, expenses of collection and reasonable attorney's fees, if incurred. The Governing Body shall have power to cause to be issued assignable certificates in evidence of any such assessments as hereinafter provided.

Sec. 6. (a) Subject to the terms hereof, the governing body of any city shall have power by ordinance to assess all the cost of constructing, reconstructing, repairing, and realigning, curbs, gutters, and sidewalks, and not exceeding nine-tenths of the estimated cost of such improvements, exclusive of curbs, gutters, and sidewalks, against property abutting upon the highway or portion thereof ordered to be improved, and against the owners of such property, and to provide the time, terms, and conditions of payment and defaults of such assessments, and to prescribe the rate of interest thereon, *and the rate may not* ~~not~~ *exceed the greater of the following two rates:*

(1) eight (8) per cent per annum; or

(2) *the rate payable by the city on its most recently issued general obligation bonds, determined as of the date of the notice provided for by Section 9 of this Act.*

(b) Any assessment against abutting property shall be a first and prior lien thereon from the date improvements are ordered, and shall be a personal liability and charge against the true owners of such property at said date, whether named or not. The governing body shall have power to cause to be issued in the name of the city assignable certificates in evidence of assessments levied declaring the lien upon the property and the liability of the true owner or owners thereof whether correctly named or not and to fix the terms and conditions of such certificates.

(c) If any such certificate shall recite substantially that the proceedings with reference to making the improvements therein referred to have been regularly had in compliance with the law and that all prerequisites to the fixing of the assessment lien against the property described in said certificate and the personal liability of the owner or owners thereof have been performed, same shall be prima facie evidence of all the matters recited in said certificate, and no further proof thereof shall be required. In any suit upon any assessment or reassessment in evidence of which a certificate may be issued under the terms of this Act it shall be sufficient to allege the substance of the recitals in such certificate and that such recitals are in fact true, and further allegations with reference to the proceedings relating to such assessment or reassessment shall not be necessary.

(d) Such assessments shall be collectable with interest, expense of collections, and reasonable attorney's fee, if incurred, and shall be first and prior lien on the property assessed, superior to all other liens and claims except State, county, school district, and city ad valorem taxes, and shall be a personal liability and charge against said owners of the property assessed.

Sec. 7. The part of the cost of improvements on each portion of highway ordered improved which may be assessed against abutting property and owners thereof shall be apportioned among the parcels of abutting property and owners thereof, in accordance with the Front Foot Plan or Rule provided that if the application of this rule would, in the opinion of the Governing Body, in particular cases, result in injustice or inequality, it shall be the duty of said Body to apportion and assess said costs in such proportion as it may deem just and equitable, having in view the special benefits in enhanced value to be received by such parcels of property and owners thereof, the equities of such owners, and the adjustment of such apportionment so as to produce a substantial equality of benefits received and burdens imposed. *Any parcel of land abutting the*

*highway proposed for assessment is subject, in its entirety as a parcel, to the assessment when the assessment is imposed by ordinance, irrespective of subdivision or partial sale after the date of mailing of the notice if the city has delivered to the county clerk for recording a notice of the proposed assessment that describes each such abutting parcel in the notice or by reference.*

**SECTION 2.** This Act applies only to assessments made on or after the effective date of this Act. Assessments made before that date are governed by the law in effect at the time the assessments were made, and the former law is continued in effect for this purpose.

**SECTION 3.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 4, 1985, by the following vote: Yeas 125, Nays 0; passed by the Senate on May 9, 1985, by the following vote: Yeas 31, Nays 0.

Approved: May 24, 1985

Effective: Immediately