

## CHAPTER 807

## S.B. No. 608

An Act relating to the levy and collection of assessments on property by certain counties to finance highway improvements; amending Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), by amending Sections 2, 4, 5, 7, and 9 and Subsection (c), Section 3 and Subsections (a) and (c), Section 8.

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

**SECTION 1.** Section 2, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2. **AUTHORITY TO MAKE IMPROVEMENTS.** An eligible county may cause to be improved any highway located within its boundaries including causing to be made any one or more of the kinds or classes of improvements named in this Act. An eligible county may improve the highway and may assess all or a part of the cost of the improvement against property within its boundaries benefited by the improvement in accordance with this Act. *Assessments may not be used for routine repair or other routine or regular maintenance of the county road system.* Consent, ratification, or approval from any city, town, or village is not required by the eligible county initiating the improvement within its boundaries, if such eligible county is otherwise authorized by law to improve such highway without such consent, ratification, or approval."

**SECTION 2.** Subsection (c), Section 3, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), is amended to read as follows:

"(c) The governing body has the power by order or resolution to:

"(1) ~~deliver certificates of assessment to a contractor employed to construct the improvements benefiting assessed property;~~

~~"(2) sell certificates of assessment on terms that the governing body finds equitable;~~

~~"(3) retain [the] certificates of assessment; and~~

"(2) ~~[(4)]~~ pledge any or all the assessments to the payment of public securities subject to Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), including certificates of obligation it is authorized to issue under The Certificate of Obligation Act of 1971, as amended (Article 2368a.1, Vernon's Texas Civil Statutes), whether the special assessments are paid alone or in combination with taxes and revenues or any other source of payment."

**SECTION 3.** Sections 4, 5, and 7, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 4. **COST OF IMPROVEMENT; ESTIMATE FOR ASSESSMENT.** The cost of improvements may be paid wholly by the eligible county with or without reimbursement, wholly by the owners of the property benefited by the highway or the portion of the highway ordered to be improved, or partly by the eligible county and partly by special assessments against property benefited ~~[and the owners of the property]~~. If all or any part of the cost is to be paid by special assessments against the property benefited ~~[and the owners]~~, before any improvements are actually constructed and before any hearing under this Act is held, the governing body shall prepare or cause to be prepared an estimate of the cost of the improvements. In no event shall more than the total cost of improvements as shown on the estimate be assessed against the property ~~[and owners of the property]~~. A hearing under this Act may be held before or after construction begins.

"Section 5. **ASSESSMENTS ON PROPERTY; TERMS; CERTIFICATES OF OBLIGATION.** (a) Subject to the terms of this Act, the governing body of an eligible county has the power by order or resolution to:

"(1) assess all or any part of the cost of improvements against ~~[the owners of]~~ property benefited by the highway or the portion of the highway ordered to be improved;

"(2) provide the time, terms, denominations, and conditions of payment and defaults of the assessments; and

"(3) prescribe the rate of interest on the assessments, not to exceed the legal limit on rates established by Chapter 274, Acts of the 60th Legislature, Regular Session, 1967 (Article 5069-1.04, Vernon's Texas Civil Statutes).

"(b) The governing body has the power to cause to be issued in the name of the eligible county ~~[assignable]~~ certificates of obligation in evidence of assessments levied under this Act declaring the lien on the property ~~[and the liability of the true owner or owners of the property whether correctly named or not]~~ and to fix the terms and conditions of the certificates of obligation. *The governing body may not make an assessment on, issue a certificate of obligation for, or establish a lien under this section on property that is a homestead described by Subdivision (2), Subsection (a), Section 41.001, Property Code.* If a certificate of obligation substantially recites that the proceedings on making the improvements complied with the law and that all prerequisites to the fixing of the assessment lien against the property described in the certificate ~~[and the personal liability of the owner or owners of the property]~~ have been performed, the certificate is prima facie evidence of all the matters recited in the certificate, and no further proof is required. In a suit on an assessment or reassessment in evidence of which a certificate of obligation may be issued under this Act, a pleading is sufficient if it alleges the substance of the recitals in the certificate and that the recitals are in fact true. Further allegations with reference to the proceedings relating to the assessment or reassessment are not necessary.

"(c) Delinquent assessments are collectible together with interest at the then prevailing legal rate, any penalties imposed, expense of collection, and reasonable attorney's fees incurred. ~~[An assessment under this Act is a first and prior lien on the property assessed; from the date improvements are ordered; superior to all other liens and claims except ad valorem taxes levied by cities and other political subdivisions. An assessment under this Act is a personal liability and charge against the owners; whether named or not; of the property assessed. The lien may be transferred to other nonexempt property owned by the same person or persons; but if the lien is transferred, it must be recorded in the deed records of each county in which the property encumbered by the assessment is located.]~~

"(d) *An assessment levied against property that is appraised for property tax purposes under Subchapter C, D, E, F, or G, Chapter 23, Tax Code, may not be collected unless the property is converted to a use not covered by one of those subchapters before the end of the 10th year after the completion of construction of the improvement on which the assessment is based.*"

“Section 7. NO LIEN ON PROPERTY EXEMPT; NO PERSONAL LIABILITY OF OWNER; ENFORCING LIEN. This Act does not empower an eligible county or its governing body to fix a lien against any interest in property exempt, at the time the improvements are ordered, from the lien of special assessment for highway improvements. The owner or owners of the property are *not* [~~nevertheless~~] personally liable for any assessment in connection with the property. The lien created against any property *is equivalent to a county ad valorem tax lien and* [~~the personal liability of the owner or owners of the property~~] may be enforced by suit in any court of competent jurisdiction and, if necessary, by sale of the property assessed [~~or of other nonexempt property to which the lien may have been transferred~~]; in the same manner as provided by law for sale of property for nonpayment of county ad valorem taxes.”

SECTION 4. Section 8, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (c) to read as follows:

“(a) An assessment under this Act may not be made against any property [~~or the owners of the property~~]; unless notice and opportunity for hearing have been provided. The true owners of the property may waive in writing notice or the opportunity for hearing. Notice under this section must be by advertisement inserted at least three times in a newspaper of general circulation published in the county where the assessment is to be imposed, unless there is not such a newspaper in the county, in which event notice must be inserted in a newspaper of general circulation published in the nearest county to the eligible county. The first publication of the notice of hearing must be made at least 21 days before the date of the hearing. Additional written notice of the hearing must be given by certified mail, return receipt requested, at least 14 days before the date of the hearing to the owners of the properties benefited by the highway or portion of the highway to be improved. A return receipt is prima facie evidence of providing proper notice, provided the notice is mailed to the owner as listed in the current appraisal or tax rolls as prepared under the Tax Code. If the notice describes in general terms the nature of the improvements for which the assessments are to be levied, states the highway or portion of the highway to be improved, states the estimated amount to be assessed against the [~~owner or owners of~~] property on the highway or portion of the highway, states the estimated total cost of the improvements on the highway or portion of the highway, and states the time and place of the hearing, the notice is sufficient, valid, and binding on all owning or claiming the property or any interest in the property. The notice to be mailed may consist of a copy of the published notice. If an owner of property benefited by a highway or portion of the highway to be improved is listed as ‘unknown’ on the current county or central appraisal district tax roll or the name of an owner is shown on the appraisal or tax roll but no address for the owner is shown, notice need not be mailed. If the owner is shown to be an estate, the mailed notice shall be addressed to the estate.”

“(c) A person owning or claiming any property assessed, or any interest in the property, who wants to contest the amount of any assessment, any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings relating to the assessment or the improvements, or any matter or thing *relating to the assessment or the property assessed* [~~not in the discretion of the governing body~~], is entitled to appeal from the hearing by instituting suit for that purpose in any district court in the county imposing the assessments within 30 days from the date of the hearing. A person who fails to institute a suit within the required time period waives every matter which might have been appealed and is barred and estopped from contesting or questioning the assessment, the amount, accuracy, validity, regularity, and sufficiency of the assessment, or the proceedings relating to the assessment and the improvements. It is not a challenge to an assessment that contracts for construction are invalid. [~~The only challenge to an assessment is that the notice of the hearing was not made in accordance with this Act or that the assessment exceeds the amount of the estimate.~~]”

SECTION 5. Section 9, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 9. CHANGES IN IMPROVEMENTS; PROCEDURE. The governing body of an eligible county has the power to provide for changes in plans, methods, or contracts for improvements, or other proceedings relating to the improvements. Any change substantially affecting the nature or quality of any improvements and increasing the amount of the assessments may only be made when it is determined by *three-fifths* [~~two-thirds~~] vote of the governing body that it is not practical to proceed with the improvements as originally planned. If any substantial change is made after any hearing has been ordered or held, unless the improvements are abandoned, a new estimate of cost shall be made, a new hearing shall be ordered and held, and new notices shall be given, all with the same effect and in the same manner as the original notices and hearing. An owner may waive the notice or opportunity for hearing on the change provided the waiver is in writing, notwithstanding any previous waivers for

previous planned improvements. Changes in or abandonment of improvements must be with the consent of the persons, firm, or corporation that has contracted with the eligible county for the construction of the improvements, if any contract has been made. In case of abandonment of any particular improvement, an order shall be adopted that cancels any assessments levied for the improvement.'"

**SECTION 6.** The legislature finds that the exemption of certain property from the collection of assessments under Subsection (d), Section 5, Chapter 387, Acts of the 68th Legislature, Regular Session, 1983 (Article 6812i, Vernon's Texas Civil Statutes), as added by this Act, is a just and reasonable exemption, based on property tax preferences allowed for certain property in accordance with Article VIII of the Texas Constitution and Chapter 23, Tax Code. If a court determines that an exemption under that subsection is unconstitutional, the determination of unconstitutionality does not affect the other provisions of that law that can be given effect without that subsection, and the provisions of that law are severable for that purpose.

**SECTION 7.** This Act applies only to assessments made under an order adopted on or after the effective date of this Act. An assessment made under an order adopted before the effective date of this Act is subject to the law in effect when the order was adopted, and the former law is continued in effect for that purpose.

**SECTION 8.** 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 the Senate on March 21, 1985, by the following vote: Yeas 30, Nays 0; Senate concurred in House amendments on May 25, 1985, by the following vote: Yeas 31, Nays 0; passed the House, with amendments, on May 22, 1985, by the following vote: Yeas 130, Nays 2, seven present not voting.

Approved: June 15, 1985

Effective: Immediately