

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2018

Page 1, line 2, after the second comma insert "chapter 40-22.2,"

Page 1, line 4, after the first comma insert "authority for municipalities to establish special assessment districts for residential energy efficiency improvements,"

Page 6, after line 24, insert:

"**SECTION 9.** Chapter 40-22.2 of the North Dakota Century Code is created and enacted as follows:

**40-22.2-01. Improvements by special assessments for residential energy efficiency projects.**

A municipality may defray the expense of improvements by special assessments for residential energy efficiency projects. The governing body of the municipality may make and execute necessary or convenient agreements to exercise the powers and functions under this chapter, including contracts with any entity. In planning an improvement project under this chapter the governing body may include any work and materials which are deemed necessary or reasonably incidental to the project. A municipality may issue warrants, bonds, or any other form of indebtedness in anticipation of the levy and collection of assessments under this chapter.

**40-22.2-02. Improvement districts to be created.**

For an improvement project authorized under section 40-22.2-01 and defraying the costs of the project by special assessments, a municipality may create and alter a residential energy efficiency project district by ordinance or resolution. The governing body of the municipality shall designate the district by an appropriate name and by a number distinguishing it from other improvement districts. A municipality may make and finance any improvement and levy special assessments for the improvement under any alternate procedure in this title on its own motion or if the proposal for creation of an improvement project under this chapter is made by any person that is not an officer, board, or agency of the municipality, and the person files a bond or other sufficient security with the city auditor, payable to the municipality, to defray all costs incurred by the municipality if the improvement project is later abandoned. The governing body of the municipality shall determine the amount and form of the bond or other sufficient security required under this section.

**40-22.2-03. Size and form of improvement district - Regulations governing.**

Any residential energy efficiency improvement district created by a municipality may embrace two or more separate property areas. A residential energy efficiency improvement district must include all residential properties for which the property owner has elected to participate by filing consent in the form required by the governing body and which, after consultation by the governing body with the city auditor or city auditor's designee planning the improvement, the governing body believes will be benefited by the creation of all or a portion of the residential energy efficiency project. A district may be created without uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the district. The jurisdiction of a

municipality to make, finance, and assess the cost of any improvement project may not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the district is subsequently determined not to be benefited by all or part of the improvement or the owners of one or more of the properties ultimately declines to participate in the improvements.

#### **40-22.2-04. Auditor's report required - Contents.**

After a residential energy efficiency project district has been created, the governing body of the municipality, to make residential energy efficiency improvements in the manner provided in this chapter, shall direct the city auditor for the municipality or some other person to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement and an estimate of the probable cost of the work. Estimated probable cost of the work must be provided in a manner that allows a residential property owner to determine estimated cost of each type of energy efficiency improvement available under the project for the owner's property, based on a list of types of energy efficiency improvements approved by the governing body for inclusion in the project.

#### **40-22.2-05. Approval of plans, specifications, and estimates.**

At any time after receiving the report required by section 40-22.2-04, the governing body may direct the city auditor or other person preparing the report to prepare detailed plans and specifications that are suitable for presentation to residential property owners in a manner that allows a residential property owner to determine estimated cost of each type of energy efficiency improvement available under the project for the owner's property if the owner elects to participate and have the cost of one or more of the improvements, plus a proportional share of the cost to the municipality of conducting the project, assessed as special assessments against the property. The plans and specifications must be approved by a resolution of the governing body of the municipality. The plans, specifications, and estimates must be made available to property owners in a manner directed by the governing body and must be filed in the office of the city auditor and remain on file in that office subject to inspection by the public.

#### **40-22.2-06. Resolution declaring improvements necessary - Contents of resolution - Publication of resolution.**

After the report required by section 40-22.2-04 has been filed and approved, the governing body of the municipality shall declare by resolution that it is necessary to make the improvements. The resolution must refer intelligibly to the report and must include a map of the municipality showing the proposed residential energy efficiency project district. The resolution must establish a filing deadline for property owners who elect to participate to file their consent in the form required by the governing body. The resolution must be published once each week for two consecutive weeks in the official newspaper of the municipality.

#### **40-22.2-09. Execution and filing of contracts.**

All contracts under this chapter must be entered in the name of the municipality and must be executed for the municipality by the executive officer and countersigned by the auditor. After the contract is signed by the other party, it must be filed in the office of the city auditor.

#### **40-22.2-10. Contracts - Conditions and terms.**

A contract executed under this chapter must require the work to be done pursuant to the plans and specifications on file in the office of the city auditor, subject to the approval of the city auditor acting for the municipality, and must provide:

1. The governing body may suspend the work at any time for improper performance and relet the contract or order reperformance of all or any of the work improperly done.
2. The time within which the work is to be completed.
3. The period of time for which the work must be guaranteed or warranted.
4. The fund from which the contract price is to be paid by the municipality.
5. That the consideration expressed in the contract is payable only in warrants drawn on the fund described in the contract.
6. That the municipality assumes and incurs no general liability under the contract.
7. That the failure of the city auditor to reject work and materials which are not up to specifications and acceptance of the job by the city auditor does not release the party from liability for any failure to perform work or furnish materials in accordance with the plans and specifications.

The city auditor, or the city auditor's designee, acting for the municipality shall supervise and inspect the work during its progress. In addition to any rights a municipality may have under its contract for establishment and operation of part or all of a residential energy efficiency improvement after a contract has been awarded and before contract work has been completed, a municipality, with the consent of the other party and without advertising for bids, may order additional work done by that party of the same character as that which was contracted for, whether within or without the improvement district for which the original contract was made, and upon the same terms and conditions specified in the original contract except as to time of performance, and at a total price payable to said party for such additional work not exceeding twenty percent more than the amount estimated by the city auditor for the municipality to be payable for that character of work under the original contract.

#### **40-22.2-11. Abbreviations, letters, and figures may be used in proceedings for levy and collection of special assessments.**

In all proceedings for the levy and collection of special assessments abbreviations, letters, and figures may be used to denote full or partial additions, lots, blocks, sections, townships, and ranges or years, days of the month, and amounts of money.

#### **40-22.2-12. City auditor to keep complete record of improvements - Record as evidence.**

The city auditor shall keep a complete record of all the proceedings in the matter of making any improvements under this chapter. The records must include all reports and confirmations, all petitions, orders, appointments of commissioners, notices and proofs of publication, and resolutions of the governing body. The records, a

certified transcript of the records, or the original papers, proofs, publications, orders, or resolutions on file in the auditor's office may be admitted in evidence in any court or place in this state without further proof as evidence of the facts they contain.

**40-22.2-13. Defects and irregularities in improvement proceedings are not fatal.**

If the proceedings are for a lawful purpose, unaffected by fraud, and do not violate any constitutional limitation or restriction, defects or irregularities in proceedings under this chapter do not invalidate the proceedings. No action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any defects or irregularities in proceedings under this chapter, unless commenced within thirty days of the adoption of the resolution of the governing body awarding the sale of warrants to finance the improvement.

**40-22.2-14. City auditor's statement of estimated cost required - Governing body to enter into contracts.**

Before adopting or rejecting any contract proposed under this chapter, the governing body shall require the city auditor for the municipality to make a careful and detailed statement of the estimated cost of the work based on bids received. The governing body may seek and accept bids on all or any part of the types of energy efficiency improvements approved by the governing body for inclusion in the project. The governing body may not award the contract if the city auditor's estimate prepared under this section exceeds the estimate prepared under section 40-22.1-04. If all proposals are not rejected, the governing body shall award the contract to the party or parties best able to perform the work, upon the basis of cash payment for the work.

**40-22.2-15. Residential property owner election to participate and subject property to special assessments.**

When the governing body has awarded contracts under this chapter, the governing body shall cause preparation of estimated contract cost of work in a manner that allows a residential property owner to determine estimated cost of each type of energy efficiency improvement available under the project for the owner's property and file with the governing body the owner's acceptance of any or all types of energy efficiency improvement available under the project for the owner's property and acceptance of imposition of the cost of any accepted work as special assessments against the property. Improvements under this chapter may not be made to any residential property for which the owner has not filed acceptance under this section."

Renumber accordingly