

## **SPECIAL ASSESSMENTS**

This memorandum reviews the stages of the special assessment process in cities and briefly reviews the statutory provisions pertaining to special assessments levied by recreation service districts, water resource districts, counties, and townships.

### **STATUTORY AUTHORITY FOR IMPOSITION OF SPECIAL ASSESSMENTS**

Cities were the first political subdivision in North Dakota to receive authority to levy special assessments for improvements. Cities have had authority to levy special assessments since 1897, and as a result, the statutory provisions relating to special assessments in cities are the oldest and most detailed. Recreation service districts were the second political subdivision to receive special assessment levy authority in 1975, followed by water resource districts in 1981, counties in 1983, and townships in 2001.

Several chapters of North Dakota Century Code Title 40 govern improvements by special assessment in cities. Recreation service districts and counties glean authority to levy special assessments for improvements by adopting the provisions relating to cities by reference. Special assessment levy authority and related procedures for water resource districts are contained in Chapter 61-16.1 and township special assessment levy authority is governed by an abbreviated statutory procedure in Chapter 58-18.

### **INITIATION OF PROCESS FOR IMPROVEMENTS BY SPECIAL ASSESSMENT**

Section 40-22-08 and the North Dakota Supreme Court in *Merchant's National Bank of Fargo v. City of Devils Lake*, 173 N.W. 748 (1919), require an improvement district be created as a jurisdictional prerequisite before a public improvement to be paid by special assessments may be undertaken. Sections 40-22-08 and 40-22-02 provide that a special improvement district may be created by ordinance or resolution adopted by a city governing body by a majority vote, except when establishing a sewage system, in which case a two-thirds vote of the governing body is required.

Special assessment districts frequently are initiated by petition of property owners, although there are no formal statutory provisions for initiating improvements by special assessment through a petition process. After a petition is received or the governing body decides to proceed, the city generally schedules an informal meeting with property owners or notifies them by mail that a project will be considered. Section 40-22-09 provides the size and form of a special assessment district is a matter to be decided by the city governing body after consultation with the city engineer.

Pursuant to Section 40-22-01, a city may create a water district, sewer district, water and sewer district, street improvement district, boulevard improvement district, flood protection district, parking district, or business improvement district. Section 40-22-10 provides that after a special improvement district has been created, the city governing body shall direct the city engineer to prepare a report as to the nature, purpose, feasibility, and estimated cost of the improvement. The city engineer's report also must include a separate statement of the estimated cost of the work for which bids will be accepted and a separate statement of all other items of estimated cost not included in the cost of the improvement under the contract. Following receipt of the report, the city governing body may direct the city engineer to prepare detailed plans and specifications for construction of the improvement, which must be approved by a resolution of the city governing body pursuant to Section 40-22-11. The plans, specifications, and estimates must remain on file in the city auditor's office and open for inspection by interested parties pursuant to Section 40-22-14.

After the city engineer's report is filed and approved, the city governing body is required to adopt a resolution declaring the necessity of the improvement pursuant to Section 40-22-15. A resolution of necessity is not required if the improvement is a water or sewer improvement or if a petition signed by the owners of a majority of the area of property included within the district has been received. The resolution must be published once each week for 2 consecutive weeks in the official newspaper of the city.

### **PROTEST OF IMPROVEMENTS BY SPECIAL ASSESSMENT**

Pursuant to Section 40-22-17, owners of property in the proposed improvement district may file written protests against adoption of the resolution of necessity within 30 days after the resolution is first published. If protests are filed, the city governing body is required to consider the protests at its next meeting after the expiration of the time for filing protests. Pursuant to Section 40-22-18, the city will be barred from levying special assessments for the improvement if protests are received from the owners of a majority of the area of property within the improvement

district. If the protests contain the names of owners of a majority of any separate property area included within the district, the protest is a bar against proceeding with the portion of the improvement to be assessed in whole or in part upon property within that area.

### **PROJECT BIDS**

After the resolution of necessity is adopted, and if sufficient protests are not filed, the city governing body is required to advertise for bids on the project in the official newspaper of the municipality. Pursuant to Section 40-22-19, the advertisement must run once each week for 2 consecutive weeks. If a public improvement construction contract is estimated to exceed \$150,000, the plans, drawings, and project specifications must be prepared by an architect or engineer pursuant to Section 48-01.2-02. The city governing body shall award the public improvement construction contract to the lowest responsible bidder pursuant to Section 48-01.2-07. The governing body may reject any bid and readvertise for proposals pursuant to Section 48-01.2-05 if a satisfactory bid is not received.

The city engineer is required to re-estimate the cost of the work under the bids pursuant to Section 40-22-29. The city is prohibited from awarding the contract if the city engineer's new estimate exceeds the city engineer's previous estimate by 40 percent or more. If the ultimate cost of an improvement exceeds the cost of the work contained in the engineer's original estimate by 70 percent or more, the governing body of the city is required to secure an audit of all the costs included in the assessment for the project pursuant to Section 40-23-24. The audit report must include a separate statement of the engineer's original estimate of the cost of the work, the actual cost of the work, the cost of extra work, engineering fees, fiscal agents' fees, attorneys' fees, publication costs, warrant printing costs, interest costs, and each separate item of expense incurred in making the improvement and levying the assessment for the improvement. The city is required to make a copy of the audit report available without charge to any person that requests a copy.

### **ASSESSMENT OF BENEFITS TO PROPERTY OWNERS**

Section 40-23-01 requires the executive officer of a city to appoint three "reputable residents and freeholders" of the city to the city's special assessment commission. Pursuant to Section 40-23-07, the special assessment commission is required to determine the lots and parcels of property that will benefit from the improvement and the amount in which each lot and parcel will be benefited. The commission is required to assess against each lot and parcel a fair portion of the total cost of the improvement, which may not exceed the amount each property will benefit from the improvement. As an alternative, Chapter 40-23.1 provides the city governing body may assess benefits against property on a per-square-foot basis and considering the distance of the property from the marginal line of the public way or area improved.

Sections 40-23-09 and 40-23.1-07 require the special assessment commission or the city auditor to prepare a complete list of benefits and assessments showing each lot, tract, or parcel benefited by the improvement and the amount assessed against it. Section 40-23-25 requires the special assessment commission to prepare a list of estimated future assessments on property presently located outside the corporate limits of the city, but likely to be annexed, which the commission determines is potentially benefited by the improvement. Sections 40-23-10 and 40-23.1-08 require the special assessment commission or the city auditor to publish the assessment list in the official newspaper of the city once each week for 2 consecutive weeks and include notice of the time and place when the commission or the city auditor will meet to hear objections to assessments by any interested party. The special assessment commission or the city auditor may alter assessments at the hearing, as may be just or necessary, pursuant to Sections 40-23-11 and 40-23.1-09. Sections 40-23-07 and 40-23.1-06 provide property of political subdivisions is not exempt from special assessments.

Any person still aggrieved after consideration by the commission or city auditor may file a written notice of appeal stating the grounds for the appeal pursuant to Sections 40-23-14 and 40-23.1-12. At the regular meeting of the city governing body at which the assessment list is to be acted upon, in accordance with Sections 40-23-15 and 40-23.1-13, any person who has appealed may appear and present the reasons why the action of the commission or city auditor should not be approved. The governing body of the city may increase or diminish any assessment as it deems just.

### **COLLECTION OF SPECIAL ASSESSMENTS**

Pursuant to Section 40-24-01, a special assessment is a lien against the property on which it is levied. Special assessments may be paid by a property owner without interest within 10 days after the assessments have been approved by the city governing body under Section 40-24-02. After 10 days, interest accrues on special assessments at an annual rate not exceeding one and one-half percentage points above the average net annual interest rate on any warrants or bonds for which they are pledged. Pursuant to Sections 40-24-04 through 40-24-08,

special assessments generally are payable in annual installments, which for most projects may be extended for up to 30 years. Section 40-24-11 requires the city auditor to certify annual installments of assessments to the county auditor for collection with property tax collections.

The following table contains information provided by county auditors regarding the total amount of taxes levied for the 2017 tax year and the total amount of special assessments certified for the 2017 tax year in each of the 10 most populous cities in the state.

City	2016 Population Estimate <sup>1</sup>	2017 Taxes Levied	2017 Special Assessments Certified
Fargo	120,762	\$31,526,029	\$32,081,933
Bismarck	72,417	\$87,839,857	\$18,637,764
Grand Forks	57,339	\$21,863,157	\$7,471,663
Minot	48,743	\$22,615,501	\$1,762,633
West Fargo	34,858	\$13,534,195	\$21,749,834
Williston	26,426	\$4,823,445	\$4,090,212
Dickinson	22,993	\$4,301,844	\$1,805,463
Mandan	21,769	\$5,578,860	\$5,616,020
Jamestown	15,440	\$4,301,844	\$1,805,463
Wahpeton	7,830	\$1,895,963	\$874,263

<sup>1</sup>The 2016 population estimates were derived from the *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2016*, United States Census Bureau, Population Division.

### WARRANTS OR BONDS

After a construction contract for an improvement has been entered and the time has passed for filing protests, the city governing body may issue warrants or improvement bonds on the fund created for the improvement district pursuant to Section 40-24-19. Warrants or bonds are payable from the fund. If the fund has insufficient amounts for payment, the city may issue refunding special assessment warrants or bonds pursuant to Section 40-27-06. Refunding special assessment warrants or bonds may be issued to extend maturities, reduce the rate of interest, equalize taxes to be levied by the city, or consolidate two or more outstanding issues of warrants or bonds. Pursuant to Section 40-22.1-01, a municipality may not issue warrants, bonds, or any other form of indebtedness in anticipation of levy and collection of special assessments for business promotion.

### SPECIAL ASSESSMENTS FOR PROMOTION OF BUSINESS ACTIVITY

Pursuant to Chapter 40-22.1, a city may establish a special assessment district for business promotion which includes all properties that will be benefited by the business improvement project. Following the creation of the district, the city auditor, or other entity designated by the governing body of the municipality, is required to prepare a report regarding the nature, purposes, feasibility, and estimated cost of the proposed improvement. The city governing body is required to declare the necessity of the improvement project by resolution and publish the resolution in the official newspaper of the municipality. The improvement project will be barred from proceeding if protests are filed by owners of one-third or more of the area of property in the district. The provisions of law governing special assessment collection and indebtedness apply to special assessments for business promotion.

### RECREATION SERVICE DISTRICT SPECIAL ASSESSMENTS

A recreation service district may levy special assessments to provide services, including police protection, sewer and water, garbage removal, and public road construction and maintenance. Pursuant to Section 11-28.2-04.1, a recreation service district is deemed to be a "municipality" for purposes of the special assessment provisions under Chapters 40-22 through 40-27.

### WATER RESOURCE DISTRICT SPECIAL ASSESSMENTS

Chapter 61-16.1 governs the administration of special assessments by water resource districts. Pursuant to Section 61-16.1-15, a water resource board may provide for the cost of construction, alteration, repair, operation, and maintenance of a water resource district project through issuance of improvement warrants or with funds raised by special assessments, a general tax levy, issuance of revenue bonds, or a combination of these methods. The water resource district board may assess the cost of the project against parcels of land in proportion to the benefits conferred on each parcel.

## **COUNTY SPECIAL ASSESSMENTS**

For a defined area outside the limits of an incorporated city, the board of county commissioners may initiate a special assessment district and levy special assessments for improvements. Pursuant to Section 11-11-55.1, a county is given all the authority and duties pertaining to special assessments which belong to cities in Chapters 40-22 through 40-28. Whenever action is required of city officials in those chapters, the comparable county officials shall take the action.

## **TOWNSHIP SPECIAL ASSESSMENTS**

Townships may defray expenses of improvements through special assessment districts pursuant to Chapter 58-18. The board of township supervisors may create an improvement district upon petition of 60 percent of the freeholders in a proposed improvement district area. Each improvement district must be of a size and form to include all properties the township board of supervisors believes will be benefited by the improvement project. For purposes of Title 58, the term "freeholder" means the legal title owner of the surface estate in real property.

After a township special improvement district has been created, the board of township supervisors is required to direct a competent engineer to prepare a report on the nature, purpose, and feasibility of the improvement and the probable cost of the work. The board of township supervisors is required to provide 30 days' written notice by first-class mail to each freeholder within the improvement district and publish a notice in a legal newspaper published in the township or, if there is no such newspaper, in the county's official newspaper. The notice must be published at least 10 days before the special meeting at which the engineer's findings will be presented.

The freeholders of the township in attendance at the special meeting may vote on the question of whether to proceed with the improvement project. A project may proceed if approved by 60 percent or more of the votes cast at the meeting or filed with the township clerk within 15 days after the meeting. A freeholder affected by the project is entitled to one vote for each dollar of the proposed special assessment against the freeholder's property within the proposed improvement district. If there is more than one owner of a parcel of property, the votes available for the parcel must be prorated among the owners in accordance with their percentage ownership interests.

Aggrieved freeholders may appeal an assessment against their properties by providing a written notice of appeal to the township clerk. The township is required to schedule a special meeting to hear appeals. An aggrieved freeholder may present reasons to change the freeholder's assessment at the special meeting and the board of township supervisors may increase or diminish any assessment as it deems just.