

USE OF SPECIAL ASSESSMENT IN OTHER STATES

This memorandum provides information regarding the use of special assessments in adjacent states.

MINNESOTA

In Minnesota, statutory provisions relating to special assessments are contained in Minnesota Statutes Chapter 429. Local governing bodies granted authority to levy special assessments include counties, cities, and townships. Improvements to property which may be funded through special assessments, with the exception of certain limitations imposed on counties, include the construction or improvement of streets, sidewalks, gutters, curbs, pedestrian skyway systems, underground pedestrian concourses, highway sound barriers, and retaining walls; the construction or maintenance of storm drains, sewers, waterworks systems, flood control systems, and heating systems; the installation and maintenance of street lights and address markers related to 911 services; the acquisition or improvement of parks and recreational facilities; the planting and maintenance of trees on streets and the construction of public malls or courtyards; the construction and maintenance of gas and electric distribution facilities owned by a municipal gas or electric utility; the abatement of nuisances and the drainage of swamps and marshes; and the improvement, construction, and maintenance of facilities for Internet access or other communications purposes.

The governing body of the municipality initiating the project shall hold a public hearing, following notice and publication, prior to the commencement of a project to be funded with special assessments. Property owners may appeal an assessment to district court by serving notice of the appeal upon the mayor or clerk of the municipality within 30 days after the adoption of the assessment and filing the notice with the district court within 10 days after the notice is served on the municipality. Special assessments may be levied against property owned by a county, city, town, public corporation, school district, or any other political subdivision. Special assessments are collected at the time property taxes are collected on each benefited parcel. Special assessments may be paid in installments over a period not to exceed 30 years.

The governing body of a municipality, by resolution, may defer payment of special assessments against unimproved property. The governing body also may defer payment of special assessments against homestead property if the property is owned by a person 65 years of age or older, a person retired due to a permanent and total disability, or certain military members if the governing body determines the payment of the assessment would constitute a hardship as outlined in an ordinance or resolution adopted by the governing body. The balance of special assessments levied against a property, including the amount of any deferred assessments, is due and payable at the time the property is sold, transferred, or subdivided. The municipality may cancel installments of assessments that have not yet been collected, and refund assessments already paid, if the improvement proposed by the municipality is abandoned or if the improvement is complete and all claims against the special assessment fund have been satisfied. Any remaining assessments not canceled or refunded must be transferred to the general fund of the municipality.

SOUTH DAKOTA

In South Dakota, statutory provisions relating to special assessments are contained in South Dakota Codified Laws Chapter 9-43. Municipalities in South Dakota may levy special assessments to fund the cost of building, repairing, improving, or demolishing any local infrastructure facility. The costs of local improvements may be assessed on the properties adjoining or benefiting from the improvement based on the number of feet fronting or abutting the improvement or on the benefits that will accrue to each lot or tract within the improvement district.

The governing body of the municipality initiating the improvement project shall draft a proposed resolution of necessity for the improvement and schedule a public hearing on the resolution. The notice of hearing and proposed resolution of necessity must be published at least 10 days but not more than 20 days before the hearing. The improvement project may commence following publication and adoption of the resolution of necessity unless a petition opposing the resolution is received containing the signatures of the owners of more than 55 percent of the frontage of the property to be assessed. The petition opposing the resolution may be superseded upon a two-thirds vote by the governing body opposing the petition. If a protest petition containing the required number of signatures is not received, the finance officer of the municipality shall publish a notice of the hearing on the assessment roll and mail a copy of the hearing notice to each owner of property to be assessed. Property owners may object to the proposed assessment at the hearing and the governing body may approve, amend, or reject the assessment roll based on the objections received. A property owner may appeal the governing body's decision on the assessment roll to the circuit court. The appeal must be made within 20 days after publication of the notice confirming the adoption of the special assessment roll.

Special assessments may be levied against property owned by a county, municipality, school district, or the state. Assessments may be paid without interest within 30 days after the assessment roll is approved or paid in interest bearing annual installments for a period not to exceed 40 years. The governing body of the municipality may waive or reduce the special assessments levied against a property if the property consists of an owner-occupied single family dwelling and the head of the household is 65 years of age or older or disabled or if the annual income of the household does not exceed the federal poverty level. A municipality may transfer any funds remaining in its special assessment fund to its general fund after all obligations against the special assessment fund have been discharged.

MONTANA

In Montana, statutory provisions relating to special assessments are contained in Montana Code Annotated, Title 7, Chapter 12. The governing body of a city may levy special assessments against the properties within a special improvement district to fund various costs, including the cost to convert overhead utilities to underground locations; construct or maintain streets, sidewalks, crosswalks, culverts, curbs, sewers, ditches, drains, waterworks, water mains, pipes, hydrants, recreational facilities, public parks, fire protection appliances and structures, levies, retaining walls, and sewers; purchase, install, and maintain alternative energy production facilities; and make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities to extend public utility services. Special assessments also may be levied to pay for costs associated with projects undertaken in a business improvement district, rural improvement district, or fire hydrant maintenance district.

A special improvement district may be initiated by the city governing body upon the receipt of a petition containing the signatures of the owners of the property to be included in the district. The city governing body shall pass a resolution of intention to create the district. Notice of the passed resolution must be published and a copy of the notice must be mailed to each property owner within the proposed district. A property owner may file a written protest against the creation of the district within 15 days after publication of the notice. The city governing body shall review protests submitted within the protest period at the next regular meeting of the city governing body. If written protests are received from property owners whose cumulative assessments will pay for more than 50 percent of the cost of the proposed work, or 75 percent of the cost of the proposed work for sewer projects, the city governing body is barred from proceeding with the project.

The city governing body may spread the costs related to improvements equally among all lots within the special improvement district or assess costs based on a property's assessable area, assessed value, or frontage bordering or abutting the improvement. Special assessments may be paid in full within 30 days from the date the assessment was levied or paid in interest bearing annual installments for a period not to exceed 20 years. Any funds remaining in a special improvement revolving fund after all the special improvement district's outstanding bonds and warrants have been paid may be returned to the owners of the property in the district in direct proportion to the original assessment on each piece of property or transferred to the city's general fund.