

I am vetoing Section 44 in order to eliminate a conflict with Section 87. Section 44 would amend RCW 85.08.290; Section 87 would repeal the same. The procedures set forth in Section 44 are not needed, it refers back to Sections 1 through 19 which do contain the formation procedures.

With the exception of Section 44, which I have vetoed, the remainder of Substitute House Bill No. 150 is approved."

CHAPTER 397

[Engrossed Substitute House Bill No. 379]

LOCAL IMPROVEMENT DISTRICTS—UTILITY LOCAL IMPROVEMENT DISTRICTS—POWERS AND AUTHORITY—ASSESSMENTS

AN ACT Relating to local improvement districts and utility local improvement districts; amending RCW 35.43.040, 35.43.050, 35.44.010, 35.44.020, 35.44.190, and 36.94.280; adding a new chapter to Title 35 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 35.43.040, chapter 7, Laws of 1965 as last amended by section 1, chapter 291, Laws of 1983 and RCW 35.43.040 are each amended to read as follows:

Whenever the public interest or convenience may require, the legislative authority of any city or town may order the whole or any part of any local improvement including but not restricted to those, or any combination thereof, listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to the planting, setting out, cultivating, maintaining, and renewing of shade or ornamental trees and shrubbery thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect special assessments on property specially benefited thereby to pay the whole or any part of the expense thereof, viz:

(1) Alleys, avenues, boulevards, lanes, park drives, parkways, parking facilities, public places, public squares, public streets, their grading, regrading, planking, replanking, paving, repaving, macadamizing, remacadamizing, graveling, regraveling, piling, repiling, capping, recapping, or other improvement; if the management and control of park drives, parkways, and boulevards is vested in a board of park commissioners, the plans and specifications for their improvement must be approved by the board of park commissioners before their adoption;

(2) Auxiliary water systems;

(3) Auditoriums, field houses, gymnasiums, swimming pools, or other recreational ((σ)), playground, museum, cultural, or arts facilities or structures;

(4) Bridges, culverts, and trestles and approaches thereto;

(5) Bulkheads and retaining walls;

(6) Dikes and embankments;

(7) Drains, sewers, and sewer appurtenances which as to trunk sewers shall include as nearly as possible all the territory which can be drained through the trunk sewer and subsewers connected thereto;

(8) Escalators or moving sidewalks together with the expense of operation and maintenance;

(9) Parks and playgrounds;

(10) Sidewalks, curbing, and crosswalks;

(11) Street lighting systems together with the expense of furnishing electrical energy, maintenance, and operation;

(12) Underground utilities transmission lines;

(13) Water mains, hydrants, and appurtenances which as to trunk water mains shall include as nearly as possible all the territory in the zone or district to which water may be distributed from the trunk water mains through lateral service and distribution mains and services;

(14) Fences, culverts, syphons, or coverings or any other feasible safeguards along, in place of, or over open canals or ditches to protect the public from the hazards thereof;

(15) Roadbeds, trackage, signalization, storage facilities for rolling stock, overhead and underground wiring, and any other stationary equipment reasonably necessary for the operation of an electrified public street-car line; ((and))

(16) Systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including passenger, terminal, station parking, and related facilities and properties, and such other facilities as may be necessary for passenger and vehicular access to and from such terminal, station, parking, and related facilities and properties, together with all lands, rights of way, property, equipment, and accessories necessary for such systems and facilities; and

(17) Programs of aquatic plant control, lake or river restoration, or water quality enhancement. Such programs shall identify all the area of any lake or river which will be improved and shall include the adjacent waterfront property specially benefited by such programs of improvements. Assessments may be levied only on waterfront property including any waterfront property owned by the department of natural resources or any other state agency. Notice of an assessment on a private leasehold in public property shall comply with provisions of chapter 79.44 RCW. Programs under this subsection shall extend for a term of not more than five years.

Sec. 2. Section 35.43.050, chapter 7, Laws of 1965 as amended by section 3, chapter 52, Laws of 1967 and RCW 35.43.050 are each amended to read as follows:

When the legislative body of any city or town finds that all of the property within a local improvement district or utility local improvement district will be benefited by the improvements as a whole, a local improvement district or utility local improvement district may include adjoining,

vicinal, or neighboring streets, avenues, and alleys or other improvements even though the improvements thus made ((is)) are not connected or continuous(~~(-PROVIDED, That)~~). The assessment rates may be ascertained on the basis of the special benefit of the improvements as a whole to the properties within the entire local improvement district or utility local improvement district, or on the basis of the benefit of each unit of the improvements to the properties specially benefited by that unit, or the assessment rates may be ascertained by a combination of the two bases. Where no finding is made by the legislative body as to the benefit of the improvements as a whole to all of the property within a local improvement district or utility local improvement district, the cost and expense of each continuous unit of the improvements shall be ascertained separately, as near as may be, and the assessment rates shall be computed on the basis of the cost and expense of each unit. In the event of the initiation of a local improvement district authorized by this section or a utility local improvement district authorized by this section, the legislative body may, in its discretion, eliminate from ((said)) the district any unit of the improvement which is not connected or continuous and may proceed with the balance of the improvement within ((said)) the local improvement district or utility local improvement district, as fully and completely as though ((said)) the eliminated unit had not been included within the improvement district, without the giving of any notices to the property owners remaining within the district, other than such notices as are required by the provisions of this chapter to be given subsequent to such elimination.

Sec. 3. Section 35.44.010, chapter 7, Laws of 1965 as amended by section 9, chapter 52, Laws of 1967 and RCW 35.44.010 are each amended to read as follows:

All property included within the limits of a local improvement district or utility local improvement district shall be considered to be the property specially benefited by the local improvement and shall be the property to be assessed to pay the cost and expense thereof or such part thereof as may be chargeable against the property specially benefited. The cost and expense shall be assessed upon all the property in accordance with the special benefits conferred thereon (~~(in proportion to area and distance back from the marginal line of the public way or area improved)~~).

Sec. 4. Section 35.44.020, chapter 7, Laws of 1965 as last amended by section 8, chapter 116, Laws of 1971 ex. sess. and RCW 35.44.020 are each amended to read as follows:

There shall be included in the cost and expense of every local improvement for assessment against the property in the district created to pay the same, or any part thereof:

(1) The cost of all of the construction or improvement authorized for the district including, but not limited to, that portion of the improvement within the street intersections;

(2) The estimated cost and expense of all engineering and surveying necessary for the improvement done under the supervision of the city or town engineer;

(3) The estimated cost and expense of ascertaining the ownership of the lots or parcels of land included in the assessment district;

(4) The estimated cost and expense of advertising, mailing, and publishing all necessary notices;

(5) The estimated cost and expense of accounting, clerical labor, and of books and blanks extended or used on the part of the city or town clerk and city or town treasurer in connection with the improvement;

(6) All cost of the acquisition of rights of way, property, easements, or other facilities or rights, whether by eminent domain, purchase, gift, or in any other manner (~~PROVIDED, That any of the costs enumerated in this section may be excluded from the cost and expense to be assessed against the property in such local improvement district if the legislative body of such city or town so designates by ordinance at any time and may be paid from any other moneys available therefor;~~);

(7) The cost for legal, financial, and appraisal services and any other expenses incurred by the city or town for the district or in the formation thereof, or by the city or town in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds and the cost of providing for increases in the local improvement guaranty fund, or providing for a separate reserve fund or other security for the payment of principal of and interest on such bonds.

Any of the costs set forth in this section may be excluded from the cost and expense to be assessed against the property in such local improvement district and may be paid from any other moneys available therefor if the legislative body of the city or town so designates by ordinance at any time.

NEW SECTION. Sec. 5. The definitions set forth in this section apply throughout this chapter.

(1) "Local improvement district" means any local improvement district, local utility district, or any other similar special assessment district.

(2) "Municipality" means any city, town, county, metropolitan municipal corporation, or any other municipal corporation or quasi-municipal corporation of the state of Washington authorized to order local improvements, to establish local improvement districts, and to levy special assessments on property specially benefited thereby to pay the expense of the improvements.

(3) "Permissible floor area" means the maximum total floor area, at grade and above and below grade, of a building or other structure that may lawfully be developed on a property.

(4) "Private land use restriction" means any restriction on the use of property imposed by agreement and enforceable by a court of law and that the legislative authority of a municipality determines is useful in measuring

special benefits to a property from an improvement. Such restrictions include but are not limited to easements, covenants, and equitable servitudes that are not mere personal obligations.

(5) "Public land use restriction" means any restriction on the use of property imposed by federal, state, or local laws, regulations, ordinances, or resolutions. Such restrictions include but are not limited to local zoning ordinances and historic preservation statutes.

NEW SECTION. Sec. 6. A municipality may contract with any other municipality, or with the state of Washington, for the following purposes:

(1) To have the acquisition or construction of the whole or any part of an improvement performed by another municipality or by the state of Washington;

(2) To pay, from assessments on property within a local improvement district or from the proceeds of local improvement district bonds, notes or warrants, the whole or any part of the expense of an improvement ordered, constructed, acquired, or owned by another municipality; or

(3) To integrate the planning, financing, construction, acquisition, management, or operation, or any combination thereof, of the improvements of one municipality with the planning, financing, construction, acquisition, management, or operation, or any combination thereof, of the improvements of another municipality on such terms and conditions as may be mutually agreed upon including, but not limited to, the allocation of the costs of the improvements and the allocation of planning, financing, construction, management, operation, or other responsibilities.

NEW SECTION. Sec. 7. (1) As an alternative or in addition to other methods of ascertaining assessments for local improvements, the legislative authority of a municipality may develop and apply a system of classification of properties based upon some or all of the public land use restrictions or private land use restrictions to which such property may be put at the time the assessment roll is confirmed.

(2) The legislative authority of a municipality may classify property into office, retail, residential, public, or any other classifications the legislative authority finds reasonable, and may levy special assessments upon different classes of property at different rates, but in no case may a special assessment exceed the special benefit to a particular property. A municipality also may exempt certain classes of property from assessment if the legislative authority of the municipality determines that properties within such classes will not specially benefit from the improvement.

(3) For each property within a classification, the legislative authority of the municipality may determine the special assessment after consideration of any or all of the following:

(a) Square footage of the property;

(b) Permissible floor area;

(c) Distance from or proximity of access to the local improvement;

(d) Private land use restrictions and public land use restrictions;
(e) Existing facilities on the property at the time the assessment roll is confirmed; and

(f) Any other factor the legislative authority finds to be a reasonable measure of the special benefits to the properties being assessed.

(4) If after the assessment roll is confirmed, the legislative authority of a municipality finds that the lawful uses of any assessed property have changed and that the property no longer falls within its original classification, the legislative authority may, in its discretion, reclassify and reassess such property whether or not the bonds issued to pay any part of such costs remain outstanding. If such reassessment reduces the total outstanding assessments within the local improvement district, the legislative authority shall either reassess all other properties upward in an aggregate amount equal to such reduction, or shall pledge additional money, including money in a reserve fund, to the payment of principal of and interest on such bonds in an amount equal to such reduction.

(5) When the legislative authority of a municipality determines that it will use the alternative or additional method of assessment authorized by this section, it may select and describe the method or methods of assessment in the ordinance ordering a local improvement and creating a local improvement district if such method or methods of assessment have been described in the notice of hearing required under RCW 35.43.150. If the method or methods of assessment are so selected and described in the ordinance ordering a local improvement and creating a local improvement district, the action and decision of the legislative authority as to such method or methods of assessment shall be final and conclusive, and no lawsuit whatsoever may be maintained challenging such method or methods of assessment unless that lawsuit is served and filed no later than thirty days after the date of passage of the ordinance ordering the improvement, and creating the district or, when applicable, no later than thirty days after the expiration of the thirty-day protest period provided in RCW 35.43.180.

NEW SECTION. Sec. 8. For the purpose of securing the payment of the principal of and interest on an issue of local improvement bonds, notes, warrants, or other short-term obligations, the legislative authority of a municipality may create a reserve fund in an amount not exceeding fifteen percent of the principal amount of the bonds, notes, or warrants issued. The cost of a reserve fund may be included in the cost and expense of any local improvement for assessment against the property in the local improvement district to pay the cost, or any part thereof. The reserve fund may be provided for from the proceeds of the bonds, notes, warrants, or other short-term obligations, from special assessment payments, or from any other money legally available therefor.

Sec. 9. Section 35.44.190, chapter 7, Laws of 1965 and RCW 35.44.190 are each amended to read as follows:

Whenever any assessment roll for local improvements has been confirmed by the council, the regularity, validity, and correctness of the proceedings relating to the improvement and to the assessment therefor, including the action of the council upon the assessment roll and the confirmation thereof shall be conclusive in all things upon all parties. They cannot in any manner be contested or questioned in any proceeding by any person unless he filed written objections to the assessment roll in the manner and within the time required by the provisions of this chapter and unless he prosecutes his appeal in the manner and within the time required by the provisions of this chapter.

No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any assessment or the sale of any property to pay an assessment or any certificate of delinquency issued therefor, or the foreclosure of any lien therefor, except that injunction proceedings may be brought to prevent the sale of any real estate upon the ground (1) that the property about to be sold does not appear upon the assessment roll or, (2) that the assessment has been paid.

If federal, local, or state funds become available for a local improvement after the assessment roll has been confirmed by the city legislative authority, the funds may be used to lower the assessments on a uniform basis. Any adjustments to the assessments because of the availability of federal or state funds may be made on the next annual payment.

Sec. 10. Section 28, chapter 72, Laws of 1967 and RCW 36.94.280 are each amended to read as follows:

Whenever any assessment roll for local improvements (~~shall have~~) has been confirmed by the (~~board of county commissioners as herein provided~~) county legislative authority, the regularity, validity and correctness of the proceedings relating to (~~such~~) the improvement and to the assessment therefor, including the action of the (~~board~~) county legislative authority upon (~~such~~) the assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding (~~whatsoever~~) by any person not filing written objections to (~~such~~) the assessment roll in the manner and within the time provided in this chapter, and not appealing from the action of the (~~board of county commissioners~~) county legislative authority in confirming (~~such~~) the assessment roll in the manner and within the time in this chapter provided. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any (~~such~~) assessment, or the sale of any property to pay (~~such~~) an assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: PROVIDED, That this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds:

(1) That the property about to be sold does not appear upon the assessment roll, or

(2) That ~~((said))~~ the assessment has been paid.

If federal, local, or state funds become available for a local improvement after the assessment roll has been confirmed by the county legislative authority, the funds may be used to lower the assessments on a uniform basis. Any adjustments to the assessments because of the availability of federal or state funds may be made on the next annual payment.

NEW SECTION. Sec. 11. Sections 5 through 8 of this act shall constitute a new chapter in Title 35 RCW.

NEW SECTION. Sec. 12. The authority granted by sections 1 through 8 of this act is supplemental and in addition to the authority granted by Title 35 RCW and to any other authority granted to cities, towns, or municipal corporations to levy special assessments.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 23, 1985.

Passed the Senate April 19, 1985.

Approved by the Governor May 20, 1985.

Filed in Office of Secretary of State May 20, 1985.

CHAPTER 398

[Substitute House Bill No. 606]

LAKE MANAGEMENT DISTRICTS

AN ACT Relating to lake improvements; amending RCW 90.24.010 and 90.24.040; adding a new chapter to Title 36 RCW; adding a new section to chapter 35.21 RCW; repealing RCW 90.24.065; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the environmental, recreational, and aesthetic values of many of the state's lakes are threatened by eutrophication and other deterioration and that existing governmental authorities are unable to adequately improve and maintain the quality of the state's lakes.

It is the purpose of this chapter to establish a governmental mechanism by which property owners can embark on a program of lake improvement and maintenance for their and the general public's benefit, health, and welfare. Public property, including state property, shall be considered the same as private property in this chapter, except liens for special assessments shall not extend to public property. Lake bottom property shall not be considered