SENATE FLOOR VERSION
March 1, 2011

SENATE BILL NO. 172 By: Ballenger of the Senate

and

Derby of the House

An Act relating to municipal street improvements procedures; amending 11 O.S. 2001, Sections 36-202, 36-203, 36-204, 36-205, 36-207, 36-208, 36-209, 36-211, 36-212, 36-213, 36-214, and 36-223, which relate to street improvement procedures; modifying petition content and procedures; extending certain time limits for challenging certain actions; modifying procedures for authorizing certain improvements; deleting obsolete requirements; extending certain notification period; modifying certain notification requirements; clarifying assessment procedures; providing an assessment calculation; repealing 11 O.S. 2001, Section 36-206, which relates to protest hearings; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 2001, Section 36-202, is amended to read as follows:

Section 36-202. A. The owners of more than one-half, in area, of the land liable to assessment for any improvement may petition the municipal governing body for the improvement of any street, alley, lane or avenue, or part thereof, not less than one block in length. ~~The petition shall be filed with the municipal clerk.~~

B. The petition shall state in bold, capitalized letters at the top of the page that ~~the cost of the proposed improvements shall be assessed against the property benefited by the improvements. The petition shall~~ those who affix their signatures to the petition agree to:

1. The cost of the proposed improvements being assessed against their property; and

2. Be liable and assessed for the cost of improvements for those landowners in the proposed street improvement area who do not sign the petition.

C. The petition shall also:

1. Describe the character of the improvement desired and the width of the improvement;

2. Indicate the materials preferred by the petitioners for the improvement; and

3. Show that the petitioners are the record owners of the land liable to assessment.

D. The petition shall be filed with the municipal clerk.

~~B.~~ E. The governing body shall determine the sufficiency of the petition and its finding shall be conclusive and binding for all purposes and against all persons. The governing body may conduct hearings on the sufficiency of the petition and compel the attendance of witnesses under oath. No action or suit to question the findings of the governing body on the sufficiency of the

petition may be commenced later than ~~fifteen (15)~~ thirty (30) days after such finding.

~~C.~~ F. Upon making a satisfactory determination of the sufficiency of the petition, the governing body shall direct the engineer to prepare preliminary plans and estimates, as provided in Section ~~36-203~~ 36-204 of this title, and proceed with the improvement in the manner provided by Sections 36-201 through 36-226 of this title.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 36-203, is amended to read as follows:

Section 36-203. A. Whenever the municipal governing body deems it necessary to grade, pave, construct, macadamize, chat or gravel, curb, gutter, drain or otherwise improve any street, alley, avenue, lane or any part thereof which shall have been heretofore paved, within the limits of the municipality, it shall direct, by resolution, ~~the engineer to prepare preliminary plans and an estimate of cost. The resolution shall require the engineer to prepare and submit to the municipal clerk the following:~~

~~1. Preliminary plans, showing a typical section of the contemplated improvement, the type or types of material, and approximate thicknesses and widths;~~

~~2. Assessment plat, showing the area to be assessed; and~~

~~3. Preliminary estimate of the total cost of the improvement.~~

~~The cost estimate may be in a lump sum or by unit prices, as the engineer may deem most desirable, for the improvement complete in place. The estimate shall also include the cost of advertising, appraising, engineering, and such other expense as in the judgment of the engineer is necessary or essential to the completion of the work of improvement and the payment of the cost thereof. The engineering fees shall not exceed five percent (5%) of the contract price of the improvement. If the resolution provides for one or more types of construction, the engineer shall separately estimate the cost of each type of construction. If more than one street, avenue, alley, lane, public place, or part thereof is included in such resolution, separate estimates as to each shall be made~~ the municipal clerk to obtain a signed and notarized statement from landowners to be benefitted by the improvement authorizing such assessment and notifying them that by signing the statement, they will be assessed and liable for the improvements benefitting their land and the land of those declining to sign the statement.

B. Upon making a satisfactory determination of the sufficiency of the authorizations, the municipal governing body shall direct the engineer to prepare preliminary plans and estimates, as provided in Section 36-204 of this title, and proceed with the improvement in the manner provided by Sections 36-201 through 36-226 of this title.

SECTION 3. AMENDATORY 11 O.S. 2001, Section 36-204, is amended to read as follows:

Section 36-204. A. The municipal governing body shall direct, by resolution, the engineer to prepare preliminary plans and an estimate of cost. The resolution shall require the engineer to prepare and submit to the municipal clerk the following:

1. Preliminary plans, showing a typical section of the contemplated improvement, the type or types of material, and approximate thicknesses and widths;

2. Assessment plat, showing landowners to be assessed, and

3. Preliminary estimate of the total cost of the improvement. The cost estimate may be in a lump sum or by unit prices, as the engineer may deem most desirable, for the improvement complete in place. The estimate shall also include the cost of advertising, appraising, engineering, and such other expense as in the judgment of the engineer is necessary or essential to the completion of the work improvement and the payment of the cost thereof. The engineering fees shall not exceed five percent (5%) of the contract price of the improvement. If the resolution provides for one or more types of construction, the engineer shall separately estimate the cost of each type of construction. If more than one street, avenue, alley, lane, public place, or part thereof is included in such resolution, separate estimates to each shall be made.

B. Upon the filing of the plans, assessment plat, and preliminary estimate of the cost of the improvements with the clerk, the governing body shall examine them and, if found satisfactory,

shall adopt and approve them by resolution, and declare such work of improvement necessary to be done. The resolution shall~~:~~

~~1. Contain~~ contain the time and place that the governing body will hold a hearing on the proposed improvement~~; and~~

~~2. Direct the municipal clerk to give notice as required in Section 36-205 of this title.~~

~~The resolution shall further provide that:~~

~~1. Any person, firm, corporation, administrator or guardian holding title to the lands liable to assessment may file, within fifteen (15) days after the last publication of notice, with the clerk a protest in writing against the improvement of the street, avenue, lane, alley or public place, or part thereof; and~~

~~2. The municipality may proceed to cause the improvements to be made, contract therefor and levy assessments for the payment thereof, if the record owners of more than one-half, in area, of the land liable to be assessed do not file their written protest as provided in this section~~.

SECTION 4. AMENDATORY 11 O.S. 2001, Section 36-205, is amended to read as follows:

Section 36-205. A. The resolution of necessity shall be published in six (6) consecutive issues of a daily newspaper, or two (2) consecutive issues of a weekly newspaper, which newspaper shall be of general circulation in the municipality.

B. Not less than ~~ten (10~~) fourteen (14) days before the date of the first hearing on the proposed improvement, as set forth in the resolution of necessity, the clerk shall notify each listed owner of lots or tracts of land within the district as shown by the current year's tax rolls in the county treasurer's office in the following manner:

~~1.~~ By mailing a ~~postal card~~ first class, certified mail, notice and copy of the resolution directly to the listed owner at ~~his~~ the last-known address of the owner as shown by the tax roll, notifying the owner of the initiation of proceedings and advising ~~him~~ the owner that ~~his~~ if the owner signed the petition or the authorization, if applicable, the property will be liable to assessment ~~and referring him to the newspaper and issues thereof in which the resolution is or will be published for further particulars~~; or if the owner did not sign the petition or authorization, if applicable, the property will not be liable to assessment

~~2. In lieu of mailing the postal card, by mailing to each of the listed owners a copy of the newspaper publication, which mailing shall not be less than ten (10) days before the first hearing. If several tracts appear to be owned by the same person, all may be included in the same notification~~.

C. Proof of the notification given shall be made by certificate of the clerk which shall be filed in ~~his~~ the office of the clerk.

~~However, the failure of any one or more of the listed owners to receive the notification shall not invalidate any of the proceedings hereunder.~~

SECTION 5. AMENDATORY 11 O.S. 2001, Section 36-207, is amended to read as follows:

Section 36-207. Any property owner, or other person interested in the proposed improvement, shall have the right to institute an action in the district court in the county in which situs of the municipality is located, at any time not later than ~~fifteen (15)~~ thirty (30) days after the action of the municipal governing body in adopting and approving the plans, profiles, specifications, estimates and assessment plat, to contest such action. Any suit instituted after the expiration of the ~~fifteen (15)~~ thirty (30) days shall not be maintained to question the plans, profiles, specifications, estimates or assessment plat, and the property owners liable for assessment shall be deemed to have waived all objections thereto.

SECTION 6. AMENDATORY 11 O.S. 2001, Section 36-208, is amended to read as follows:

Section 36-208. A. ~~After the expiration of the time for filing protests against the proposed improvement, or if insufficient protests have been filed, the~~ The municipal governing body shall adopt a resolution ~~declaring that no protests have been filed, or if protests have been filed, that the protests were insufficient, and~~

expressing the determination of the governing body to proceed with the improvement. ~~The resolution shall require the engineer to forthwith submit and file detailed plans, profiles, specifications and estimates of probable cost~~.

B. ~~After the engineer has filed the detailed plans and estimates, the~~ The governing body shall examine ~~them~~ and, if found satisfactory, shall adopt and approve the detailed plans and estimates submitted by the engineer and, if found satisfactory, shall adopt and approve them by resolution, and order the improvement. The resolution ordering the improvement shall be adopted not later than one (1) year after the adoption of the resolution of necessity or after the filing of a petition by property owners for street improvements. The resolution shall:

1. State that the improvement will be constructed in accordance with the final detailed plans, specifications and profiles of the engineer;

2. Set forth the material to be used;

3. Set forth any reasonable terms and conditions that the governing body shall deem proper to impose with reference to the letting of the contract and the provisions thereof;

4. Require the contractor to execute to the municipality a good and sufficient bond, in the amount stated in the resolution, conditioned for the full and faithful execution of the work and the performance of the contract for the protection of the municipality

and all property owners interested, against any loss or damage by reason of the negligence of the contractor, or improper execution of the work, or for the use of inferior material;

5. Require the contractor to execute a bond, in the amount stated in the resolution, for the maintenance of the improvements against any failure due to defective workmanship or materials for a period of not less than three (3) years from the time of its completion and acceptance. Such maintenance bond shall not be required where the street improvements consist in chatting or graveling;

6. Require the execution of a good and sufficient bond for payment of labor and material in accordance with applicable state law; and

7. Direct the municipal clerk, after the filing of the final plans, profiles, specifications and estimates, to advertise for sealed proposals for furnishing the materials and performing the work necessary in making the improvement.

SECTION 7. AMENDATORY 11 O.S. 2001, Section 36-209, is amended to read as follows:

Section 36-209. A. The notice of the municipality's advertisement for proposals shall set forth:

1. The streets, avenues, or other public places to be improved;

2. The kind of improvements proposed;

3. That bonds will be required to be executed by the contractor as specified in the resolution ordering the improvement;

4. A reference to the plans and specifications;

5. The time and place for filing sealed proposals; and

6. The time and place that the governing body will consider the proposals.

The notice shall be published in ten (10) consecutive issues of a daily newspaper, or two (2) consecutive issues of a weekly newspaper, which is of general circulation in the municipality.

B. No action or suit to question the adoption of the resolution ordering the improvement, or its sufficiency, or the final detailed estimates of the engineer, shall be commenced later than ~~fifteen (15)~~ thirty (30) days after the first publication of the notice for proposals.

SECTION 8. AMENDATORY 11 O.S. 2001, Section 36-211, is amended to read as follows:

Section 36-211. A. After the contract has been let and the grading and underground connections have been made, the engineer shall prepare and file with the municipal clerk a final, complete and accurate statement of the cost of the entire improvement, including engineering, appraising, advertising and other expenses incurred or to be incurred by the municipality incident to the improvement, together with any and all additions to the contract price of the improvements and the cost of all water, gas, sewer or

other utility connections directly chargeable against the abutting property.

B. The engineer or municipal clerk shall prepare a roster of the owners of the lots and parcels of land which are to be ~~included in~~ liable for the ~~improvement district~~ assessment. The roster shall contain, according to the record title thereof:

1. The names of the last known owners of the property to be assessed, as shown by the current year's tax rolls in the county treasurer's office, or as shown by the certificate of a bonded abstractor; ~~or in case the name of the owner is not known, a statement to that effect;~~ and

2. A description of each tract or parcel of land to be assessed.

~~Any error in the description of any lot or tract of land liable for assessment shall not invalidate the assessment or lien thereof.~~

C. The governing body shall adopt and approve the final statement of cost, and the roster designating the lots and parcels of land liable for assessment, if they are found to be correct.

SECTION 9. AMENDATORY 11 O.S. 2001, Section 36-212, is amended to read as follows:

Section 36-212. A. After the approval of the final statement of cost and the roster designating the property ~~in the improvement district~~ to be assessed, the governing body by resolution shall appoint a board of appraisers to appraise and apportion the benefits

to the several lots and tracts of land described in the roster. The board of appraisers shall consist of three (3) disinterested freeholders of the municipality who are not owners of property to be assessed for the improvement.

B. The appraisers shall take and subscribe an oath to make a true and impartial appraisement and apportionment. The appraisers may be paid for their services. The act of a majority of the appraisers shall have like force and effect as the act of all.

C. Within five (5) days after being notified of their appointment, the appraisers shall proceed to appraise and apportion the benefits to such lots and tracts of land as have been designated by the governing body. The cost of the improvement shall be apportioned among the lots and subdivisions of each quarter block, as provided in Section 36-213 of this title, according to the ownership thereof as it appears on the roster and according to the benefits to be assessed to each lot or parcel. The appraisers shall prepare and file an assessment roll containing the amount of the apportionment and assessment of each tract or parcel of land listed on the roster with the municipal clerk within ten (10) days after being notified of their appointment.

D. ~~The~~ No action or suit to question the determination by the board of appraisers, as confirmed by the governing body, of the property to be assessed and of the amount of benefits shall be ~~conclusive upon the owners of the property assessed and shall not be~~

~~subject to review by any court~~ commenced later than thirty (30) days after confirmation by the governing body.

SECTION 10. AMENDATORY 11 O.S. 2001, Section 36-213, is amended to read as follows:

Section 36-213. A. For the purpose of determining the area of assessment, a block shall be deemed to be the area bounded on all sides by streets and avenues, or municipal limits, irrespective of the designation thereof. The lots, pieces or parcels of land fronting or abutting upon any improvement shall be chargeable with the cost thereof to the center of the block where the abutting way is on the exterior of the block.

B. Each quarter block shall be charged with its due proportion of the cost of improving both the front and side streets on which the block abuts, together with the areas formed by street intersections and alley crossings, except such portions of street intersections and alley crossings as may be chargeable to railway companies. Each quarter block shall bear:

1. Its due proportion of the cost of paving, curbing, and guttering the same;

2. The cost of grading in proportion to the cost of grading the entire street being improved; and

3. The proportionate cost for construction of catch basins, manholes, inlet and drainage pipes, sewers and utility connections

in proportion to the cost of the entire area of the improvement drained.

The board of appraisers shall determine the amount of benefits to each quarter block on account of the grading thereof and the installation and construction of necessary drainage therefor.

C. When triangular or other irregularly shaped lots or tracts are to be assessed for an improvement, the cost of the improvement in excess of the benefits accruing to the lots shall be assessed against and borne by the municipality.

D. If the improvement is made in an alley or other public way in the center of the block, the assessment shall be made upon the property abutting the alley to the exterior of the block. In case of an alley not in the center of the block, or if more than one alley is improved in the block, then the assessment shall be made against the property which fronts and abuts the alley according to the area specially benefited by the improvement as the board of appraisers shall determine and as confirmed by the governing body.

E. If any of the property abutting upon an improvement shall not be a part of a block, or shall be a part of a block which is not square or rectangular in shape or shall be a part of a block which is not uniformly platted or subdivided, the governing body shall include such property in quarter block districts as nearly as practicable for the purpose of appraisement and assessment, and it shall determine the area of the property benefited by the

improvement and the depth to which the property shall be assessed. In such cases the property shall be subject to assessment according to benefits as determined by the board of appraisers and as confirmed by the governing body and irrespective of whether or not the property immediately abuts upon the improvement. All such property within six hundred (600) feet of the improvement shall be deemed to be abutting thereon for the purposes of assessment.

F. If a fractional part of a lot, parcel, or tract of land is within an assessment area, the benefit shall be computed for the fractional part; but the entire lot, parcel or tract of land under the same ownership of which the fractional part is a part shall be subject to assessment for such benefit.

G. In improvement areas where the petitioners or those signing authorizations agreed to be liable and assessed for the cost of the improvements of those landowners who did not sign the petition or the authorization, the cost of the assessments shall be divided equally among those landowners who agreed to pay.

SECTION 11. AMENDATORY 11 O.S. 2001, Section 36-214, is amended to read as follows:

Section 36-214. A. When the assessment roll has been filed, the governing body shall set a time for holding a hearing on any complaints or objections that may be made concerning the apportionment as to any of the lots or tracts of land.

B. Notice of the hearing shall be published in five (5) consecutive issues of a daily newspaper, or two (2) consecutive issues of a weekly newspaper, which is of general circulation in the municipality. The date fixed for the hearing shall be not less than five (5) nor more than ten (10) days from the date of the last publication.

Not less than ~~ten (10)~~ fourteen (14) days before the hearing, the municipal clerk shall also notify each listed owner of property chargeable with the cost of the improvement at ~~his~~ the address, as shown by the current year's tax rolls in the county treasurer's office, or as shown by certificate of a bonded abstractor, ~~in the following manner:~~

~~1. By~~ by mailing ~~a postal card~~, first class, certified mail, a notice directly to the owner, notifying ~~him~~ the owner of the facts contained in subsection C of this section, and ~~referring him to the newspaper and issues thereof in which the notice is or will be published; or~~ a copy of the notice to be published.

~~2. In lieu of mailing the postal card, by mailing to each of the listed owners a copy of the newspaper publication, which mailing shall be not less than ten (10) days before the first hearing. If several tracts appear to be owned by the same person, all may be included in the same notification.~~

C. The notice by publication and by mail shall state:

1. That the assessment roll is on file in the municipal clerk's office;

2. The date the assessment roll was filed; and

3. The time and place that the governing body will hear and consider any objections.

D. Proof of the notification given shall be made by certificate of the clerk which shall be filed in ~~his~~ the office of the clerk. ~~However, the failure of any one or more of the listed owners to receive the notification shall not invalidate any of the proceedings hereunder.~~

SECTION 12. AMENDATORY 11 O.S. 2001, Section 36-223, is amended to read as follows:

Section 36-223. No suit may be sustained to set aside any assessment, nor to contest the area of assessment, nor to enjoin the municipal governing body from levying or collecting any assessment, or installment thereof, or interest or penalty thereon, or issuing the bonds, or providing for their payment, or contesting the validity thereof on any ground unless such suit shall be commenced not more than ~~fifteen (15)~~ thirty (30) days after the publication of the ordinance levying assessments. After the ~~fifteen day~~ thirty-day period has expired, or after the work has been completed and accepted by the municipality, a suit may be brought only for the failure of the governing body to adopt and publish the resolution declaring the necessity for the improvements, as provided in

~~Sections 36-204 and~~ Section 36-205 of this title, or for the failure to give notice of the hearing on the assessment roll, as provided in Section 36-214 of this title. If any special assessment shall be found to be invalid or insufficient, in whole or in part, for any reason whatever, the governing body at any time, in the manner provided for levying an original assessment, may proceed to cause a new assessment to be made and levied which shall have like force and effect as an original assessment.

SECTION 13. REPEALER 11 O.S. 2001, Section 36-206, is hereby repealed.

SECTION 14. This act shall become effective November 1, 2011.

COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 2-28-11 - DO PASS, As Coauthored.