

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 172

By: Ballenger

4
5
6 AS INTRODUCED

7 An Act relating to municipal street improvements
8 procedures; amending 11 O.S. 2001, Sections 36-202,
9 36-203, 36-204, 36-205, 36-207, 36-208, 36-209, 36-
10 211, 36-212, 36-213, 36-214, and 36-223, which relate
11 to street improvement procedures; modifying petition
12 content and procedures; extending certain time limits
13 for challenging certain actions; modifying procedures
14 for authorizing certain improvements; deleting
15 obsolete requirements; extending certain notification
16 period; modifying certain notification requirements;
17 clarifying assessment procedures; providing an
18 assessment calculation; repealing 11 O.S. 2001,
19 Section 36-206, which relates to protest hearings;
20 and providing an effective date.

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

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

24 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.~~

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

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

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

11 C. The petition shall also:

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

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

7 ~~The resolution shall further provide that:~~

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

17 2. Set forth the material to be used;

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

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

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

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

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

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

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

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

- 22 1. The streets, avenues, or other public places to be improved;
- 23 2. The kind of improvements proposed;

24

- 1 3. That bonds will be required to be executed by the contractor
2 as specified in the resolution ordering the improvement;
- 3 4. A reference to the plans and specifications;
- 4 5. The time and place for filing sealed proposals; and
- 5 6. The time and place that the governing body will consider the
6 proposals.

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

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

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

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

1 other utility connections directly chargeable against the abutting
2 property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

23 C. The notice by publication and by mail shall state:
24

- 1 1. That the assessment roll is on file in the municipal clerk's
- 2 office;
- 3 2. The date the assessment roll was filed; and
- 4 3. The time and place that the governing body will hear and
- 5 consider any objections.

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

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

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

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

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

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

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