

AN ACT

ENTITLED, An Act to revise procedures and requirements relating to special assessments and the financing of local improvements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 9-43-1 be repealed.

Section 2. That §§ 9-43-5 to 9-43- 41, inclusive, §§ 9-43-42 to 9-43-53, inclusive, and §§ 9-43-54 to 9-43-74, inclusive, be repealed.

Section 3. For purposes of sections 3 to 67, inclusive, of this Act, the term, local improvement, means the process of building, altering, repairing, improving, or demolishing any local infrastructure facility, including any structure, building, or other improvement of any kind to real property, the cost of which is payable from taxes or special assessments.

Section 4. Any municipality may make assessments for local improvements on property adjoining or benefiting from the improvements, collect the assessments in the manner provided by law, and fix, determine, and collect penalties for nonpayment of any special assessments. Any municipality may construct and finance combined improvements if the benefits of each improvement will accrue to the same lots and tracts of land within the municipality. Any municipality may accept and consider petitions by owners of property within the municipality for local improvements to be specially assessed against the properties benefiting from the improvement.

Section 5. The entire cost of a local improvement or any part of the improvement may be paid out of the funds of the municipality not otherwise appropriated, paid by funds received through any authorized financing mechanism, or the governing body may issue general obligation bonds in accordance with the provisions of chapter 6-8B.

Section 6. After investigation by the governing body to determine the amount of benefit from construction of the local improvement to the lots and tracts fronting or abutting the improvement,

the amount to be assessed against each lot for any local improvement for which special assessments are to be levied may be determined by dividing the total cost of the improvement by the number of feet fronting or abutting the improvement, and the quotient may be assessed per front foot upon the property fronting or abutting the improvement. If any of the property assessed is outside of municipal boundaries, the amount levied and assessed may not be collected unless the property has been annexed into the municipality.

Section 7. In lieu of the method prescribed in section 6 of this Act, the governing body may provide by resolution that the costs of the local improvement shall be assessed against all lots and tracts according to the benefits determined by the governing body to accrue to each lot and tract from the construction of the improvement. In such event the governing body shall make an investigation and shall determine the amount in which each lot and tract will be specially benefitted by the construction of the improvement and shall assess against each lot and tract the amount, not exceeding the special benefit, as is necessary to pay its just portion of the total cost of the work to be assessed.

Section 8. The total benefit of the local improvement may not be deemed to be less than the total cost of the improvement, including the contract price and all the engineering, inspection, publication, fiscal, legal, and other expenses incidental to the improvement.

Section 9. If the governing body deems it necessary that a local improvement to be financed in total or in part by special assessment be constructed or maintained, it shall cause plans and specifications showing the location, arrangement, form, size, and materials to be used in the construction to be prepared by the city engineer or other competent person. The plans and specifications shall be filed in the office of the finance officer and available for examination by any interested party.

Section 10. If the governing body deems it necessary that a local improvement to be financed in

total or in part by special assessment be constructed or maintained, and after plans and specifications have been filed with the finance officer, the governing body shall draft a proposed resolution of necessity for the improvement and shall schedule a public hearing on the resolution.

The proposed resolution of necessity shall include the general nature of the proposed improvement, the material to be used or materials from which a choice may be made, an estimate of the total cost or cost per linear foot, a description of the classes of lots to be assessed and of the method of apportioning the benefits to the lots.

If it is deemed expedient for the municipality to assume and pay any portion of the cost of the improvement, the proposed resolution may so provide, or the portion to be assumed may be provided by a subsequent resolution.

The proposed resolution may provide that the municipality will pay any definite, specified portion or all of the cost of the improvements in street and alley intersections.

The proposed resolution may provide that the municipality will pay any definite, specified portion or all of the cost of improvements fronting or abutting on the side of a corner lot, or it may provide that that portion of the cost may be spread as an area tax on the properties benefitting from the improvement.

The proposed resolution of necessity shall state that details, plans, and specifications may be reviewed at the finance office during regular office hours.

Multiple improvements may be embraced by one resolution of necessity if the general nature of each improvement is stated.

Section 11. The notice of hearing on the proposed resolution of necessity shall contain the time and place of the hearing and shall state that the governing body will consider any objections to the proposed resolution by owners of the property liable to be assessed. Notice of hearing on the proposed resolution of necessity shall be published once, not less than ten nor more than twenty days

before the hearing on the resolution of necessity.

Section 12. In addition to the published notice, the governing body, not less than ten nor more than twenty days before the hearing on the adoption of the proposed resolution of necessity, shall cause personal notice to be mailed by first class or certified mail to each person owning property liable to be assessed for the improvement, as shown by records kept by the director of equalization. The mailed notice shall contain a copy of the notice of hearing and the proposed resolution of necessity.

Section 13. At the time and place of the hearing required by section 10 of this Act, the governing body shall consider any objections to the proposed resolution and may adopt the resolution, with or without amendment. No amendment may be made affecting property of any class not included in the original proposed resolution unless the owner of that property has been given the notice and opportunity to be heard as provided by sections 10 to 12, inclusive, of this Act.

Section 14. Twenty days after publication of the adopted resolution of necessity, unless the referendum is invoked or unless a written protest is filed with the finance officer signed by the owners of more than fifty-five percent of the frontage of the property to be assessed, the governing body may cause the local improvement to be made, may contract for the improvement, and may levy and collect special assessments as provided in sections 3 to 67, inclusive, of this Act.

Section 15. At any time after the execution of any contract for any local improvement for which special assessments are to be levied, the governing body may cause to be made and filed in the office of the finance officer an assessment roll showing:

- (1) The name of the owner of each lot to be assessed as shown by the assessment roll of the county director of equalization;
- (2) The legal description of each parcel of land to be assessed. The division by deeds of platted lots shall be recognized. The legal description of lands included in the assessment

roll shall be taken as of the date of the adoption of the resolution of necessity;

(3) The amount assessed against each lot.

Section 16. Wherever the term, lot, appears in sections 3 to 67, inclusive, of this Act, it shall be construed to include tracts or other parcels of land.

Section 17. If the assessment is payable in installments, the special assessment roll shall specify the number of installments, the rate of interest that deferred installments shall bear, that the whole assessment or any installment may be paid at any time, and that all installments paid before their respective due dates are deemed paid in inverse order of their due dates.

Section 18. Upon the filing of the assessment roll with the finance officer, the governing body shall fix a time and place for hearing on the assessment roll. The finance officer shall publish a notice of the time and place of hearing in the official newspaper not less than ten nor more than twenty days before the date set for the hearing. The notice shall, in general terms, describe the improvement for which the special assessment is levied, the time and place of the hearing, and that the roll will be open for public inspection at the office of the finance officer and shall refer to the special assessment roll for further particulars.

In addition to the publication of the notice of hearing, the finance officer shall mail a copy of the notice, by first class or certified mail, addressed to the owner or owners of any property to be assessed for the improvement at the address shown by the records of the director of equalization. The mailing may not be less than ten nor more than twenty days before the date set for the hearing.

Section 19. At the time and place fixed for the hearing, the governing body shall meet to consider the assessment roll and hear any objections. At the hearing, the governing body may approve, equalize, amend, or reject the assessment roll.

Section 20. If the governing body rejects the assessment roll, a new one may be made and filed, and notice and hearing shall be held as provided in section 18 of this Act.

Section 21. If the governing body equalizes or amends the assessment roll, a list of all items of assessment changed or amended shall be published and notice and hearing shall be held as provided in section 18 of this Act.

Section 22. After any corrections in the assessment roll have been made, the governing body by resolution shall approve and levy the assessment, describing the assessment and the local improvement, and providing the dates of the official approval of the assessment roll.

Section 23. The resolution approving the assessment roll shall also state under which plan the assessment and installments thereof shall be paid as provided by section 30 of this Act.

Section 24. The decision of a municipal governing body upon a special assessment roll may be appealed to circuit court. The appeal shall be made within twenty days after publication of a notice that the resolution confirming the special assessment roll has been adopted by filing written notice of the appeal with the municipal finance officer and the clerk of the circuit court in the county in which the real property is situated. The notice of appeal shall describe the property and set forth the objections of the appellant to the special assessment.

Section 25. Each item of assessment shall be numbered consecutively by the finance officer without regard to date, character of local improvement, or description of property. No number may be duplicated.

Section 26. The finance officer shall prepare a special record which shall contain the following:

- (1) A record of all special assessments;
- (2) The consecutive number of the item;
- (3) The date the assessment is due;
- (4) The name of the property owner as provided by the director of equalization;
- (5) The legal description of the property;
- (6) The amount assessed against each lot;

(7) The character of the improvement for which the assessment is made; and

(8) The date of payment of each assessment or installment that is paid to the municipality.

The finance officer shall include in the special record a suitable index to the real property against which special assessments have been levied. The finance officer may destroy any record as provided by chapter 1-27.

Section 27. The municipal finance officer shall immediately mail to the owners of each lot, parcel, or piece of land as shown by the special assessment roll, a notice specifying the amount of the assessment, the number of installments, the date of the approval of the assessment roll, and a statement that any number of the installments may be paid without interest at the office of the finance officer within thirty days from the date of approval of the roll, after which the unpaid balance will draw interest at the rate fixed by the governing body from the date of the approval of the assessment roll.

Section 28. Any special assessment lawfully levied upon real property assessed pursuant to sections 3 to 67 of this Act, except land that is used for agricultural purposes as defined in § 10-6-31, is a continuing lien on the property as against all persons except the United States and this state. The lien shall continue for fifteen years from the date of the due date of the last installment.

Section 29. A municipality may waive or reduce special assessments levied against owner-occupied single family dwellings if the head of the household is sixty-five years of age or older, or is disabled, or if the annual household income does not exceed the federal poverty level as updated annually on the Department of Social Services website. The terms used in this section are defined in § 10-18A-1.

Section 30. All special assessments are payable under Plan One or Plan Two.

Plan One--Collection by county treasurer.

Plan Two--Collection by municipal finance officer.

Before any contract is let or before bonds are issued for any local improvement for which special assessments are to be levied, the governing body shall provide by resolution or ordinance whether the assessments and installments are payable under Plan One or under Plan Two. The resolution or ordinance may provide for the assessment to be divided into any number of annual installments not exceeding forty.

Section 31. The installments of each assessment under Plan One or Plan Two are due and payable, one on January first following the date of approval of the assessment roll, and one on January first of each succeeding year until the entire assessment is paid. The governing body shall fix the interest rate to be borne by unpaid installments.

Section 32. Any assessment or installment under Plan One or Plan Two may be paid without interest to the municipal finance officer at any time within thirty days after the approval of the assessment roll. Thereafter, and before the due date of the first installment, the entire assessment remaining, or any number of installments, plus interest from the approval date to the date of payment may be paid to the municipal finance officer. After the due date of the first installment, if the installments that are due together with interest have been paid, any of the remaining installments not yet due may be paid without additional interest to the municipal finance officer. All installments paid before their respective due dates shall be paid in inverse order of their due dates.

Section 33. Under Plan One, the assessment roll shall be delivered to the county auditor not later than November first next following the date of approval or at the expiration of the thirty-day period for prepayment without interest, whichever is later. Before delivering the assessment roll to the county auditor, the municipal finance officer shall cancel in inverse order of their due dates all installments of any assessment previously paid. After delivery of the assessment role to the county auditor, the municipal finance officer shall promptly notify the county auditor of all installments of assessments paid to the finance officer, and the auditor shall cancel the installments in inverse order

of their due dates upon the assessment roll.

Section 34. Under Plan Two, the finance officer shall deliver no later than November first to the county auditor of the county in which the property assessed is located, all special assessments remaining unpaid that have become delinquent on or before October first. The finance officer shall certify to the county auditor the original amount of the assessment or installment, the amount of accrued interest of the assessment, the name of the property owner as provided by the director of equalization, the character of the improvement for which the assessment was made, and the legal description of the property. The county auditor shall include the delinquent installment and accrued interest in the following year at the time the real property tax is paid and shall certify the installment and interest, together with the general taxes, to the county treasurer for collection in accordance with chapter 10-17.

Section 35. No installment under Plan One may be paid to the municipal finance officer on or after January first after certification to the county auditor.

Section 36. The county auditor shall include each installment under Plan One, unless advised by the finance officer of the municipality of the prior payment, in the taxes collectible in the year in which the installment is due, upon each parcel of land assessed, including interest upon that installment and all subsequent unpaid installments, at the rate fixed by the governing body. The county auditor shall certify the installment and interest, together with general taxes, to the county treasurer for collection in accordance with chapter 10-17.

Section 37. The first installment under Plan One or Plan Two shall include interest from the date of approval of the assessment roll with the finance officer of the municipality to May first of the year in which the first installment is due. Each subsequent installment shall include one year's interest. Each of the installments, including interest as provided above, becomes delinquent on May first of the year in which the installment becomes due and shall have interest and penalty added each month

at the same rate as provided in § 10-21-23 for delinquent real estate taxes.

Section 38. The amount owing by any county, municipality, school district, or the state on account of assessments under Plan One or Plan Two against property within the municipality is payable by the treasurer of the governmental subdivision affected and shall be paid in like installments and with like interest and penalty as provided by law for other assessable real property.

Section 39. All proceeds of special assessments under Plan One or delinquent Plan Two shall be paid to the finance officer of the municipality with the proceeds of other taxes.

Section 40. If the combined taxes and assessment installments under Plan One or delinquent Plan Two are not paid, the parcel may be sold for all such taxes and assessments in accordance with chapter 10-23. There may be no separate sale as provided in § 10-23-1 but each parcel may be sold for both taxes and special assessments at a single sale, and redemption must be made by payment of all such special assessments and taxes. No tax sale relieves the land from liability for subsequent installments of special assessments.

Section 41. If any such parcel is bid off in the name of the county, the bid shall include the amount of the delinquent installment of special assessments under Plan One or Plan Two. Any parcel may be discharged from the assessments at any time by paying to the county treasurer an amount equal to the then due and past-due installments, with accrued interest, penalty, and cost, if any, and paying to the municipal finance officer all subsequent installments without additional interest; at which point the parcel is relieved from the lien of the assessment.

Section 42. The governing body may provide by ordinance or resolution for the issuance of negotiable bonds without a vote of the voters in an amount not exceeding the entire cost of the local improvement. The bonds shall be issued and sold as provided in chapter 6-8B. However, all bonds shall mature not later than one year after the maturity of the last assessment installment. A single issue may be sold to finance several improvements.

Section 43. All amounts derived from special assessments for all local improvements shall be received into the account of the municipality. The proceeds of the sale of bonds issued pursuant to section 42 of this Act shall be placed into a fund and may be used only for the payment of the cost of the improvements. No moneys may be transferred out of the fund until all obligations that are charged against it have been discharged. Thereafter the governing body may transfer any unexpended and unobligated balance to the general fund.

Section 44. If general obligation bonds are authorized, issued, and sold and the proceeds expended for the purpose of any local improvements of a type for which assessments may lawfully be levied, and if assessments have been levied on account of such improvements in the manner prescribed by law, special assessment bonds may be issued in anticipation of the collection of the assessments and may be transferred and appropriated to the debt service fund for the general obligation bonds, in reimbursement of all or any part of the sum expended. The amount of bonds transferred and appropriated may not exceed the sum expended, less any portion of the cost of the improvements to be assumed by the municipality. Any assessment bonds not transferred may be sold to third parties to provide additional moneys for financing the improvement.

Section 45. All moneys received from collections of assessments for any local improvement wholly or partially financed from the proceeds of general obligation bonds shall be applied toward payment of the assessment bonds issued on account thereof, including those held in the debt service fund for the general obligation bonds, in the same manner as if all such assessment bonds were held by third persons.

Section 46. The moneys collected in and held by the debt service fund for the general obligation bonds shall be applied toward the payment of the general obligation bonds and interest, and the governing body may annually cause to be certified to the county auditor the amount applied. The governing body may direct that the tax levy collectible in the following year for the payment of the

bonds be reduced by an amount not exceeding the sum certified. However, the municipality remains obligated to levy general taxes sufficient, together with other resources of the debt service fund, for the prompt payment of all principal and interest due on the general obligation bonds. No assessment bond transferred to any debt service fund pursuant to the provisions of section 44 of this Act may subsequently be transferred to any other fund until the general obligation bonds for which the fund is maintained have been fully paid with interest.

Section 47. The principal amount of all special assessment bonds that are held in any debt service fund and that are not in default as to either principal or interest, as well as other assets of the fund, are deductible from the principal amount of the outstanding general obligation bonds for which the debt service fund is maintained, in determining at any time the net indebtedness of the municipality represented by the general obligation bonds.

Section 48. The governing body may by ordinance or resolution create and maintain special assessment accounts for financing local improvements for which assessments are to be levied. The governing body may provide moneys for the accounts in the annual appropriation ordinance or by transfer of unused balances from other funds in accordance with the provisions of chapter 9-21, or it may provide for the issuance of general obligation bonds for the purpose of creating and maintaining the account after authorization by the voters and in the manner provided by chapter 9-26. Creating and maintaining the account is deemed a single purpose in framing the question to be submitted to the voters.

Section 49. A separate fund may be established to be used only to pay, in whole or in part, the cost of local improvements of the type for which the fund has been created and for which assessments are to be levied. Money in the fund may be used both to pay the portion of the cost of the improvement assumed by the municipality and to advance the portion of the cost ultimately to be paid from collections of assessments.

Section 50. Special assessment bonds may be transferred and appropriated to the special assessment accounts in the same manner and to the same extent as provided in section 44 of this Act for the transfer of the bonds to general obligation bond sinking funds. All collections of assessments for assessment bonds transferred shall be held in and used only for the purposes of debt retirement.

Section 51. If the governing body determines that the cash, assessment bonds, and any other investments held in the special assessment accounts are in excess of amounts required for financing contemplated future local improvements, it may transfer all or any part of the assets to the sinking fund for any outstanding general obligation bonds issued to create and maintain special assessments. The transfer is irrevocable, and the principal amount of all assessment bonds transferred that are not in default as to principal or interest, together with the other assets of the sinking fund, are deductible from the principal amount of the general obligation bonds in determining the net indebtedness of the municipality.

Section 52. No special assessment moneys may be transferred to any other fund of the municipality until all general obligation bonds issued to create or maintain the special assessments have been fully paid with interest.

Section 53. No injunction restraining the making of any local improvement under the provisions of this chapter may be issued after the letting of the contract. No action or proceedings may be commenced or maintained in any court attacking the validity of the proceedings for special assessments up to and including the approval of the assessment roll or questioning the amount of the assessment unless the action is commenced within twenty days after the publication of the resolution approving the assessment roll and notice that assessments are due and payable as provided in section 27 of this Act.

Section 54. If any action or proceeding is commenced and maintained in any court to restrain the collection of any assessment levied for any municipal local improvement, to recover any such

assessment previously paid, to recover the possession or title of any real property sold for such an assessment, to invalidate or cancel any deed or grant thereof for such an assessment, or to restrain or delay the payment of any such assessment, the true and just amount of the assessment due upon the property shall be ascertained and judgment shall be rendered for the assessment, making the assessment a lien upon the property and authorizing execution or process to issue for the collection of the assessment by a sale of the property. If in the opinion of the court the assessment has been rendered void or voidable by any act or omission, the court may order that a reassessment be made under the provisions of sections 62 and 63 of this Act. The court may require the payment of the assessment as a condition for granting such relief, or declare by its judgment that the assessment is a lien upon the property, and authorize the issuing of execution or proper process for its collection by a sale of the property, to the end that the whole matter may be adjudicated in the one action or proceeding and the proper proportion or ratio of the assessment be paid by the property owner. The cost of such an action or proceeding shall be taxed as the court may direct.

Section 55. The governing body of any municipality may establish one or more districts for the construction and maintenance of local improvements. The governing body may establish or modify the boundary of the district, construct improvements or portions of improvements, and assess the cost of the improvement to the property within the district as provided in sections 3 to 67, inclusive, of this Act.

Section 56. If the governing body deems it necessary to establish a local improvement district, the governing body shall have a plan of the district prepared by the city engineer or other competent person, showing the boundaries of the district and lots or parts of lots included in the district. The plan shall be filed in the office of the finance officer for public inspection. No district need be established for the purpose of constructing or maintaining any improvement.

Section 57. Upon filing of the plan, a notice signed by the finance officer shall be published once

stating that a plan for a public district, bounded as described in the notice and designated by number has been prepared and is on file in the office of the finance officer. The notice shall state that all persons owning property or interested in any real estate in the district may examine the notice during regular office hours and may file objections within ten days after the publication of the notice, and that on the date stated the governing body will hold a public hearing at a place named to consider any objections, at which time all persons may be heard. The notice shall be published once, and the hearing may not be less than ten nor more than twenty days after publication.

Section 58. At the hearing, the governing body shall consider any objections and may by resolution approve and adopt the proposed plan or change it in such manner as it may deem necessary. The governing body may adopt and approve the plan or may reject the plan and order a new plan prepared in accordance with sections 9 and 10 of this Act.

Section 59. When a resolution adopting and approving a local improvement district plan takes effect, the plan shall be numbered and filed in the office of the finance officer and shall then constitute the plan of the district, and the lots contained in the district are liable to assessment for the construction of improvements within the district in the same manner as other assessed property not within a district and in accordance with the provisions of sections 3 to 67, inclusive, of this Act.

Section 60. The total cost, or any portion of the cost that is assessable against all the real property within any district or area benefited by the local improvement, may be apportioned according to the benefits to accrue to each lot or tract, as determined by the governing body. In determining benefits to a district or area, the governing body shall determine the amount in which each lot or tract located within the district or area will be benefited by the construction of the improvement, and shall assess against each lot or tract that amount, not exceeding its special benefit, as is necessary to pay its just portion of the total cost of the work to be assessed.

Section 61. If any lot is subject to assessment both as fronting and abutting property and as

property within the district or area benefited by the local improvement, the sum of both assessments may be the amount to be stated in the assessment roll against each such lot.

Section 62. If any special assessment for any local improvement is set aside for irregularity in the proceedings or declared void by reason of noncompliance with the provisions of law when ordering or letting the work or making the assessment, or if the collection of any portion of the assessment has been restrained or enjoined, or if any special assessment made upon any lot has been set aside or in any manner rendered or found to be ineffectual, the governing body may make a new assessment or reassessment. The governing body may collect the assessment or reassessment in the manner provided for the collection of the original assessment, to an amount not exceeding the amount of the original assessment, to bear interest at the rate provided by the governing body for unpaid installments of the original assessment from the date of approval of the assessment roll.

Section 63. If any reassessment is required, the governing body shall appoint a time for making the reassessment. The finance officer shall give ten days' notice to the owner of any lot to be reassessed, by mail addressed to the owner's last mailing address as shown by the records of the director of equalization, and shall publish notice of the reassessment once not less than ten nor more than twenty days before the time set for the reassessment. After publication of the approved resolution, the governing body may proceed with the levying and forwarding for the collection of special assessments.

Section 64. If the assessment originally levied, together with any sum to be paid by the municipality from its general fund or from the proceeds of general obligation bonds, is insufficient to pay the total cost of the improvement, the governing body may assess the additional cost to each lot in the same proportion as provided in the original assessment roll, after public hearing in the same manner as required for the adoption of the original assessment roll. The governing body shall adopt a resolution proposing to increase the special assessment contained in the original special assessment

roll by the proportion it determines to be sufficient to pay the total cost of the improvement. The resolution, notice of hearing, and hearing procedures shall be carried out as provided in section 18 of this Act. The amount by which each assessment is increased shall be collected by the same procedure and at the same time as the original assessment. However, if any installment of the original assessment has been paid before the levy of the supplemental assessment, the amount of the increase shall be added to the balance unpaid and becomes payable with and as a part of the remaining installments. Interest shall be computed in the same manner as provided for in the original assessment.

Section 65. If public moneys are made available by loan from any federal source to the state, an agency of state government, a public body created by the state, or a political subdivision of the state for the direct or indirect aid of landowners or owners of real property in the public or private improvement of their property in a manner specified by competent federal, state, or local authority, the owners are entitled to retire their obligations for the improvements in like pro rata installments over the same period of time as the loan of federal moneys will be retired, or, if permissible, to accelerate the installments as they are able, and at the same rate of interest as the loan of federal moneys to the state, state agency, public body, or political subdivision of the state. However, if the loan of federal moneys requires different or more stringent terms be met by the owners with regard to time period, installments, or rate of interest, then the terms allowed shall be the most liberal possible that still comply with the federal requirements.

The provisions of this section, in a proper case, are in lieu of assessment under any other law granting power to assess for property improvement.

Section 66. The governing body prior to the assessment of real property within the municipality for the next fiscal year, may levy, annually, for the purpose of maintaining or repairing public improvements, a special maintenance fee upon the lots fronting and abutting any improvements

within the municipality that are maintained by the municipality. The governing body prior to the assessment of real property may, by resolution, designate the lot or portion of lots against which the fee is to be levied and the amount of the fee to be assessed against each lot or portions of lots for such purposes, or may apportion the fee pursuant to § 46A-10B-20. The governing body may directly bill the affected property owner for the fee in a manner determined by the municipality, or the governing body may require the county treasurer to add the fee assessed to the general assessment against the property and certify the fee assessed together with the regular assessment to the county auditor to be collected in the same manner as municipal taxes are collected for general purposes. The fee assessed is subject to review and equalization the same as assessments or taxes for general purposes.

Section 67. The provisions of sections 3 to 66, inclusive, of this Act do not apply to chapters 9-53, 9-55, or 21-10.

Section 68. That § 9-36-11 be amended to read as follows:

9-36-11. Any municipality may construct, reconstruct, repair, and maintain bulkheads, wharves, levees, or breakwaters along or across any river or stream flowing within or through its boundaries. For that purpose the municipality may purchase or condemn private property and assess the cost against the property upon which the improvement is situated, and upon the lots abutting or adjoining such property upon that side of the river or stream on which the improvement is constructed, as provided in sections 3 to 67, inclusive, of this Act.

Section 69. That § 9-36-13 be amended to read as follows:

9-36-13. If a majority of the property owners do not enter a protest against the proposed improvement, and if the improvement is not made in the manner and within the time prescribed in the notice, the governing body by resolution may cause the improvement to be done and the cost of the improvement assessed against the lots chargeable as provided in § 9-36-12, according to the

benefits derived by each of the lots from the improvement as provided in sections 3 to 67, inclusive, of this Act.

Section 70. That § 9-38-24 be amended to read as follows:

9-38-24. The board may establish, improve, care for, regulate, and manage a system of public parks, parkways, and boulevards and with the approval of the governing body may acquire land for such purposes. The board may regulate the planting and trimming of trees and shrubbery in such areas and may establish the channel of any stream or watercourse forming a part of the park system and improve the banks of the stream or watercourse. The board may provide parkways and boulevards for the streets and maintain and regulate the care of the parkways and boulevards. The board may cause the cost of construction and maintenance of the street parkways and boulevards to be assessed against the abutting property as provided in sections 3 to 67, inclusive, of this Act. The board may establish, maintain, and conduct with or without charge or grant concessions for places of public amusement, recreation, or refreshment within or in connection with such parks. No concession lease or grant may be made for longer than three years, and no professional shows or exhibitions for which an admission price is charged may be given in such parks. However, a lease or grant to a concession may be made by the board for a period not to exceed fifteen years if the concession requires a realty improvement investment of at least fifty thousand dollars or for a period not to exceed fifty years if the concession requires a realty improvement investment of at least one hundred thousand dollars.

Section 71. That § 9-38-36 be amended to read as follows:

9-38-36. No roads or streets may be laid out or constructed through any park without consent of the board.

Upon recommendation of the board, any road, street, or alley, or part thereof, excepting railroads, that passes through or into or divides any land used for parks may be vacated by the governing body

and made a part of the park. Upon recommendation of the board, the governing body may provide for special assessments to be made pursuant to sections 3 to 67, inclusive, of this Act, for improvements to any road, street, alley, or part thereof under control of the board.

Section 72. That § 9-38-49 be repealed.

Section 73. That § 9-38-59 be repealed.

Section 74. That § 9-38-51 be repealed.

Section 75. That § 9-38-52 be repealed.

Section 76. That § 9-38-53 be repealed.

Section 77. That § 9-39-23 be amended to read as follows:

9-39-23. The municipal utility board has all of the powers granted to a governing body in this title to fix reasonable rates, fees, and charges, and to make special assessments for improvements as provided in sections 3 to 67, inclusive, of this Act. The board may adopt, by resolution, reasonable rules and regulations for utility services supplied by the municipally owned public utilities under its control and management within the limits permitted by the statutes of this state.

Section 78. That § 9-45-16 be amended to read as follows:

9-45-16. If any viaduct is declared by resolution necessary for the safety and protection of the public, the governing body of any first or second class municipality shall provide for appraising, assessing, and determining the damages, if any, that may be caused to any property by reason of the construction of the viaduct and its approaches. The resolution is effective thirty days after its publication, unless nullified by an order of the Public Utilities Commission.

Such damage shall be paid by the municipality and may be assessed against the property benefited as provided in sections 3 to 67, inclusive, of this Act.

Section 79. That § 9-45-20 be repealed.

Section 80. That § 9-45-21 be repealed.

Section 81. That § 9-45-22 be repealed.

Section 82. That § 9-45-23 be repealed.

Section 83. That § 9-45-24 be repealed.

Section 84. That § 9-45-25 be repealed.

Section 85. That § 9-45-26 be repealed.

Section 86. That § 9-45-27 be repealed.

Section 87. That § 9-45-28 be repealed.

Section 88. That § 9-45-29 be repealed.

Section 89. That § 9-45-30 be repealed.

Section 90. That § 9-45-31 be repealed.

Section 91. That § 9-45-32 be repealed.

Section 92. That § 9-45-33 be repealed.

Section 93. That § 9-45-34 be repealed.

Section 94. That § 9-45-35 be amended to read as follows:

9-45-35. The resolution of necessity may provide that the municipality may pay any portion or all of the cost of resurfacing, rebuilding, or repaving the portion of any street, alley, or public way in which pavement has previously been placed and paid for wholly or in part by assessment of benefited property.

Section 95. That § 9-45-38 be repealed.

Section 96. That § 9-45-39 be repealed.

Section 97. That § 9-47-5 be amended to read as follows:

9-47-5. If the expense in connection with the waterworks system is raised by special assessments, the assessments shall be levied and collected in the manner provided in sections 3 to 67, inclusive, of this Act.

Section 98. That § 9-47-7 be repealed.

Section 99. That § 9-47-11 be repealed.

Section 100. That § 9-47-12 be repealed.

Section 101. That § 9-47-16 be repealed.

Section 102. That § 9-47-19 be repealed.

Section 103. That § 9-47-21 be amended to read as follows:

9-47-21. Any municipality may operate and maintain a system of irrigation within the municipality. The municipality may assess the cost of the system against abutting or benefited property in the manner provided by sections 3 to 67, inclusive, of this Act, if a connection with an irrigation water supply system is available. If such a connection is not available, the providing of a means of a water supply for irrigation shall be first authorized at a regular or special election. The municipality may regulate the distribution and use of water supplied for irrigation.

Section 104. That § 9-48-7 be amended to read as follows:

9-48-7. Any municipality may regulate and provide for the laying of sewer connections from the city trunk or service sewers, to the lot line. The municipality may assess the cost against the abutting property owner as provided by sections 3 to 67, inclusive, of this Act.

Section 105. That § 9-48-8 be repealed.

Section 106. That § 9-48-9 be repealed.

Section 107. That § 9-48-10 be repealed.

Section 108. That § 9-48-11 be repealed.

Section 109. That § 9-48-12 be repealed.

Section 110. That § 9-48-13 be repealed.

Section 111. That § 9-48-14 be repealed.

Section 112. That § 9-48-15 be amended to read as follows:

9-48-15. If either a main sewer or trunk sewer or service sewer has been constructed for which the cost has not been apportioned against property that may be benefited thereby as provided by this chapter or sections 3 to 67, inclusive, of this Act, the governing body may require the property to pay its proportionate share of the cost of the construction, without interest, according to the benefits to accrue to the property before the property may be served by the facilities. The governing body shall investigate and determine the amount to be paid. The amount shall be apportioned by the governing body as it determines among the persons, including the municipality, paying the appropriate cost.

Section 113. That § 9-48-16 be amended to read as follows:

9-48-16. If any person has constructed within any street or alley a private sewer that is wholly or partly within any district subsequently established as provided in this chapter, the municipality may purchase the sewer or any part of the sewer and assess the cost to the property fronting or abutting upon the sewer as provided in sections 3 to 67, inclusive, of this Act.

Section 114. That § 9-48-19 be repealed.

Section 115. That § 9-48-21 be repealed.

Section 116. That § 9-48-22 be repealed.

Section 117. That § 9-48-23 be repealed.

Section 118. That § 9-48-24 be repealed.

Section 119. That § 9-48-25 be repealed.

Section 120. That § 9-48-33 be repealed.

Section 121. That § 9-48-34 be repealed.

Section 122. That § 9-48-35 be repealed.

Section 123. That § 9-48-36 be repealed.

Section 124. That § 9-48-37 be repealed.

Section 125. That § 9-48-38 be repealed.

Section 126. That § 9-48-39 be repealed.

Section 127. That § 9-48-40 be repealed.

Section 128. That § 9-48-41 be repealed.

Section 129. That § 9-48-42 be repealed.

Section 130. That § 9-48-43 be repealed.

Section 131. That § 9-48-44 be repealed.

Section 132. That § 9-48-45 be repealed.

Section 133. That § 9-48-46 be repealed.

Section 134. That § 9-48-47 be repealed.

Section 135. That § 9-48-48 be repealed.

Section 136. That § 9-48-49 be repealed.

Section 137. That § 9-48-50 be repealed.

Section 138. That § 9-48-51 be repealed.

Section 139. That § 9-48-52 be repealed.

Section 140. That § 9-49-1 be repealed.

Section 141. That § 9-49-2 be repealed.

Section 142. That § 9-49-3 be repealed.

Section 143. That § 9-49-4 be repealed.

Section 144. That § 9-51-11.1 be repealed.

Section 145. That § 9-51-37 be repealed.

Section 146. That § 9-51-38 be repealed.

Section 147. That § 9-51-39 be repealed.

Section 148. That § 9-51-40 be repealed.

Section 149. That § 9-51-41 be repealed.

Section 150. That § 9-51-42 be repealed.

Section 151. That § 9-51-43 be repealed.

Section 152. That § 9-51-44 be repealed.

Section 153. That § 9-51-45 be repealed.

Section 154. That § 9-51-46 be repealed.

Section 155. That § 9-51-47 be repealed.

Section 156. That § 9-51-47.1 be repealed.

Section 157. That § 9-51-50 be repealed.

Section 158. That § 9-55-13 be amended to read as follows:

9-55-13. A municipality may levy a special assessment against the real property located in a district, to the extent of the special benefit on such property, for the purpose of paying all or any part of the total costs and expenses of any project authorized by this chapter, within the district. The amount of each special assessment shall be determined by the governing body. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the governing body finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then the governing body may assess the costs under a method the governing body finds to be fair and equitable. Notice of a hearing on any special assessments to be levied under this chapter shall be given to the landowners in the district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which the assessment is to be made, once a week for two weeks in a daily or weekly newspaper of general circulation published in the municipality. The notice shall be published at least thirty days prior to the hearing and shall provide the date, time, and place of the hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their property. All special assessments levied under this chapter constitute liens on the property and shall

be certified for collection and collected in such manner as the governing body determines by ordinance.

An Act to revise procedures and requirements relating to special assessments and the financing of local improvements.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1156

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1156
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State