



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 651 (as enrolled)
 Sponsor: Senator Dave Honigman
 Senate Committee: Local Government and Urban Development
 House Committee: Local Government

PUBLIC ACT 153 of 1996

Date Completed: 8-13-96

RATIONALE

In some Michigan communities, property owners who would like to create special assessment districts to provide themselves with specific benefits apparently have been thwarted because State statute either did not permit special assessments for the desired purposes or did not do so without ambiguity. For example, in some residential areas, homeowners reportedly want to buy nearby pristine open spaces to prevent their development. These areas could serve as parks for the neighborhood and/or as buffer zones to shield residences from busy highways or nearby commercial strips. Many acts authorizing special assessments provide for the acquisition, improvement, and maintenance of public parks, but it was not clear whether the term "public park" included open and scenic spaces in addition to areas set aside for traditional recreational uses. Other laws that authorize special assessments did not permit their use for parks at all. In these types of situations, some claim that it is unreasonable to expect a local government to provide the desired benefit to a few property owners through general taxation, and that these would be ideal opportunities for those taxpayers who would benefit directly to assess themselves.

CONTENT

The bill created a new act to allow the legislative bodies of certain local units of government to acquire or improve a park, defray all or part of the cost of the acquisition or improvement by special assessment, and finance the park acquisition or improvement by borrowing money and issuing bonds in anticipation of the collection of special assessments.

Under the bill, a county board of commissioners, the city council of a city organized under the Fourth Class City Act, the legislative body of a city organized under the Home Rule City Act, the legislative body of a village, or the township board

of a township may proceed with special assessments and bonding in the same manner as those units are authorized to do under existing laws. The proceedings for establishing a special assessment for a park improvement, however, must be initiated by the filing of a petition that meets the following requirements: has been signed by record owners of land constituting at least two-thirds of the total land area in the special assessment district as finally established, and has been signed by two-thirds of the record owners of land in the special assessment district as finally established.

A county, township, city, or village may not acquire property for a park under the bill by condemnation. Property, instead, must be acquired from a willing seller. The powers granted by the bill are in addition to, and not a limitation on, those powers granted by law or charter.

The bill defines "park" as an area of land or water or both, dedicated to one or more of the following uses:

- Recreational purposes, including but not limited to landscaped tracts; picnic grounds; playgrounds; athletic fields; camps; campgrounds; zoological and botanical gardens; swimming, boating, hunting, fishing, and birding areas; and, foot, bicycle, and bridle paths.
- Open or scenic space.
- Environmental, conservation, nature, or wildlife areas.

MCL 141.321-141.324

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By specifically permitting assessments for public parks, including open and scenic areas, the bill expands and clarifies the purposes for which special assessments may be exacted. The bill allows residents to preserve green belts or undeveloped spaces in their neighborhood by paying a special assessment authorized by a majority of the affected property owners. Thus, a group of citizens who wish to provide a benefit to themselves must agree to share the cost, instead of attempting to burden all taxpayers including those who will receive little or no direct benefit. Special assessments are a less coercive way of providing benefits and services than general taxation because the process involves a majority of the intended beneficiaries' requesting the imposition of an assessment.

Response: According to the Michigan Supreme Court, when a special assessment is placed on property, the benefit received from the assessment must be proportionate to the cost of the assessment (*Dixon Road Group v City of Novi*, 426 Mich 390). It is uncertain whether imposition of a special assessment to establish public parks or open spaces will meet potential legal challenges regarding the benefits derived from a park in relation to the amount of the assessment on a parcel of property. While a park or open space may improve the quality of life for residents in a special assessment district, some may question whether this kind of development will increase the value of properties in the district in proportion the amount assessed on the property.

Opposing Argument

A special assessment is considered to be the most egalitarian form of taxation available because it is initiated at the grass roots level of a local unit of government. Generally, most local governments provide that a special assessment can be challenged by a petition signed by 20% of the residents in proposed special assessment district. If there is a challenge, 50% plus one of the residents in the district must approve the plan. Under the bill, however, proceedings for establishing a special assessment for a park or open space must be initiated by the filing of a petition that had been signed by owners of land constituting at least two-thirds of the total land area in the proposed district and by two-thirds of the landowners in the district. This "super majority" may result in property owners who possess two-thirds of the land but do not constitute a majority of property owners overruling the will of the actual majority of property owners in a district. This requirement may thwart efforts to develop parks and open spaces.

Response: Requiring the approval of owners of two-thirds of the land in a special assessment district may prevent persons who own a proportionately smaller amount of land in a district from forcing the development of a park or open space in an attempt to restrict commercial growth there.

Opposing Argument

A special assessment for a park or open space will force a few landowners to pay for a development that may be used not only by persons who pay the assessment but also by those who are not subject to it. In this situation, it would be more equitable to levy a general assessment on all residents of a local unit since all residents potentially may benefit from the development.

Opposing Argument

The use of special assessments is simply a tactic for avoiding tax limitations, and may even be a method of initiating projects or program that later might have to be supported by taxes. The increased use of special assessments also may lead to a less equal distribution of services and programs, since more affluent groups may be able to afford to provide services to themselves while less fortunate people may not. In addition, the availability of the special assessment mechanism might make governments less likely to use general taxation for public purposes. Perhaps the use of special assessments should receive a comprehensive evaluation, rather than an expansion.

Response: Special assessments already are in use in many local governmental units for a wide variety of purposes. The bill simply is an elaboration of the purpose for which special assessments may be imposed.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill will have no fiscal impact on State government. The fiscal impact on counties, cities, villages, and townships that undertake park improvements, will be determined by the amount of the special assessments. Prior to collections of the special assessments, the local units can finance the park improvements by issuing bonds to borrow money. The special assessments will increase total property tax collections.

Fiscal Analyst: R. Ross

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.