

**HOLIDAY ISLAND SUBURBAN IMPROVEMENT DISTRICT**

**RESOLUTION NO. 2019-R1**

**A RESOLUTION APPROVING 2019 LEGISLATIVE PROPOSALS AND AUTHORIZING THE DISTRICT MANAGER AND BOARD CHAIRPERSON TO SEEK ADVICE FROM THE DISTRICT'S ATTORNEY AND CONTACT STATE LEGISLATORS TO FURTHER DEVELOP AND MOVE THE LEGISLATIVE PROPOSALS THROUGH THE PROCESS.**

WHEREAS, The Holiday Island Suburban Improvement District's Board of Commissioners is an elected five-member assembly who serves as policy-making body of the community. The Improvement District is responsible for the operation, maintenance, and preservation of public infrastructure, services, and amenities; including: streets and roads, water and wastewater, fire, EMS, and recreational facilities; and

WHEREAS, the Holiday Island Board of Commissioners believes that the current laws and resulting operating structure of the Suburban Improvement District are inflexible, convoluted, and lack the necessary governing powers to allow the District to function as the community's sole Local Governing Body into the foreseeable future. Changes to current statutes are necessary to provide the needed flexibility, clarity and powers to help ensure the long-term prosperity and sustainability of the community; and

WHEREAS, the Holiday Island Board of Commissioners recognizes that the proposals may substantially change in wording, phrasing, structure and legislative construction as part of the legislative process, and so long as the intent does not change, the Board of Commissioners maintains its support; and

NOW, THEREFORE BE IT RESOLVED THAT, the Holiday Island Suburban Improvement District's Board of Commissioners approves the attached legislative proposals and authorizes the Board Chairperson and District Manager to seek advice from the district's attorney, and contact state legislators to further develop and move the legislative proposals through the process.

ADOPTED AND APPROVED THIS 28 DAY OF January, 2019.

Signed: \_\_\_\_\_  
Linda Graves, Chairperson

ATTEST: \_\_\_\_\_  
Nita Holley, Secretary



# A.C.A. § 14-92-201 Proposed

Current through all laws of the 2018 Fiscal Session and 2018 Second Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 14 Local Government
- Subtitle 5. Improvement Districts Generally
- Chapter 92 Suburban Improvement Districts
- Subchapter 2-- Suburban Improvement Districts Generally

## 14-92-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Last federal census" means the most recent federal census taken prior to the filing of any petition as provided in this subchapter for the formation of any suburban improvement district;
- (2) "Majority in value" means a majority in assessed value as shown by the latest county assessment records for general taxes;
- (3) "Land" or "real property" means all property subject to taxation for the purposes of this subchapter;
- (4) "County court," "county judge," or "county clerk" means "circuit court," "circuit judge," or "circuit clerk" in the cases where the district contains lands in more than one (1) county;
- (5) "Nearby municipalities" means municipalities within ten (10) miles of any boundary of the district.
- (6) "Property Owner" means a fee simple owner of a distinct real property parcel within the District with an ad valorem tax parcel number assigned by the county or counties in which the District resides.

## History

Acts 1941, No. 41, §§ 1, 4, 5, 23; 1951, No. 115, § 1; 1967, No. 286, §§ 1-3; 1969, No. 230, §§ 1, 2; 1971, No. 263, § 1; 1981, No. 510, § 1; A.S.A. 1947, §§ 20-701, 20-704, 20-705, 20-723.

NOTES:

1. Added a definition of "property owner", which would make it apply to all sections of Subchapter
2. It is particularly applicable to section 14-92-240, the section on elections pertaining to SIDs with less than 6000 lots, which was written specifically for Holiday Island. We wanted to qualify the definition to eliminate timeshare owners being considered as property owners for the purposes of this subchapter. Although timeshare owners have recorded deeds, their property does not have an individual ad valorem tax parcel number assigned by the county. We also searched the whole subchapter to see everywhere "property owner" was used, and it didn't appear that adding this definition would interfere with any other sections' use of the term.

## **A.C.A. § 14-92-219 Proposed**

Current through all laws of the 2018 Fiscal Session and 2018 Second Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 14 Local Government
- Subtitle 5. Improvement Districts Generally
- Chapter 92 Suburban Improvement Districts
- Subchapter 2-- Suburban Improvement Districts Generally

### **14-92-219. Purposes for which district organized.**

A suburban improvement district may be organized for any one (1) or more of the following purposes, and may, after original formation, by resolution of the Board of Commissioners, expand its responsibilities to include any of the following:

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- (1) To purchase, accept as a gift, or construct a waterworks system or betterments, improvements, and extensions to such waterworks system, either within or without the boundaries of the district, if the property of the district will benefit and to operate and maintain any such waterworks system it may purchase, construct, or own;
- (2) To purchase, accept as a gift, or construct, either within or without the boundaries of the district, if the property of the district will benefit, a sewage collection system or a sewage treatment plant or intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection or treatment, purification, and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil, and industrial waste of the area within the boundaries of the district or adjacent thereto, and to operate and maintain any such sewage system and facilities;
- (3)
  - (A) To open, grade, drain, pave, curb, gutter, or otherwise improve streets, roads, highways, and every other way for passage and use of vehicles, including viaducts and underpasses, either within or without the boundaries of the district, if the property of the district will benefit.
  - (B) Such purpose shall include the acquisition of rights-of-way by purchase or the exercise of the power of eminent domain, and to maintain such streets, roads, highways, and every other way for passage and use by vehicles, lying within the boundaries of the district or beyond the boundaries of the district, if the property of the district will benefit;
- (4) To build, purchase, or accept as a gift recreational facilities such as, but not limited to, parks, lakes, golf courses, playgrounds, clubhouses, stadiums, auditoriums, arts and crafts centers, folklore centers, interpretative centers, camping areas, greenbelt areas, and any other facilities to provide for the recreation and cultural needs of the owners of the lands within the district and also to care for, maintain, and operate any such recreational facilities;
- (5) To lay and maintain sidewalks;
- (6)
  - (A) To lay, own, extend, operate and maintain gas pipelines connecting with gas systems.

(B)

(i) Nothing in this subchapter shall be construed to allow the purchase of an existing natural gas system or any part thereof.

(ii) Any such gas system shall be subject to the jurisdiction of the Pipeline Safety Division of the Arkansas Public Service Commission and shall be subject to all provisions of the Arkansas Gas Pipeline Code;

(7) To build telephone lines to connect with the telephone systems operating in nearby or adjacent municipalities;

(8) To establish, equip, train and maintain rural fire departments, including but not limited to construction of fire department buildings, purchase of fire trucks, fire boats, rescue trucks and any other firefighting equipment and supplies necessary to provide emergency response to fire, medical, or other hazardous situations which put community residents and resources at risk;

(9) To own, acquire, construct, reconstruct, extend, equip, improve, maintain, and operate hospitals and/or to acquire appropriate vehicles and equipment for, maintain, and operate ambulance services;

(10) To own, acquire, construct, reconstruct, extend, equip, improve, maintain, and operate libraries; and

(11)

(A) To provide a solid waste management system to adequately provide for the collection and disposal of all solid wastes generated or existing within the boundaries of the district in accordance with the rules, regulations, and orders of the Arkansas Pollution Control and Ecology Commission.

(B)

(i) The governing body of the district may enter into an agreement with one (1) or more municipalities, counties, county solid waste authorities, regional solid waste management districts, private persons, private trusts, or any combination thereof, to provide a solid waste management system or any part of a system for the district.

(ii) (12) To provide security services that provide for the patrol and protection of property and the safety of residents.

(13)

(aA) The district may levy and collect fees and require licenses as determined appropriate to effectuate any of the aforementioned purposes and discharge the responsibilities of the district.

(bB) Any fees, charges, and licenses shall be based upon a schedule set forth by the district.

(C) The district may open such facilities and services to non-property owners and charge fees for such usage if the board determines this action and the revenue resulting from such usage would benefit the property owners of the district.

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## History

Acts 1941, No. 41, § 4; 1953, No. 420, § 2; 1967, No. 286, § 2; 1969, No. 230, § 2; 1975

(Extended Sess. 1976), No. 1213, § 1; A.S.A. 1947, § 20-704; reen. Acts 1987, No. 1008, § 1; 1997, No. 1134, § 1; 2005, No. 927, § 1.

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Notes:

1. Added a clause to the first paragraph that would definitively allow a SID to add additional purposes after the original formation which were not included in the original formation order. Community needs change over time and the law doesn't seem to provide a way to do this currently.
2. The Bischoff vs. HISID lawsuit alleged HISID was paying for certain "improvements" with assessment income, which improvements were not authorized in the original formation order.
3. Elaborated in paragraph (8) to include training and additional equipment that modern fire departments require to address other emergencies in addition to fire.
4. Changed the numbering of section 11 (B) to accommodate a single paragraph.
5. Added paragraph 12 to add another purpose of providing security services.
6. Added paragraph 13 and moved text of paragraph 11(B)(ii) to it, in order that fees might apply to any of the previous paragraphs detailing the various purposes for which a district may be organized. Fees should/could also apply to water/sewer/gas/telephone, hospitals, ambulance services, libraries, security, and recreation services/facilities. Also, included a sub-paragraph indicating that any of the facilities and services could be offered to non-property owners, with fees charged for such usage, provided it would benefit the property owners of the district.

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## **A.C.A. § 14-92-220 Proposed**

Current through all laws of the 2018 Fiscal Session and 2018 Second Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 14 Local Government
- Subtitle 5. Improvement Districts Generally
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- Subchapter 2-- Suburban Improvement Districts Generally

### **14-92-220. Powers of districts generally.**

(a) Any district, in aid to and furtherance of the purposes prescribed in § 14-92-219, shall have the authority to hire managers and other employees and to pay their salaries incident to the operation and maintenance of any of the improvements and facilities authorized in this subchapter. The district shall also have the authority to acquire, lease, rent and purchase equipment and machinery incident to the operation and maintenance of the facilities and shall be further authorized to do any and all other actions which shall be deemed necessary in order to purchase, construct, accept as a gift, operate, and maintain any and all improvements and facilities authorized in this subchapter, including advertising of the District amenities to attract new property owners and any facilities open to the general public.

(b) Any district shall have the power to sell, or lease or contract for the operation and maintenance of all or any part of any improvement owned by it to any municipality which encompasses all or part of the geographic boundaries of the district, to any adjacent or nearby municipality, to an improvement district therein, to public service corporations serving on behalf of the property owners of the district, or to any other corporation, organization, or person. It may make contracts with the inhabitants of adjacent, nearby, or co-located municipalities, or it may operate such improvements for water, sewer, gas, recreation, or telephone service and may connect sewers with the sewers of any adjacent municipality or of other districts, or carry its sewers to any proper outlet within or without the district.

(c) Any district may accept as a gift any or all of the improvements and facilities authorized in this subchapter upon the assumption of the maintenance and operation of such improvements and facilities.

(d) ~~It~~ Any district shall have the authority to effect the assessment of benefits and to levy the necessary tax against such assessment of benefits, as prescribed in this subchapter in order to provide the revenue for the costs of maintenance and operation.

(e) Any district shall have the authority to create reserve accounts as part of its accounting systems to collect funds for large or unanticipated expenses in future years.

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## History

Acts 1941, No. 41, § 4; 1953, No. 420, § 2; 1967, No. 286, § 2; 1969, No. 230, § 2; A.S.A. 1947, § 20-704.

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### Notes:

1. Added clause to paragraph (a) to authorize leasing and renting of equipment and also advertising the community, to attract new property owners, as well as facilities open to the public.
2. Added to paragraph (b) to allow SID's to sell or lease or enter into contracts with a municipality that shares some or all of the same land area as the SID, which would be the situation if Holiday Island becomes a city.
3. Also in paragraph (b), added "sewer" to the list of improvements it could operate itself.
4. Moved the second sentence of paragraph (c) to new paragraph (d), since the authority to levy a tax against the assessment of benefits applies to paying for all aspects of (a) and (b) as well as (c).
5. Took out the word "the" before "revenue" in paragraph (d), to insure the understanding that assessment revenue is not an exclusive funding source; usage fees can also supplement assessment income in funding the operation and maintenance of the improvements.
6. Added paragraph (e) to allow creation of special reserve fund accounts to hold money that comes in as revenue in one year, but is held for expenses to be paid out in a future year. Bischoff vs. HISID lawsuit contended this was not allowed, citing 14-92-219 & 220.

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## **A.C.A. § 14-92-222. Proposed**

Current through all laws of the 2018 Fiscal Session and 2018 Second Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 14 Local Government
- Subtitle 5. Improvement Districts Generally
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- Subchapter 2-- Suburban Improvement Districts Generally

### **14-92-222. Right and power of eminent domain.**

(a)

(1) All improvement districts organized under this subchapter shall have the right of eminent domain in order that they may carry out the purposes of their creation.

(2) This right shall be exercised in the same manner as in the case of railroads, telegraph, and telephone companies but without the necessity of making a deposit of money before entering into possession of the property condemned.

(b) (1) Any district shall have the power of eminent domain for the purposes of:

(A) Condemning any water or sewer utility found within the boundaries of the district which is exempt from the definition of "public utility" as found in § 23-1-101(4);

(B) Securing any lands or rights-of-way needed in making improvements to water or sewer systems owned and operated by that district, or needed to maintain the streets, roadways, and drainage structures within the boundaries of the district.

(2)

(A) The board of the district shall have the power to enter upon any private property for the purposes stated in subdivision (b)(1) of this section. If the person is damaged and the board cannot agree on the sum to be paid for the damages, the person aggrieved may file his petition in the circuit court of the county setting forth his grievance and asking compensation therefor, making the board a party defendant. The issues in the suit shall be made up as in other cases at law, and the cause shall be tried by a jury, unless dispensed with by the parties. The case shall be advanced on the docket so as to have precedence over all other causes. The judge of the circuit court may hold a special term at any time for the trial of the cause, giving ten (10) days' notice to the parties of the time of holding the special term. The notice may be in writing and shall be served on the parties as a writ of summons is directed to be served unless the notice is waived by the parties, or one of them.

(B) In case an agreement cannot be arrived at between the board of improvement and the owner of the property in relation to the damages claimed, the judge of the court, in vacation, may fix an amount to be deposited with some person to be designated by the court, before the entering upon and taking possession of the property to be used and taken as provided in this subsection. Upon the amount required being deposited and certificate thereof filed in the cause, the work may proceed.

## History

Acts 1941, No. 41, § 25; A.S.A. 1947, § 20-725; Acts 1987 (1st Ex. Sess.), No. 37, § 3.

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### Notes:

1. In paragraph (b)(1)(B), added maintenance of streets, roadways, and drainage structures to the list of items for which the SID might need an easement/right-of-way. HISID has recently had to address significant drainage issues crossing major roadways (even where landslides have occurred or water is eroding the roadway), where rights-of-way on privately held land will be necessary to correct the situation. General drainage issues affecting privately-owned property could also arise, and present the need for rights-of-way, due to the topography of the land at HI and flooding and erosion issues that have plagued us in the past.

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## **A.C.A. § 14-92-225 Proposed**

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- Arkansas Code Annotated
- Title 14 Local Government
- Subtitle 5. Improvement Districts Generally
- Chapter 92 Suburban Improvement Districts
- Subchapter 2-- Suburban Improvement Districts Generally

### **14-92-225. Assessment of benefits and damages.**

(a)

(1) In the event the board of commissioners of a suburban improvement district shall have voted to accept any offer of gift, shall have voted to purchase any improvement or facility, or shall have voted to construct any improvement or facility, it shall thereupon appoint an assessor to assess the benefits which will accrue to the real property within the district from the acceptance of the gift of improvement or facilities, the purchase of the improvement or facilities, or the construction of the improvement or facilities.

(2) The assessor shall take an oath that he will well and truly assess all benefits that will accrue to the landowners of the district by reason of the acceptance, purchase, or construction of the proposed improvement or facilities, sometimes referred to as "improvement." He shall thereupon proceed to assess the lands within the district.

(b)

(1) The assessor shall inscribe in a book each tract of land and shall place in one column his valuation of each tract or parcel of land prior to the improvement, which may be marked "Assessed Value of Lands Prior to Improvements," and in another column he shall place what he thinks will be the value of each tract or parcel of land after the improvement, which may be marked "Assessed Value of Lands After Improvements."

(2) (A) (i) If the assessed value of land after improvements is greater than the assessed value of land before improvements, as assessed by the assessor for the district, then the difference between the two shall be the assessed benefits that will accrue to each tract by reason of the improvement.

(ii) If the assessed value of land, as assessed by the assessor of the district, after improvements are acquired or made is less than the assessed value of land before improvements are acquired or made, as assessed by the assessor for the district, then the difference between the two shall be the assessed damages that will accrue to the particular parcel or tract of land by reason of the improvement.

(B) The assessor shall enter the assessment of benefits or damages opposite the description of each piece of property in appropriate columns, one of which may be marked "Assessed Benefits" and the other may be marked "Assessed Damages," and in another column the assessor shall



show the estimate of the probable cost to the landowner, which may be marked "Estimated Cost."

(c)

(1) The assessment shall embrace not merely the lands, but shall embrace all railroads, tramroads, telegraph lines, telephone lines, pipelines, and other improvements on real estate that will be benefited by the acquiring or making of the improvement.

(2) No assessment shall apply against any pipelines or other improvements which are extensions of or connected to the pipeline distribution system or other improvements within any city adjacent to the district.

(d)

(1) The assessor shall place opposite each tract the name of the supposed owner as indicated by the deed records, but a mistake in name shall not vitiate the assessment.

(2)

(A) The assessor shall also assess all damages that will accrue to any landowner by reason of the proposed improvement including all injury to lands taken or damaged.

(B) Where the assessor returns no such damages to any tract of land, it shall be deemed a finding by him that no damages will be sustained.

(e) The assessor shall hold his office at the pleasure of the board, which can fill any vacancy in the position of assessor.

(f) In assessing benefits which shall accrue as the result of the acquisition or construction of gas pipelines, the assessor may consider the number of burner tips and the historical and estimated usage of gas with respect to each tract of land assessed.

(g) In assessing benefits or damages which shall accrue to any tract of land, the assessor may employ a methodology that differentiates tracts of land based on characteristics that the assessor deems appropriate.

(h) The board of commissioners shall have the power to update the current Assessment of Benefits on file for individual tracts of land within the District, whenever the characteristics that determined their Assessed Benefits in the current Assessment have changed.

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## History

Acts 1941, No. 41, § 5; 1951, No. 115, § 1; 1967, No. 286, § 3; A.S.A. 1947, § 20-705; Acts 1997, No. 1134, § 2.

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Notes:

1. Paragraph (g) was added to explicitly allow the assessor freedom to create and use an assessment methodology that categorizes properties according to specific characteristics, which could result in the benefits to one property being different than the benefits to another property. For example, an unimproved lot (no house/business) vs. a lot with a structure (house/business), a property on a paved road vs. a gravel road (gravel road not as beneficial to the property), or a property with a multi-family structure (more people could use the community improvements) vs. a single family structure property.
2. Added paragraph (h) to give the board of commissioners ability to adjust invalid assessments when normal changes occur to property in the district. Such changes are necessary in the following examples: paving what was formerly a gravel road which would upgrade the lots on that road, replatting a tract into multiple lots, or consolidating via replat several lots into one tract, rectifying a classification (prior to development) of a lot from R3 (multi-family) to R1 (single family), changing a property from unimproved to improved when a house is built on it, and changing a property from improved to unimproved when a structure has burned down/been removed.

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## **A.C.A. § 14-92-228 Proposed**

Current through all laws of the 2018 Fiscal Session and 2018 Second Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 14 Local Government
- Subtitle 5. Improvement Districts Generally
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### **14-92-228. Levy of tax.**

(a)

(1) The board of commissioners of a suburban improvement district shall, at the same time that the assessment of benefits is equalized or at any time thereafter, enter upon its records an order, which shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district a tax sufficient to pay the estimated cost of the improvement, with ten percent (10%) added for unforeseen contingencies.

(2) The tax is to be paid by the real property in the district in proportion to the amount of the assessment of benefits thereon and is to be paid in annual installments, not to exceed ten percent (10%) for any one (1) year, as provided in the order. No property shall be entitled to pay more than the annual levy of tax authorized and any interest and penalty if applicable.

(b) The tax so levied shall be a lien upon all the real property in the district from the time it is levied and shall be entitled to preference over all demands, executions, encumbrances, or liens, whensoever created, and shall continue until the assessment, with any penalty costs that may accrue thereon, shall have been paid.

(c)

(1) The remedy against the levy of taxes shall be by suit in chancery.

(2) The suit must be brought within thirty (30) days from the time of notice that the levy was made, and on the appeal, the presumption shall be in favor of the legality of the tax.

(d)

(1) The commissioners shall, promptly after entry of an order levying the tax, publish once a week for two (2) consecutive weeks in some newspaper having general circulation in the district, a notice setting forth the order of levy and warning all persons affected by it that it shall become final unless suit is brought to contest it within thirty (30) days of the date of first publication of the notice.

(2) No property owner shall be barred from contest of the levy within the thirty-day publication period.

## History

Acts 1941, No. 41, § 8; 1961, No. 154, § 1; 1970 (Ex. Sess.), No. 16, § 2; A.S.A. 1947, § 20-708; Acts 1989, No. 548, § 1.

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### Notes:

1. Paragraph (a)(2) was amended to add a sentence to prevent property owners from trying to pay off the full assessed benefits on their property. Such action, if allowed, would prevent the District from collecting future annual 'interest' payments on the Assessment of Benefits, which contribute to the District's ability to continue funding the maintenance and operation of the District's improvements.

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## A.C.A. § 14-92-229 Proposed

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### 14-92-229. Interest on assessments.

The assessment of the benefits shall bear interest compounding at a rate ~~or rates~~ from the time it is equalized, not to exceed that ~~required to service the bonds, or at the~~ maximum interest rate allowed by law ~~if no bonds issue~~. However, the interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest, or the interest may be first collected.

### History

Acts 1941, No. 41, § 9; 1971, No. 360, § 3; 1981, No. 474, § 1; A.S.A. 1947, § 20-709.

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#### Notes:

1. Wording changed to clarify that the assessed benefits will bear compounded interest annually up to the maximum rate allowed by law. This interest is a necessity to sustain a SID, since SIDs may live on well after initial improvements have been paid for. Also, this interest is required to pay for the annual costs of operation and maintenance over and above what interest may be due on any bonds. The wording of this statute as it currently reads is also confusing in that, in a SID, various improvements may have different bonds

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issued with different interest rates and maturities, and other improvements with no bonds currently outstanding. How do you determine the interest rate for the assessed benefits in such a situation? Since all these improvements require operation and maintenance, and hired staff to operate, plus materials and supplies, etc., the District really needs to be able to set an interest rate, up to the maximum required by law, sufficient to pay for all costs associated with all the improvements.

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## **A.C.A. § 14-92-236 Proposed**

Current through all laws of the 2018 Fiscal Session and 2018 Second Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 14 Local Government
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### **14-92-236. Public contributions to road or street improvement districts.**

(a)

(1) The county court is authorized to turn over to any ~~road or street improvement district~~ organized under this subchapter, which has road and street improvements and maintenance as one of its purposes, that proportion of the road tax, as may be just and equitable, or any portion of the automobile or gasoline tax.

(2) The county court is further authorized to contribute these funds in money or scrip to the expense of the improvement from the general revenue of the county as it may deem appropriate.

(b)

(1) Any such district is authorized to receive any part of the funds that may be set aside by the federal government for the improvement of public roads and any that may be set aside by the government of this state for aid in the improvement of public roads.

(2) The board of commissioners of the district and the Arkansas Department of Transportation are authorized and directed to take such action as may be necessary to secure any of these funds for these districts as an improvement of a part of the public roads of the state in which the state has an interest.

### **History**

Acts 1941, No. 41, § 27; A.S.A. 1947, § 20-726; Acts 2017, No. 707, § 25.

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Notes:

1. Reworded paragraph (a)(1) so that this section could not be interpreted to apply only to SIDs organized exclusively for road or street improvements. This section should apply to all districts with responsibilities for street and roads, while excluding any that do not include that purpose.

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## **A.C.A. § 14-92-239 Proposed**

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### **14-92-239. Continued existence of district.**

Suburban improvement districts shall not cease to exist upon the acquiring, construction, or completion of the improvement but shall continue to exist for the purpose of preserving, maintaining, and operating the improvement, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in this subchapter. To this end, the board of commissioners may, from time to time, make such additional levies based upon the assessment of benefits as may be necessary for these purposes. ~~However, the amount of the total levies shall not exceed the assessed benefits and interest thereon.~~

### **History**

Acts 1941, No. 41, § 18; 1953, No. 420, § 3; 1963, No. 150, § 1; 1967, No. 286, § 5; A.S.A. 1947, § 20-718.

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#### **Notes:**

1. The deletion of the last sentence of the current statute is intended to provide for the ongoing maintenance and operation of SID improvements in the event of the depletion of the calculated assessed benefits. There must be a way to preserve community assets in a

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suburban improvement district community where people have their whole life savings invested in their homes and property, and must depend on continuation of SID services for roads, fire/medical emergency services, water/sewer, and other amenities. Even if the SID becomes a city or part of a city, there is not enough revenue from property or sales tax to continue to operate and maintain the improvements without an assessment, since all of the SIDs in Arkansas are in very rural areas.

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## **A.C.A. § 14-92-240 Proposed**

Current through all laws of the 2018 Fiscal Session and 2018 Second Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 14 Local Government
- Subtitle 5. Improvement Districts Generally
- Chapter 92 Suburban Improvement Districts
- Subchapter 2-- Suburban Improvement Districts Generally

### **14-92-240. Districts of less than six thousand lots -- Alteration of number of and method of selecting commissioners.**

(a) Any suburban improvement district which contains fewer than six thousand (6,000) lots and which selects successor commissioners by a vote of the remaining commissioners may alter the number and method of selection of members of the board of commissioners of the district pursuant to this section.

(b)

(1) Any property owner in the suburban improvement district may make a written request for an election on the question of whether to change the method of selecting the board of commissioners of the district. The request shall be filed with a quorum court member whose district includes all or part of the suburban improvement district.

(2) The property owner filing the request shall be responsible for all costs of the election and any notice required under subsection (b) of this section.

(3)

(A) Within forty-five (45) days after receiving the request, the quorum court member shall mail, by first class mail, ballots to all property owners in the district, along with a copy of this section.

(B) The date for returning ballots shall be set by the quorum court member and shall not be less than twenty (20) days after the date he or she mailed the ballots to property owners.

(C) Ballots shall not be valid unless signed by the property owner and mailed within the time allowed.

(4) Two (2) votes shall be awarded for each property. The interests of time-share owners shall be voted by the time-share owners' association on the same basis.

(5) A majority of the votes cast on the issue shall be required for passage of the measure.

(6) The quorum court member who conducted the election shall notify the property owners of the results of the election. If the measure passes, the notice shall include the notice of the meetings for nomination and election.

(7) The commissioners serving on the board at the time of the approval of the measure shall continue to serve until a new board is elected.

(c) (1) (A) Not more than sixty (60) days nor less than thirty (30) days after the measure is approved, the quorum court member who conducted the election under subsection (b) of this section shall hold a meeting to accept nominations for the new commissioners. Nominations for commissioners shall be made by property owners.

(B) The commissioners shall be elected, from among those nominated, provided that the nominee is current, as of close of business on the day before the nomination meeting date, on all monies owed to the district, including past due assessments and utility bills. The election shall be held at a subsequent public meeting to be held not less than thirty (30) days after the meeting to nominate commissioners.

(C) Notice of the meetings shall be mailed to the last known address of each property owner at least thirty (30) days prior to the meeting to nominate commissioners.

(D) The notice shall include the following information:

(i) The time, place, and date of the meetings to nominate and elect a new board of commissioners;

(ii) How to request an absentee ballot; and

(iii) The qualifications for voting in the election.

(2) (A) Each property owner in attendance at the meeting to nominate shall be entitled to nominate one (1) district resident property owner.

(B) Each property owner shall be entitled to only one (1) vote for each position of commissioner to be filled, regardless of the number of properties owned. Where a property is owned by more than two named persons on the deed, only the first two named persons will be entitled to vote. Where a property is owned by a corporation, trust, or other legal entity, their vote will be limited to two (2) votes to be cast by individuals designated by the organization on a letter signed by a properly authorized officer of the organization. Timeshare associations shall be entitled to two (2) votes to be cast by individuals designated by the timeshare association on a letter signed by a properly authorized officer of the organization. Any person so designated to vote on behalf of a corporation, trust, other legal entity, or timeshare association will be limited to one (1) and only one (1) vote per commissioner position to be filled, provided they are not property owners of other property in the district.

(C) A property owner may cast his or her vote in person at the meeting conducted to elect commissioners or may vote by an absentee ballot. Absentee ballots must be received prior to the meeting held to elect commissioners. ~~Any~~ An absentee ballot may be requested by any property owner or other person designated as provided in (c)(2)(B) who is eligible to vote.

(3)

(A) A meeting shall be held annually to nominate successor members, and a subsequent meeting shall be held to elect successor members.

(B) The annual meetings shall be conducted by the board, and the board shall enact regulations regarding how these meetings are conducted, the voting and tabulation procedures, the absentee ballot process, and any other matters necessary to insure the integrity of the voting.

(C) The same notice requirements as for the initial meetings for nomination and election of commissioners shall apply to the annual meetings for nomination and election of commissioners.

(D) In the event there is only one nominee per board position to be filled, the nominee(s) will be declared elected by acclamation and there will be no election for that year.

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(E) In the event the nominations submitted are not sufficient to fill the vacancies in board positions, those vacancies will be filled as provided for in (d)(4)(A).

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(4) The cost of the election held to select commissioners under this subsection shall be borne by the district.

(d)

(1) The new board of commissioners shall consist of five (5) members, who shall serve staggered terms of three (3) years.

(2) The terms of office of initial members shall be determined as follows:

(A) The individuals receiving the highest and second highest number of votes shall serve an initial term of three (3) years;

(B) The individuals receiving the third and fourth highest number of votes shall serve an initial term of two (2) years; and

(C) The individual receiving the fifth highest number of votes shall serve an initial term of one (1) year.

(3) If two (2) commissioners are to be elected at an annual meeting, the individuals receiving the highest and second highest number of votes shall be elected. If one (1) commissioner is to be elected at an annual meeting, the individual receiving the highest number of votes shall be elected.

(4)

(A) Vacancies occurring on the board shall be filled until the next annual election by a majority vote of the remaining commissioners.

(B) At the annual election, the position shall be filled for the remainder of the unexpired term. If two (2) commissioners are to be elected at the annual meeting, the individual receiving the second highest number of votes shall fill the vacancy for the unexpired term. If three (3) commissioners are to be elected at the annual meeting, the individual receiving the third highest number of votes shall fill the vacancy for the unexpired term.

(5) Whenever any member of the board fails to attend a majority of the meetings of the board during any six-month period, the board shall declare the position vacant, and the position shall be filled in the same manner as by this section for other vacancies provided for in (d)(4)(A).

(6) Nominees and elected commissioners shall remain resident property owners. Failing to do so will result in forfeiture of the office or eligibility to hold the office. Vacancies created by such a situation will be filled as provided for in (d)(4)(A).

(e) Whenever notice is required under this section, the notice shall be given by first class mail.

## History

Acts 1993, No. 524, § 1; 1993, No. 1138, § 1.

Notes:

1. The change to section (c)(1)(B) adds the requirement for any nominee for the office of commissioner be current on all monies owed to the district by the day prior to the nomination meeting, which is the same as in the HISID regulations. However, an appellate court ruling in HISID vs. TRL specified that any qualifications for candidates for commissioner must be specified in the state statutes.
2. The change to section (c)(1)(C) qualified the address of the property owner to which notice must be mailed to be the "last known address" so that inadvertently incorrect addresses cannot invalidate the nomination or election process.
3. The changes to section (c)(2)(B) emphasizes that any property owner who is entitled to vote only gets one vote, regardless of the number of properties owned. It also clarifies who can vote if the property owner is a corporation, trust, or other legal entity, or if there are multiple owners listed on the deed. It also allows timeshare associations to specify two voters to vote on behalf of all timeshare owners, provided those two voters are not otherwise entitled to vote based on other property owned. Based on our current law, the appellate court awarded 1428 votes to timeshare owners who own 1 week a year in Holiday Island. This change and the change to statute 14-92-201, which defines a "property owner" for the purposes of this Subchapter, will insure timeshare owners are not eligible to vote, but will give the timeshare association the same voting rights as other corporate owners of multiple properties, which will insure a fair process for all property owners.
4. The change to section (c)(2)(C) is intended to prevent fraud in absentee voting, by assuring that only a properly authorized and entitled voter can request an absentee ballot for themselves.
5. (c)(3)(B) emphasizes that the board of a SID can make regulations governing specific aspects of the election process.
6. (c)(3)(D & E) cover situations not previously covered by the state statutes, but which have occurred in HISID elections, or could occur, and which are mentioned in HISID regulations.
7. (d)(5) Language changed to be consistent with other sections.
8. Paragraph (d)(6) was added to provide for the contingency of a sitting commissioner or someone nominated for commissioner not remaining a resident property owner during their term of office. This situation was not previously covered in the state statutes.

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# **A.C.A. § 14-92-603 Proposed**

Current through all laws of the 2018 Fiscal Session and 2018 Second Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 14 Local Government
- Subtitle 5. Improvement Districts Generally
- Chapter 92 Suburban Improvement Districts
- Subchapter 6-- Collection of Taxes

## **14-92-603. Collection of delinquent taxes.**

(a) If an eligible district has elected to collect its own taxes under § 14-92-602, the district is responsible for and may take action for collecting taxes that have become delinquent.

(b)

(1) An eligible district that has not elected to collect its own taxes under § 14-92-602 may elect to assume sole responsibility for the collection of the eligible district's taxes that have become delinquent.

(2)

(A) An election under subdivision (b)(1) of this section shall be made by resolution of the board of commissioners of the eligible district, and a certified copy of the resolution shall be filed with the county tax collector of each county in which any of the territory of the eligible district is located, prior to October 15 of any year.

(B) The election shall be effective for taxes becoming delinquent in the year of filing.

(c)

(1) If an eligible district has responsibility under this section for collecting the delinquent taxes of the district, or if the eligible district elects to assume this responsibility, the county collector shall take no action to enforce collection of delinquent taxes.

(2) If the eligible district has elected to collect only delinquent taxes, the county collector shall report delinquencies to the board of the eligible district.

(d) If it is the responsibility of the eligible district to collect delinquent taxes, the district shall add to the amount of the tax a penalty of twenty-five percent (25%) and shall enforce collection by civil proceedings in the circuit court of the county and in the manner provided by §§ ~~14-121-426—14-121-432~~ 14-92-604.

(e)

(1) Once an eligible district makes the application to collect the delinquent taxes of the district, the election continues in effect until revoked.

(2)

(A) Revocation shall be by resolution of the board and the filing of certified copies of the resolution with the collector of each county in which any of the territory of the eligible district is located.

(B) A filing under subdivision (e)(2)(A) of this section shall be made on or before October 15 of any year and shall be effective as to taxes becoming delinquent in that year.

## History

Acts 1985, No. 430, § 3; A.S.A. 1947, § 20-748; Acts 2011, No. 175, § 2.

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### Notes:

1. Changed the reference as to how collection of taxes is enforced from 14-121-426 to 14-121-432 (which is in the Drainage Improvement Districts' code) to 14-92-604, which is to be a newly added section that will contain the same text as appears in 14-94-122. This section, 14-94-122, is referred to in the other area of suburban improvement district code, 14-92-232, used by districts that do not collect their own taxes or delinquent taxes. This change would reduce the redemption period from 2 years to 30 days for SIDs eligible to collect their own taxes under this Subchapter and make all SIDs consistent in their collection of delinquent taxes. It is also preferable to have the actual text incorporated into the subchapter, versus having a referral to another Chapter, which could be changed without understanding the impact to this Chapter.