

## ASSEMBLY THIRD READING

AB 2890 (Bloom)

As Amended May 5, 2022

Majority vote

**SUMMARY**

Makes changes to the Property and Business Improvement District (PBID) Law of 1994.

**Major Provisions**

- 1) Provides that "special benefit" also includes, for the purposes of a property-based district, a particular and distinct benefit provided directly to each assessed parcel within the district. Merely because parcels throughout an assessment district share the same special benefits does not make the benefits general.
- 2) Specifies that a management district plan shall include the improvements, maintenance, and activities proposed for each year of operation of the district and the *estimated*, instead of maximum, cost thereof.
- 3) Provides that, in a property-based district's management plan, properties throughout the district may share the same special benefits. In a district with boundaries that define which parcels are to receive improvements, maintenance, or activities over and above those services provided by the city, the improvements, maintenance, or activities themselves may constitute a special benefit.
- 4) Specifies that, in addition to 3), above, the city may impose assessments that are less than the proportional special benefit conferred, but shall not impose assessments that exceed the reasonable costs of the proportional special benefit conferred. Because one or more parcels pay less than the special benefit conferred does not necessarily mean that other parcels are assessed more than the reasonable cost of their special benefit.
- 5) Deletes the requirement that a management district plan include, for a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district and the total amount of general benefits, if any.

**COMMENTS**

*PBIDs.* The PBID Law of 1994 allows property owners to petition a city or county to set up an improvement district and levy assessments on property owners to pay for promotional activities as well as for physical improvements, subject to Proposition 218's approval requirements [AB 3754, (Caldera), Chapter 897, Statutes of 1994]. AB 2618 (Pérez), Chapter 240, Statutes of 2014, amended the PBID Law of 1994 to conform several of its provisions to the constitutional requirements established by Proposition 218 of 1996 (California Constitution Article XIII D).

*Assessment Districts and Proposition 218.* Post-Proposition 13, assessments gained momentum as a new source of funding. Most assessments are levied against real property, and are generally collected on the property tax roll, secured by a lien against the assessed property, and subject to Proposition 218. Proposition 218 (California Constitution Article XIII D) distinguishes among taxes, assessments, and fees for property-related revenues, and requires certain actions before such revenues may be collected.

Proposition 218 includes requirements to determine which properties are included in a benefit assessment district and the apportionment of each assessment. Local agencies must determine the special benefit for each identified parcel and separate the general benefits because only special benefits are assessable. The cost of the assessment cannot exceed the reasonable cost of the proportional special benefit that parcel receives.

Property-based assessment districts' notice, protest, and hearing requirements for new, extended, or increase assessments are governed by Proposition 218, which involves mailed protest ballots to all assessed property owners, a 45-day protest period, and a public hearing at which protests are counted and the presence or absence of a majority protest is determined. After complying with notice, protest, and hearing requirements, if a majority protest is not received from property owners, the legislative body may adopt a resolution to establish the assessment district and levy the assessment.

Proposition 218 requires a professional engineer's report to estimate the amount of special benefit to landowners and the amount of general benefit. The Constitution defines a "special benefit" as a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

### **According to the Author**

According to the author, "Without the clarifications in AB 2890, PBIDs will remain subject to litigation challenges that severely impede – or even eliminate – PBIDs and the benefits they provide. The pandemic has had an unprecedented impact on California communities, and AB 2890 provides simple clarifications that will help ensure PBIDs can continue to revitalize our State's downtown areas and economic corridors in a time when these districts need it the most."

### **Arguments in Support**

According to the California Downtown Association, "PBIDs help improve and energize the State's urban and commercial communities by successfully funding improvements that enhance the economic activity, public places, culture and support small businesses in that district. While condensed in total physical size, downtowns are immensely valuable, diverse, efficient, inclusive, and resilient. For example, PBIDs drive tax revenue, increase business activity, and hold a concentration of resources, amenities, and social infrastructure that are vital to our regions. Due to their higher density and expansive user base, our districts support a vibrant variety of retail, infrastructure, and institutional uses which offer mutually reinforcing benefits to our communities.

"AB 2890 is needed to ensure PBIDs can continue to be a viable, successful financing tool for the economic engines powering our cities forward. In 1996, Proposition 218 changed the requirements for PBID assessments, and the law now requires a professional engineer to prepare a report stipulating that 'special benefits' be separated from 'general benefits' relative to the services or improvements paid by assessments for the assessment to be approved. However, there is no implementation guidance for how engineers are to identify and separate the two benefits. This ambiguity has made it difficult for PBIDs to determine what assessments can be charged and has led to an increasing number of unwarranted lawsuits against them challenging their calculations. AB 2890 provides the necessary details to help parties comply with the benefit separation requirement.

"Specifically, AB 2890 clarifies the special benefit of the programs, which will help PBID assessments avoid unnecessary and costly legal challenges. Litigation arising from this lack of clarity threatens the viability of all of California's PBIDs and the employment, public health and safety, and economic development benefits they foster. As businesses recover from the COVID-19 pandemic, PBIDs continue to be an especially important tool helping finance improvements and services that positively energize California's commercial areas, and AB 2890 is needed to ensure that PBIDs continue to provide the best experience for our residents, employees, visitors, and tourists."

**Arguments in Opposition**

None on file.

**FISCAL COMMENTS**

None.

**VOTES****ASM LOCAL GOVERNMENT: 6-0-2**

**YES:** Aguiar-Curry, Bloom, Boerner Horvath, Ramos, Luz Rivas, Robert Rivas

**ABS, ABST OR NV:** Lackey, Voepel

**UPDATED**

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