
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2021 - 2022 Regular

Bill No: AB 2890
Author: Bloom
Version: 5/5/22
Consultant: Grinnell

Hearing Date: 6/22/22
Tax Levy: No
Fiscal: No

PROPERTY AND BUSINESS IMPROVEMENT DISTRICTS

Makes two changes to Property and Business Improvement District Law.

Background

Proposition 218 (1996) added Article XIID to the California Constitution to require owners of real property to approve benefit assessments in a weighted ballot election. Property owners vote in proportion to their proposed assessments, which reflect how much their property benefits from the proposed public works or public services.

Proposition 218 states that “no assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel,” and requires a professional engineer’s report to estimate the amount of special benefit to landowners and the amount of general benefit. Proposition 218 adds that the proportionate special benefit derived by each identified parcel must be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. The initiative further defined 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.

The Property and Business Improvement District (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, 1994). Local officials also may use the 1994 Law to assess business owners, provided that they follow statutory notice, hearing, and protest procedures (AB 1208, Silva, 2007).

PBID law currently defines “special benefit” as a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large, a definition added as part of an omnibus measure that conformed PBID law to Proposition 218’s requirements (AB 2618, Perez, 2014). AB 2618 also provided that special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

Any formation of a PBID must include a summary of its management plan that includes specified contents, including a list of the properties or businesses to be assessed, the assessor’s parcel numbers for properties to be assessed, and a statement of the method or methods by which

the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business. AB 2618 stated that the proportionate special benefit derived by each identified parcel must be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities, and prohibited any assessment that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. AB 2618 also required the plan include the total amount of all special benefits to be conferred upon the properties located within the property-based district, as well as general benefits, if any.

In 2004, Robert Dahms challenged the City of Pomona's formation of a PBID under several grounds that the City violated provisions of Proposition 218. After losing in trial court, Dahms appealed, and in 2009, the Fourth District Court of Appeals entered a decision in *Dahms v. City of Pomona*, 174 Cal.App.4th 708 (2009), affirming the trial court decision.

Dahms argued that the City of Pomona's PBID's assessments were not proportional to the benefits received because they were discounted for nonprofit entities, and as a result, could not be proportionate to the benefit received if all properties received the same benefits. The Court rejected the argument, stating that Proposition 218 "leaves local governments free to impose assessments that are less than the proportional special benefit conferred—in effect, to allow discounts. Moreover, nothing in article XIII D precludes local governments from allowing discounts across the board for all parcels in the assessment district or from allowing them selectively, for certain parcels in the district but not for other." Instead, the Court held that Proposition 218's binding restriction is to ensure assessments do not exceed the reasonable cost of the special benefit.

Additionally, Dahms argued that City of Pomona failed to separate general benefits from special ones, in violation of Proposition 218's direction that an agency "shall separate the general benefits from the special benefits conferred on a parcel." The Court disagreed, stating the Proposition 218 only requires that assessments be limited to the reasonable cost of providing special benefit, and that any additional costs of providing additional general benefits cannot be included in the amounts assessed. The Court added that special benefits can in turn provide general ones, such as when the PBID's enhanced security services produced increased property values or increased safety for the general public; however, these benefits need not be deducted from the reasonable cost of providing the special benefits before the assessments are calculated.

The California Downtown Association wants to amend PBID law to incorporate the holding in the *Dahms* decision to clarify PBID assessment calculation procedures.

Proposed Law

Assembly Bill 2890 makes two changes to PBID Law:

First, the measure adds an additional definition for special benefit to include a particular and distinct benefit provided directly to each assessed parcel within the district. The bill states that because the fact that parcels throughout an assessment district share the same special benefits does not make the benefits general.

Second, the bill deletes the requirement that the plan include the total amount of all special benefits conferred on all properties within the PBID, as well as the total amounts of general benefits, if any. The measure replaces those requirements to instead provide that properties throughout the PBID may share the same special benefits. The bill adds that 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, and permits the city to impose assessments that are less than the proportional special benefit conferred, but not any that exceed the reasonable costs of the proportional special benefit conferred. AB 2890 then adds that 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.

The measure also makes conforming changes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. 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.”

2. The law of the land. Proposition 218 imposes constitutional limitations on property-related fees. As a result, the Legislature is limited in the actions it can take to change how the Proposition works, absent a constitutional amendment. The Legislature can enact statutes to help shape the courts’ interpretations of constitutional provisions, but in the end the courts will ultimately interpret Proposition 218’s constitutional requirements. AB 2890 makes changes consistent with current case law; however, if courts find a conflict between the text of Article XIIIID and the direction codified in the bill, they will be bound to follow the Constitution.

Assembly Actions

Assembly Local Government Committee:

6-0

Assembly Floor:

73-0

Support and Opposition (6/20/22)

Support: California Downtown Association
 California Travel Association (CALTRAVEL)
 Carmichael Improvement District
 Central City Association of Los Angeles
 Chrysalis
 City and County of San Francisco
 Downtown Berkeley Association
 Downtown Center Business Improvement District

Downtown LA Industrial District Bid
Downtown Long Beach Alliance
Downtown Napa Association
Downtown Oakland Association
Downtown Sacramento Partnership
Downtown San Diego Partnership
Downtown Walnut Creek Business Improvement District
Figueroa Corridor Business Improvement District Los Angeles
Florin Road Partnership
Gateway Los Angeles Airport District
Old Pasadena Management District
San Jose Downtown Association
Soma West Community Benefit District
Union Square Alliance
Urban Place Consulting Group
Westwood Village

Opposition: None submitted.

-- END --