

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2890 (Bloom) – As Amended April 19, 2022

SUBJECT: Property and business improvement districts.

SUMMARY: Makes changes to the Property and Business Improvement District (PBID) Law of 1994. Specifically, **this bill:**

- 1) Provides that “special benefit” also includes, for the purposes of a property-based district, a particular and distinct benefit provided directly to assessed parcels throughout 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. If the special benefits themselves produce general benefits, the value of those general benefits need not be deducted before the assessments are calculated.
- 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.

FISCAL EFFECT: None.

COMMENTS:

- 1) **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 (Perez), 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).

- 2) **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 (Article XIII D of the California Constitution) 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."

- 3) **Dahms Vs. Pomona PBID.** Like many other aspects of Proposition 218, local assessments for have been litigated numerous times. One particular case, *Dahms v. Downtown Pomona Property & Business Improvement Dist.*, (2009) 174 Cal.App.4th 708, involved the formation of the Downtown Pomona PBID. The process to form the PBID began in 2003 and on August 2, 2004, the city council held the public hearing to tabulate the ballots with 126 in favor of formation and 66 opposed to it. On August 25, 2004, Dahms filed an action challenging the City's formation of the PBID on the ground that it violated article XIII D of the California Constitution.

The Court concluded in *Dahms* that, "The assessment imposed on a parcel shall not shall not 'exceed the reasonable cost of the proportional special benefit conferred on that parcel.' But article XIII D does not require the assessment *be no less than* the reasonable cost of the proportional special benefit conferred on that parcel. That is, article XIII D 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 others."

Additionally, the Court said, "In sum, nothing in article XIII D prohibits discounted assessments, and nothing in article XIII D requires that any discounts be uniformly granted across all parcels in an assessment district. Rather, what article XIII D requires is that the

assessment on a particular parcel not exceed the reasonable cost of the proportional special benefit conferred on that parcel. Thus, if the assessments imposed on some parcels are less than the reasonable cost of the proportional special benefit conferred on those parcels, then the discounted assessments do not violate article XIII D so long as those discounts do not cause the assessments imposed on the remaining parcels to exceed the reasonable cost of the proportional special benefit conferred on those parcels.”

Another question addressed in *Dahms* was whether the Pomona PBID adequately distinguished between special and general benefits. The Court declared that, “Under article XIII D, ‘[n]o assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel.’ (Art. XIII D, § 4, subd. (a).) The provision is unambiguous, and nothing in article XIII D says or implies that if the special benefits that are conferred also produce general benefits, then the value of those general benefits must be deducted from the reasonable cost of providing the special benefits before the assessments are calculated. Rather, the only cap the provision places on the assessment is that it may not exceed the reasonable cost of the proportional special benefit conferred on that parcel.”

“As we have already explained, the services provided by the PBID (security services, streetscape maintenance, and marketing, promotion, and special events) are all special benefits conferred on the parcels within the PBID—they ‘affect the assessed property in a way that is particular and distinct from [their] effect on other parcels and that real property in general and the public at large do not share.’ Under article XIII D, therefore, the cap on the assessment for each parcel is the reasonable cost of the proportional special benefit conferred on that parcel. If the special benefits themselves produce certain general benefits, the value of those general benefits need not be deducted before the (caps on the) assessments are calculated.” The Court ruled that the PBID did adequately separate general benefits from special benefits. This bill seeks to codify recent cases such as *Dahms*.

- 4) **Bill Summary and Author’s Statement.** This bill further defines “special benefit” for the purposes of the PBID Law of 1994 and makes changes to the information a management district plan must include. The California Downtown Association is the sponsor of this 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.”

- 5) **Policy Consideration.** Proposition 218 imposes constitutional limitations on assessments. 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 the courts will interpret Proposition 218’s constitutional requirements. Ultimately, if the courts find a conflict between Article XIID and AB 2890, they will be bound to follow the Constitution, meaning AB 2890 may not have an effect on the litigation at hand. The Committee may wish to consider the need for the bill in light of existing constitutional constraints.

- 6) **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.”

- 7) **Arguments in Opposition.** According to the Howard Jarvis Taxpayers Association, “AB 2890’s sponsor, the California Downtown Association, says that it wants to ‘clarify’ the distinction between general public benefits and special benefits reaped only by the assessed properties and businesses. Unfortunately, the current proposed language does more to blur the distinction than to clarify it.

“To increase clarity, the first sentence of proposed new subsection (b) of section 36615.5 should be amended to read: ‘Special benefit’ also includes, for purposes of a property-based district, a particular and distinct benefit provided directly to ~~assessed parcels throughout~~ each assessed parcel within the district.

“Next, this sentence at the end of the bill is contrary to Prop 218: “If the special benefits themselves produce general benefits, the value of those general benefits need not be deducted before the assessments are calculated.”

“It is the improvements, maintenance and activities of a district that produce special and general benefits. Special benefits don’t produce general benefits. ‘Special benefit’ and ‘general benefit’ are merely descriptions of the effects experienced because of the funded

improvements, maintenance, or activities of the district. We ask that this sentence be struck entirely. With these changes, we will remove our objection.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Downtown Association [SPONSOR]
California Asian Pacific Chamber of Commerce
California State Association of Counties
California Travel Association
Carmichael Improvement District
Central City Association of Los Angeles
Chrysalis
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
Midtown Association
Old Pasadena Management District
San Jose Downtown Association
SOMA West Community Benefit District
Union Square Alliance
Urban Place Consulting Group
Westwood Village

Opposition

Howard Jarvis Taxpayers Association (Unless Amended)

Analysis Prepared by: Jimmy MacDonald / L. GOV. / (916) 319-3958