

48-620. Improvement districts for underground utility and cable television facilities in public rights-of-way and easements; procedures; costs; definitions

A. Subject to the limitations contained in this section, the powers and duties of the governing body of a municipality for establishing underground utility facilities are as provided in this article for other types of improvement districts.

B. Notwithstanding section 48-507, after the governing body passes a resolution or notice declaring its intention to order an improvement district for underground utility facilities, the governing body shall hold a hearing at least thirty days after the completion of the posting and publication of the notice of intention pursuant to section 48-506. At the hearing, the governing body shall consider the issue of ordering an election on the formation of the improvement district and shall receive public comment on the proposed district. Section 48-507, regarding written protests of the proposed improvement, does not apply to a district formed pursuant to this section. The governing body may only order the election on the issue of formation of the district if the owners of real property in the district have signed and submitted petitions to the clerk of the governing body in support of the formation of the district. The petitions shall comply with the following:

1. Clearly state that they are petitions in support of the formation of an underground utility improvement district and shall specifically describe in words or by use of a map the location of the proposed district's boundaries. The petitions shall require the signer's signature, name and address or description of the property that is owned in the district in a manner sufficient to determine ownership through the use of public records.

2. Be signed by owners of a majority of the real property within the boundaries of the proposed district as measured by square footage or acreage owned. Signatures shall not be required to be notarized and for property with more than one owner, the signature of one owner is binding on the remaining owners of the property. On submittal to the clerk of the governing body, the petitions are a public record. Ownership of property shall be as of the date of the hearing and shall be determined by records of the county assessor or other public records regarding property ownership. For purposes of this paragraph, "owner" means a person, association, corporation or other entity without regard to residency.

C. If the governing body finds that sufficient signatures are submitted pursuant to subsection B of this section, the governing body may proceed with a simplified ballot card election pursuant to subsection G of this section. If there are not sufficient signatures, the governing body shall not proceed with the formation of the district. If no registered voters reside within the area of the proposed district, an election is not required and the governing body may declare the formation of the district.

D. The requirement pursuant to section 48-577 that plans and specifications be filed prior to adoption of the resolution of intention may be satisfied by a general plan showing at least the general location and type of facilities to be constructed. Actual plans and specifications shall be filed following the adoption of the resolution ordering the election regarding the improvement but prior to the election and the recording of the assessment and warrant. A person interested and objecting to an improvement or to the extent of the assessment district for a district established pursuant to this section may file a written protest with the city or town clerk within thirty days after completion or posting of the notice, or within thirty days after the date of the last publication of the notice if that date is after the completion of the posting.

E. The requirement pursuant to section 48-584 for notice of the award of contract may be satisfied by the inclusion in the resolution of intention of the name of the coordinating utility. The fifteen day period for filing notice of objections under section 48-584, subsection E shall begin upon completion of publication and posting of the notice of proposed improvement stating the name of the coordinating utility.

F. The governing body shall determine the boundaries of the district and designate the transmission facilities and, if applicable, any independent parallel facilities, to be placed underground and shall obtain from the coordinating utility an accurate statement of the costs of the project, including an estimate of the average cost in

assessments on an average single family residence in the district. The amount shall be included in the engineer's estimate required by section 48-577. The costs shall include:

1. The amount by which the cost of placing facilities underground would exceed the cost of placing comparable facilities overhead.
2. The reconstruction cost and net depreciation costs of any existing facilities to be removed.
3. The actual costs of removing such existing facilities, less the salvage value of the facilities removed.
4. The charge to finance the costs prescribed in this subsection over a stated period of not to exceed fifteen years.
5. The tax reimbursement amount.

G. On receipt of an accurate estimate of the costs of the project, the governing body shall call a simplified ballot card election in the area affected by the proposed district. The simplified ballot card shall contain the words for a district formation election "district, yes" and "district, no" and for an assessment election "assessment, yes" and "assessment, no". A single simplified ballot card may be used for both the question of the formation of the district and the question of the assessment. The election may be conducted in a simplified format and administered by the governing body. The governing body shall mail to all registered voters and property owners within the proposed district simplified ballot cards with return postage prepaid. The simplified ballot card shall clearly state that to be valid a voted ballot card shall be returned to the governing body within thirty days after the governing body mails the ballot card and a ballot card that is not timely returned shall not be counted. A person who is qualified to vote in a municipal election for that municipality or a property owner who owns land within the proposed improvement district are qualified to vote in an election for a municipal improvement district formed pursuant to this section, except that only residents of or property owners in the area that is within the proposed district may vote. If a majority of the persons voting with the simplified ballot card approves the formation of the district and if a majority of the persons voting with the simplified ballot card approves the assessment, the governing body may form the district and make the assessment. If more than one governing body is affected by a proposed district, each governing body may form its own district for the portion of the work within its jurisdiction. Assessments for districts that are formed for a portion of the same project shall be distributed between districts in proportion to the benefits to be received. When the governing body acquires jurisdiction to order the work, it shall not call for construction bids but may enter into a contract or contracts with the utility, utilities or licensed cable television system whose facilities are to be placed underground. Prior to entering into a contract or contracts the coordinating utility shall submit a final report to the municipality. The amount stated in the final report may be based on detailed engineering studies. If the amount stated in the final report exceeds the amount stated in the preliminary report the governing body may either:

1. Terminate the project.
2. Call a new election on the improvement.

H. The contract shall provide for payment to the utility or licensed cable television system over a term of not to exceed fifteen years of the amount set forth in the final report, shall specify those facilities to be owned by the municipality and those to be owned by the utility, utilities or licensed cable television system and shall contain such provisions for the prepayment of any assessment at the option of any property owner, and such other terms, covenants and conditions as the governing body and the utility, utilities or licensed cable television system determine. The licensed cable television system shall not be entitled to reimbursement except where the cable television system's parallel facilities are installed to replace existing cable television facilities other than independent parallel facilities not included by the governing body in the work. The amount payable on the contract or contracts shall be payable solely from amounts collected on the assessment levied in the district. No payment or performance bond shall be required of a utility or licensed cable television system entering into a contract with the governing body.

I. The municipality may retain an independent engineering consultant to review all reports, estimates and costs provided by the coordinating utility.

J. The coordinating utility shall advance or reimburse a governing body for the costs of forming the district and the cost of printing, advertising and posting incurred or to be incurred by a governing body and shall bear its own expenses for engineering and design, and preparing the reports, plans and specifications. Upon completion of the work, the coordinating utility shall reimburse a governing body for its reasonable expenses incurred with respect to the district. Unless otherwise provided for in a manner acceptable to the coordinating utility, the amounts advanced or reimbursed shall be included in the contract and in the amount assessed.

K. This section does not amend or modify any existing line extension policies of any utility involved. The costs to be reimbursed under the contract shall be reduced to the extent of amounts paid or to be paid by landowners or from other sources directly to the utility or cable television system for the installation of the facilities.

L. The assessment and warrant may be recorded at any time following approval of the project at an election. The hearing on the assessment may be held at any time not less than twenty days from the date of recording of the assessment and warrant. An additional hearing following notice from the superintendent of streets to the governing body of completion of the work shall be requested only if any member of the governing body or any owner of or any person claiming an interest in any lot which received an assessment, within one year of the date of the notice of completion, files a written notice with the clerk stating that the work has not been performed substantially in accordance with the resolution of intention, the plans and specifications and estimate. The notice shall state in particular the failure to perform and may also state, if applicable, any requested reduction in the assessment of any one or more parcels due solely to the failure of such performance. The notice shall state the name and address of the person filing the notice and shall describe such person's interest in land subject to assessment. The governing body may enforce the contract and may recess the hearing to permit the utility or licensed cable television system to complete the work. If the work cannot be completed, the assessment may be adjusted to take the failure to complete into consideration. The amount due under the agreement with the utility or licensed cable television system shall be adjusted accordingly. Repayment under the contract shall be conditioned on completion of the work and approval of the assessment as provided by law. Unless an objection has been filed, repayment shall begin within nine months of the notice of completion.

M. An improvement district formed pursuant to this section shall not issue bonds, and the assessment for district purposes against the property within the district shall not exceed the amount specified in the engineer's estimate. Notwithstanding any other statute, the assessment for an underground electrical power line shall not be assessed against the owners of the frontage of the right-of-way of the underground power line but shall be assessed against all property owners benefiting from the burial of the power line.

N. The governing body shall provide for the levy and collection of assessments on the real property in the district in the manner provided for in this article. However, the assessment may be paid in installments necessary to pay amounts due under the contract and to reimburse the municipality for expenses incurred as provided in the assessment.

O. A district formed under this section shall not engage in any activity other than contracting for or establishing underground transmission facilities together, where applicable, with parallel facilities.

P. The governing body by resolution may summarily determine that it will participate in the costs of the improvement. If the municipality is willing to assume the total outstanding assessment for the underground utility facilities, the governing body may summarily dissolve the district by resolution after payment of all liabilities including all amounts due under the contract.

Q. The formation of an improvement district for underground utility facilities under this section does not prevent the establishment of other improvement districts which may include all or part of the same property for any purposes authorized by law.

R. If a petition for the formation of an improvement district for underground utilities is presented to the governing body, and the petition purports to be signed by all of the real property owners in the proposed district exclusive of mortgagees and other lienholders, the governing body, after verifying such ownership and making a finding of such fact, may adopt a resolution of intention to order the proposed improvement pursuant to section 48-576 and has immediate jurisdiction to adopt the resolution ordering the improvement pursuant to section 48-581, without the necessity of publication and posting of the resolution of intention provided for in section 48-578.

S. If the governing body determines that a parcel of property is a single family residence and that payment of the assessment would cause a financial hardship on the owners which would be likely to cause a delinquency in payment of the assessment, the assessment for an improvement made under this section shall provide for an extension in the time to pay principal and interest on the assessment against that parcel for a period of time not to exceed ten years. If the governing body determines that the grounds for extension no longer exist, then the extension will be terminated and all payments which would have been due but for the extension shall become due. The assessment shall provide for adjustments in the assessments against the remaining parcels to provide for timely payment under the agreement.

T. Notice of the passage of a resolution of intention for an improvement under this section shall be given to the corporation commission and, where the improvement involves a utility regulated thereby, the rural electrification administration.

U. In this section, unless the context otherwise requires:

1. "Coordinating utility" means the utility whose proposed or existing transmission facilities are to be placed underground. The coordinating utility is responsible for assembling into one report cost estimates and other data provided by each utility or licensed cable television system whose facilities are to be placed underground.

2. "Cost" means all costs of design and construction of facilities.

3. "Facilities" means any works or improvements used or useful in providing electric, communications or licensed cable television service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, studs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances but excluding any works for transmission by microwave or radio. Facilities shall include only transmission facilities and parallel facilities.

4. "Governing body" means the council of a city or town or the board of supervisors of a county.

5. "Independent parallel facilities" means existing parallel facilities which do not rely for their support on poles or other structures to be removed as part of the work. If the utility or licensed cable television system elects to remove the independent parallel facilities but the removal and underground replacement thereof was not included by the governing body in the work, the reconstruction and removal costs of such independent parallel facilities shall not be included in a contract or be assessed.

6. "Parallel facilities" means facilities that run or are permitted to run in the easement in which the transmission facilities are to be placed underground and that may be included underground with the transmission facilities, and facilities appurtenant thereto. Any parallel facilities shall have a right to be included underground and have access to a trench on such reasonable terms and conditions as the coordinating utility and the owners of the parallel facility may determine provided they do not interfere with the installation or operation of the transmission facilities.

7. "Private parallel facilities" means parallel facilities other than those owned or operated by a public utility or licensed cable television system. Private parallel facilities have the rights of parallel facilities except that the costs thereof shall not be included in a contract or be assessed.

8. "Tax reimbursement" means an annual charge for reimbursement for property taxes, or voluntary contributions in lieu of property taxes as provided in chapter 1, article 8 of this title, by applying the tax rates in effect on the date of adoption of the resolution of intention to the amount by which the estimated average taxable value of underground facilities, excluding the value of trenches, backfill and compaction, on completion exceeds the estimated average taxable value of comparable overhead facilities. In this paragraph, "estimated average taxable value" means the average of the estimated taxable value for each year of reimbursement. The value of the trenches, backfill and compaction of the underground facilities shall be attributed to and shall inure to the benefit of the owners of property within the district and shall be owned by the city. Reimbursement shall not be for a period longer than fifteen years.

9. "Transmission facilities" means facilities which are, or are appurtenant to, electric transmission lines of more than twenty-five kilovolts but not more than two hundred thirty kilovolts in size.