CHAPTER 35

Residential Improvement District Act

**SECTION 6‑35‑10.** Citation of chapter.

 This chapter may be cited as the “South Carolina Residential Improvement District Act”.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑20.** Definitions.

 As used in this chapter:

 (1) “Assessment” means a charge against the real property belonging to an owner within an improvement district created pursuant to this chapter. The assessment must be made upon real property located within the district, other than property constituting improvements within the meaning of this section, and may be based upon assessed value, front footage, area per parcel basis, the value of improvements to be constructed within the district, or a combination of them, or another basis agreed to between the owner and the governing body, as the basis is determined by the governing body of the county. An assessment imposed under this chapter remains valid and enforceable in accordance with the provisions of this chapter even if there is a later subdivision and transfer of the relevant property or a part of it. An improvement plan may provide for a change in the basis of assessment upon the subdivision or transfer of real property, or upon such other event as may be deemed appropriate by the governing body. The rates of assessments within a district need not be uniform. The owner and the governing body shall agree upon the rates of assessment across different sections of, or uses within, the district.

 (2) “Improvements” include, but are not limited to, public infrastructure improvements, such as a parkway, park, and playground; a recreation facility, athletic facility, and pedestrian facility; sidewalk; parking facility ancillary to another public facility; facade redevelopment; storm drain; the relocation, construction, widening, and paving of a street, road, and bridge including demolition of them; underground utility dedicated or to be dedicated to public use; all improvements permitted under Chapter 35, Title 4 and Chapter 37, Title 5; a building or other facility for public use; public works eligible for financing under the provisions of Section 6‑21‑50; and things incidental to an improvement including, but not limited to, planning, engineering, promotion, marketing, administrative fees, and acquisition of necessary easements and land, and may include a facility for lease or use by a private person, firm, or corporation. Improvements also include the construction of a new public school and the renovation and expansion of an existing public school. However, except as otherwise provided in this item, maintenance and an operational expense are not considered to be improvements. The construction of the improvements must comply with applicable state and federal law and regulations governing the construction of similar public improvements installed or constructed by a private entity. Improvements may be designated by the governing body as public works eligible for revenue bond financing pursuant to Section 6‑21‑50, and these improvements, taken in the aggregate, may be designated by the governing body as a “system” of related projects within the meaning of Section 6‑21‑40. The governing body, after due investigation and study, may determine that improvements located outside the boundaries of a district confer a benefit upon property inside a district or are necessary to make improvements within the district effective for the benefit of property inside the district. Improvements must service primarily an owner of the property within the district. This requirement is met if the improvements are situated within:

 (a) the district; or

 (b) a designated service area that benefits the district.

 (3) “Improvement plan” means an overall plan by which the governing body proposes and the owner accepts to effect improvements within a district and service area to preserve property values, prevent deterioration of urban areas, and preserve the tax base, and includes an overall plan by which the governing body proposes to effect improvements within an improvement district in order to encourage and promote private or public development within the improvement district.

 (4) “District” means an area within the county or municipality designated by the governing body and proposed by petition and approved by the governing body pursuant to the provisions of this chapter and within which an improvement plan is to be accomplished. A district may be comprised of noncontiguous parcels of land. A district may be made up of varying proposed land uses including, but not limited to, residential, commercial, industrial, institutional, or a combination of some or all of those. A district may not include the grounds of the State House in the City of Columbia. Multiple districts may not be formed over the same property at the same time.

 (5) “Governing body” means, as appropriate, the county council or the municipal council or councils with authority over the geographic area in which the district lies and acting under this chapter. School boards are not included within the definition of governing body under this chapter.

 (6) “Government entity” means the county or municipality in which the district is located and the governing body of which acts under this chapter to create such district and impose assessments therein.

 (7) “Owner” means any person eighteen years of age, or older, or the proper legal representative for any person younger than eighteen years of age or otherwise incapacitated person as defined in Section 62‑5‑101(1), and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater, expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights, and future interests, and who owns, at the date of the petition required by Section 6‑35‑118, at least an undivided one‑tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate, and any duly organized group whose total interest is equal to at least a one‑tenth interest in a single tract.

 (8) “Service area” means, based on sound planning or engineering principles, or both, a defined geographic area served by a particular improvement. A provision in this chapter may not be interpreted to alter, enlarge, or reduce the service area or boundaries of a political subdivision that is authorized or set by law. A service area may consist of tracts in more than one state, county, or municipality, provided that each relevant governing body approves the creation of the service area and the district. Each improvement may have its own specific service area.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

Editor’s Note

ARTICLE 5 of Title 62 was rewritten by 2017 Act No. 87, Section 5.A, effective January 1, 2019. For Section 62‑5‑101(1), referenced in (7), see now, Section 62‑5‑101(12).

**SECTION 6‑35‑30.** Authority to exercise powers and provisions of chapter.

 A county or municipality, only with the approval of the owners of all real property situated within a proposed district, as further provided in Section 6‑35‑118, may exercise the powers and provisions of this chapter.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑40.** Relation to existing powers.

 Nothing contained in this chapter may be construed to limit or restrict the existing powers of an owner, county, municipality, or local school board. The authorization contained in this chapter is in addition to their powers and is provided as an additional means for the provision of infrastructure and improvements related to new development and redevelopment.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑50.** Assessments.

 (A)(1) An assessment may be imposed and collected by the governing body only upon compliance with the procedures set forth in this chapter.

 (2) The amount of the assessment must be based on actual costs of the improvements or reasonable estimates of those costs, to include, but not be limited to, interest expense, bond issuance costs, architectural and engineering costs, furniture, fixtures and equipment costs, and costs associated with the administration of the district.

 (B) A governing body that has not adopted a comprehensive plan pursuant to Chapter 29 of this title may not impose an assessment. A governing body that has adopted a comprehensive plan may only impose an assessment pursuant to this chapter.

 (C) A governing body shall prepare and publish an annual report describing, for each district, the amount of all assessments collected, appropriated, or spent during the preceding year. An annual summary must be made publicly available at the time that property tax bills are disseminated to property owners within the district.

 (D) Payment of an assessment may result in an incidental benefit to property owners or residents within the service area other than the payor. Under no circumstances shall assessments or the burden of funding an improvement be charged to any property located outside of the district. The provisions of this section do not apply to projects or undertakings designated by a governing body as a “system” under Section 6‑21‑40.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑60.** Issuance of special district bonds.

 The government entity is authorized to acquire, own, construct, establish, install, enlarge, improve, and expand any improvement and to finance the acquisition, construction, establishment, installation, enlargement, improvement, expansion, in whole or in part, by the imposition of assessments in accordance with this chapter, the issuance of special district bonds, or any other method of financing, provided that the full faith and credit of the applicable county or municipality is not pledged as security for it. In addition to any other authorization provided herein or by other law, the governing body of a government entity may issue its special district bonds or revenue bonds of the government entity under such terms and conditions as the governing body may determine by ordinance subject to the following: such bonds may be sold at public or private sale for such price as is determined by the governing body; such bonds may be secured by a pledge of and be payable from the assessments authorized herein or any other source of funds not constituting a general tax as may be available and authorized by the governing body; such bonds may be issued pursuant to and secured under the terms of a trust agreement or indenture with a corporate trustee and the ordinance authorizing such bonds or trust agreement or indenture pertaining thereto may contain provisions for the establishment of a reserve fund, and such other funds or accounts as are determined by the governing body to be appropriate to be held by the governing body or the trustee. The proceeds of any bonds may be applied to the payment of the costs of any improvements, including capitalized interest, expenses associated with the issuance and sale of the bonds, and any costs for planning and designing the improvements or planning or arranging for the financing, and any engineering, architectural, surveying, testing, or similar costs or expenses necessary or appropriate for the planning, designing, and construction or implementation of any plan in connection with the improvements.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑70.** Effect on bond‑borrowing limit.

 Bonds issued by the county or municipality pursuant to this chapter do not count for the purposes of calculating the bond‑borrowing limit pursuant to Article X of the Constitution of this State.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑90.** Inclusion of existing improvements.

 The owner may include within a proposed district improvements that have been constructed or are under construction at the time of the establishment of the district.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑95.** Disclosure to prospective purchasers that property subject to assessment.

 The owner or developer of the real property in a residential improvement district must disclose to prospective purchasers of residential real property in the improvement district that the property is subject to an assessment under the provisions of this chapter and the maximum annual amount and duration of the assessments.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑100.** Collection of improvement fees.

 The governing body shall collect from the owner, upon the issuance of any obligations secured by assessments, an improvement fee in an amount equal to four percent of the aggregate par value of such obligations. The improvement fee must be used to construct improvements or collective improvements, as described in Section 6‑35‑110, in a service area that is related to and serves the district. The governing body may contract with the owner, or with a third party, for the construction of the improvements. The improvements must be part of the improvement plan. A governing body imposing an improvement fee must not impose any additional fee upon properties located within a district to recover any capital costs paid for from assessments which are imposed upon properties located within a district as provided in this chapter.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑110.** Improvements to be funded by multiple districts; deposit in trust fund.

 (A) The owner may include improvements that are proposed to be funded by multiple districts, known as a “collective improvement”. The owner and the governing body may agree to designate all or part of the improvement fee for the construction of the collective improvement. If this occurs and if the collective improvement has not been identified previously in an improvement plan for another district, then the improvement plan must include:

 (1) a description of the collective improvement;

 (2) the estimated cost of it;

 (3) a deadline by which the collective improvement must be initiated; and

 (4) provisions for alternative uses of the improvement fee to defray the cost of other improvements within the same service area if the collective improvement is not initiated within the approved timeline.

 (B) The improvement fee or portion allocated to a specific collective improvement must be deposited into a trust account maintained by a bank serving as trustee in connection with bonds or other obligations secured by assessments. This trust account is to be maintained only for the purpose of funding a specific collective improvement. Funds from multiple districts, including districts that are created after the creation of the trust fund and the identification of the collective improvement, may be commingled in these trust accounts for the purpose of funding the collective improvement.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑115.** Improvements pertaining to schools.

 If an improvement or a collective improvement is, or directly pertains to, a school including, but not limited to, new construction or additions to existing construction, then the proposed improvement or the collective improvement must be approved by the governing body of the school district prior to the adoption of the resolution required by Section 6‑35‑120.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑118.** Petition to create improvement district and impose assessment.

 Only the owner of real property may request by petition the governing body to create a district consisting of such real property and to impose assessments therein to defray the cost of improvements. The petition must:

 (1) be signed by owners of all real property within the proposed district as of the date of submission of the petition;

 (2) contain a legal description of such real property; and

 (3) contain:

 (a) an improvement plan;

 (b) the projected time schedule for the accomplishment of the improvement plan;

 (c) the estimated cost; and

 (d) the amount of the cost to be derived from assessments or from bonds or other obligations secured by assessments, together with the proposed basis and rates of assessments to be imposed within the district.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑120.** Resolution by public body describing proposed district and improvement plan; description of payment of costs; public hearing.

 (A) The governing body, by resolution, shall describe the proposed district and the improvement plan; the projected time schedule for the accomplishment of the improvement plan; the estimated cost; and the amount of the cost to be derived from assessments or from bonds or other obligations secured by assessments, together with the proposed basis and rates of assessments to be imposed within the district.

 (B) The governing body may provide by resolution for the payment of the cost of the improvements and facilities to be constructed within the service area by assessments, by the issuance of special district bonds or other obligations secured by assessments, from general revenues from any source not restricted from such use by law, or from any combination of such financing sources as may be provided in the improvement plan.

 (C) The resolution also must establish the time and place of a public hearing to be held. The public hearing must take place:

 (1) in a county, no earlier than thirty days nor more than forty‑five days following the adoption of the resolution; or

 (2) in a municipality, no earlier than twenty days nor more than forty days following the adoption of the resolution.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑130.** Notice of public hearing; publication.

 (A) Notice of a public hearing must be published:

 (1) once a week for two successive weeks in a newspaper of general circulation within the relevant incorporated municipality; or

 (2) once a week for two successive weeks in a newspaper of general circulation within the relevant county.

 (B) The notice of public hearing must describe in general terms the location of the proposed district, contain a general description of the proposed improvements, identify each owner of twenty‑five percent or more by acreage of the real property situated in the area of the proposed district, and state the date, time, and place of the public hearing.

 (C) The final publication must be at least ten days before the date of the scheduled public hearing. At the public hearing and at any adjournment of the meeting, all interested persons may be heard either in person or by attorney.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑160.** Improvement as property of public entity; alteration and leasing.

 The improvements are to be or become the property of the municipality, county, State, special purpose district, school district, or other public or quasi‑public entity and may at any time be removed, altered, changed, or added to, as the governing body may in its discretion determine. The public or quasi‑public entity may lease these improvements to other public, quasi‑public, or nonpublic entities.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

**SECTION 6‑35‑170.** Ordinance creating district; findings; contents; notice of adoption.

 (A) Not less than seven days after the public hearing, the governing body may proceed to create the district by enactment of an ordinance. The ordinance may provide for the creation of the district as originally proposed or with such changes and modifications as the governing body may determine. The ordinance may further provide for the financing of the improvements by assessments, bonds, or other obligations.

 (B) An ordinance enacted under this section must contain the following findings:

 (1) the proposed improvements may benefit the proposed district and the proposed service area;

 (2) the improvements may preserve or increase property values within the district;

 (3) in the absence of the improvements, property values within the district are likely to depreciate, or that the proposed improvements are likely to encourage development in the improvement district;

 (4) the general welfare and tax base of the government entity would be maintained or likely improved by creation of an improvement district in the government entity;

 (5) it would be fair and equitable to finance all or part of the cost of the improvements by an assessment upon the real property within the district, and the governing body may establish the area as an improvement district and implement and finance, in whole or in part, an improvement plan in the district in accordance with the provisions of this chapter;

 (6) the improvements are located within the district or within the relevant service area; and

 (7) in circumstances where the district is proposed to consist of noncontiguous parcels, all parcels that comprise the district are situated within the relevant service area for each improvement.

 (C) An ordinance authorizing the creation of a district must:

 (1) include a description of potential levels of service resulting from improvements;

 (2) provide a methodology for the imposition, apportionment, adjustment, and termination of the assessment; and

 (3) include the expected impact upon school enrollments of development within the proposed district.

 (D) Notice of adoption of the ordinance shall be published in a newspaper of general circulation in the district once a week for two consecutive weeks. Any person affected by the action of the governing body may, by action de novo instituted in the court of common pleas for the county in which the district is located, within twenty days following the last publication of notice prescribed by this section, but not afterwards, challenge the action of the governing body.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 6‑35‑180.** Assessment roll; preparation and notice; hearing of objections; correction and confirmation of assessment; waiver of notice requirements.

 (A) In the event all or any part of improvements and facilities within the district are to be financed by assessments on property therein, the governing body shall prepare an assessment roll in which there shall be entered the names of the owners whose properties are to be assessed and the amount assessed against their respective properties with a brief description of the lots or parcels of land assessed. Immediately after such assessment roll has been completed the governing body shall cause one copy thereof to be deposited in the offices of the government entity for inspection by interested parties, and shall cause to be published at least once in a newspaper of general circulation within the district a notice of completion of the assessment roll setting forth a description in general terms of the improvements and providing at least ten days’ notice of the time fixed for hearing of objections in respect to such assessments. Hearings may be conducted by one or more members of the governing body, but the final decision on each such objection shall be made by vote of the governing body at a public session.

 (B) As soon as practicable after the completion of the assessment roll and prior to the publication of the notice provided in the preceding paragraph, the governing body shall mail by registered or certified mail, return receipt requested, to the owner or owners of each lot or parcel of land against which an assessment is to be levied, at the address appearing on the records of the city or county treasurer, a notice stating the nature of the improvements, the maximum total proposed cost thereof, and the maximum amount to be assessed against the particular property. The notice shall contain a brief description of the particular property involved, together with a statement that the amount assessed shall constitute a lien against the property superior to all other liens except property taxes. The notice also shall state the time and place fixed for the hearing of objections with respect to the assessment. Any property owner who fails to file with the governing body a written objection to the assessment against his property within the time provided for hearing such objections shall be deemed to have consented to such assessment, and the published and written notices prescribed in this chapter shall so state.

 (C) The governing body, a panel of the governing body, or a hearing officer or officers as designated by the governing body shall hear the objections as provided herein of all persons who have filed written notice of objection within the time prescribed and who may appear and make proof in relation thereto either in person or by their attorney. The governing body, at the sessions held to make final decisions on objections, may thereupon make such corrections in the assessment roll as it may deem proper and confirm the same or set it aside and provide for a new assessment. Whenever the governing body shall confirm an assessment, either as originally prepared or as thereafter corrected, a copy thereof, certified by the clerk of the government entity, shall be filed in the office of the clerk of court, register of deeds, or register of mesne conveyances of the county in which the government entity is situate, and from the time of such filing the assessment impressed in the assessment roll shall constitute and be a lien on the real property against which it is assessed superior to all other liens and encumbrances, except the lien for property taxes, and shall be annually assessed and collected with the property taxes.

 (D) Upon the confirmation of an assessment, if any, the governing body shall mail a written notice of the amount of the assessment finally confirmed to all persons who have filed written objections as hereinabove provided. Such property owner may appeal such assessment only if he shall, within twenty days after the mailing of the notice to him confirming the assessment, give written notice to the governing body of his intent to appeal his assessment to the court of common pleas of the county in which the property is situate; but no such appeal shall delay or stay the construction of improvements or affect the validity of the assessments confirmed and not appealed. Appeals shall be heard and determined on the record in the manner of appeals from administrative bodies in this State.

 (E) Following the completion of the assessment roll, the requirements of this section as to notice and hearing may be waived upon the filing with the governing body of a waiver signed by all owners of property within the district as of the date of filing of such waiver. Such waiver shall for each parcel in the district state the maximum assessment to be imposed thereupon and all owners of such parcel. Such waiver shall contain a statement that the persons signing the waiver intend thereby to waive all rights to notice, hearing, and appeal otherwise available under Section 6‑35‑180.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 6‑35‑190.** Abolishing district; public hearing.

 The governing body may abolish the district if there are no outstanding bonds or other obligations secured by assessments. The governing body must first conduct a public hearing. Notice of the hearing must appear in a newspaper of general circulation in the district two weeks before the hearing is held.

HISTORY: 2008 Act No. 350, Section 1, eff upon approval (became law without the Governor’s signature on June 17, 2008).

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.