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## Local Government Committee

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### HB 2343

**Brief Description:** Concerning reimbursement by property owners for street, road, and water or sewer projects.

**Sponsors:** Representatives Donaghy and Duerr.

#### Brief Summary of Bill

- Provides that reimbursement contracts for water-sewer extensions and street projects may last for up to 20 years.
- Allows water-sewer extension, water and sewer facility, and street project reimbursement contracts to provide for an extension to the contract period for the duration of a national economic recession.
- Requires such reimbursement contracts entered into prior to February 29, 2020, to be extended for the duration of the declared state of emergency due to the COVID-19 pandemic if an extension is requested prior to March 31, 2025.
- Removes requirements that government entities involved in reimbursement contracts notify property owners subject to a reimbursement obligation of the extension of a reimbursement contract.

**Hearing Date:** 1/24/24

**Staff:** Kellen Wright (786-7134).

#### Background:

As a prerequisite of development, local government ordinances may require the construction or improvement of water, sewer, or street facilities. In such circumstances, it is the responsibility of

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the property owner to construct or improve the facilities at the owner's expense. The property owner may contract with the municipality or special purpose district that required the construction or improvement in order to obtain reimbursement from later property owners that use the improvements.

#### Water-Sewer Extensions.

After a water-sewer district approves an extension to the system, the district must, upon request, contract with property owners within the district to allow the owners to extend the system when an extension is required as a condition of the further development of the property. The contract must be conditioned upon, among other things, the construction of the extension according to district plans, the inspection and approval of the extension, the transfer of the extension to the district at no cost upon completion, payment of all district costs related to the extension, and payment of all required connection charges.

The contract must also provide for reimbursement to the property owner of a portion of the costs of the extension when other property owners who did not contribute to the extension later use the extension. To determine which property owners must provide reimbursement, the board of commissioners of the water-sewer district must determine which parcels in the area would have required similar improvements for their development. The share of reimbursement must be based on a proportionate share of, at a minimum, the construction, contract administration, design, engineering, installation, and restoration costs. The reimbursement is paid from connection charges that the district receives for the use of the extension.

In the contract, the period during which the property owner can be reimbursed generally cannot exceed 15 years. The contract may, however, provide for an extension of this period if some government action prevents any development in the area of the extension for six months or more. In that case, the contract may be extended for a period of up to the duration of the government action. If there is an extension of the contract, the contract must specify the duration of the extension. Property owners subject to the reimbursement obligation must be notified by the district of the extension.

Both the original contract and any extension to it must be recorded with the county auditor's office.

A water-sewer district may also participate in the financing of a project under conditions set by its board of commissioners. If it does, then it is entitled to reimbursement on the same terms as a property owner who participated in the construction or improvement.

#### Water and Sewer Facilities.

Similar agreements are possible with counties, cities, towns, and drainage districts (collectively, "municipalities"). Upon request, these municipalities must contract with a property owner when the following conditions are met:

- the municipality's ordinances require the construction or improvement of storm, sanitary, combination sewers, pumping stations, disposal plants, water mains, hydrants, reservoirs,

or appurtenances ("water and sewer facilities") as a condition of further property development; and

- the water and sewer facilities are located within the municipality, or, except in the case of a county, within 10 miles of the corporate limits of the municipality.

If the municipality does not notify the property owner in writing that it will request a comprehensive plan approval, then the owner must do so if such approval is required. The water and sewer facilities must be consistent with the municipality's comprehensive plan and development regulations.

The contract must be conditioned on the same terms as a contract related to a water-sewer extension, including the construction of the facility to approved specifications, inspection and approval of the facility by the municipality, and the transfer of the facility to the municipality without cost upon acceptance of the facility by the municipality. Once a facility is accepted by the municipality, the municipality is responsible for its maintenance and operation. A contract must be recorded with the county auditor to be effective.

A property owner who enters into such a contract is entitled to pro rata reimbursement for up to 20 years for a portion of the costs of the facility from latecomer fees charged by the municipality to owners who subsequently use the facilities but did not contribute to their construction or improvement. A latecomer fee can be collected as part of a connection fee or as a separate charge. Municipalities must collect the fee as a condition of the use of the facilities by subsequent property owners, and the municipality may remove any tap or connection that was made without the payment having been made and may dispose of any unauthorized material without liability. The reimbursements must be determined by the municipality based on cost information submitted by the property owner within 120 days of the completion of the facility.

Like in a water-sewer contract, a water and sewer facility contract period may be extended if government action prevents development in the area for a period of six months or more. The extension cannot be for a period longer than the duration of the government action, and must be recorded with the county auditor. Property owners subject to the reimbursement obligations must be notified of the extension by the municipality.

A municipality may also participate in the financing of a facility and, unless prohibited by the contract or ordinance, may receive reimbursement based on its contribution. A municipality may also create a reimbursement area without the involvement of a property owner in order to finance the construction or improvement of facilities under certain conditions, and may receive reimbursement within the area.

#### Street Projects.

Similarly, cities, towns, counties, and, for projects related to state highways, the Department of Transportation (collectively, "local governments"), may contract with property owners for street projects that the property owners elect to construct or improve when an ordinance requires such construction or improvement as a condition of further property development. These contracts

can cover design, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lighting, traffic controls, and other similar improvements ("street projects").

The contract may provide for a pro rata reimbursement of the costs of the project from property owners who use the project but did not pay for it, based on the benefit that the property owner receives from the project. Reimbursement must be made when such a property owner subsequently develops their property and did not have to complete a street project because the projects had been provided pursuant to the contract.

The area from which the original property owner can be reimbursed must be determined by the local government based on which parcels adjacent to the projects would require similar improvements for development. Property owners in the area must be notified prior to a final determination of the area and a public hearing must be held if requested by one of the property owners. If a contract is entered into, it must be recorded with the county auditor within 30 days.

The reimbursement period in the contract cannot exceed 15 years, though, like with the other reimbursement contracts, it may be extended if a government action prevents development in the area for six months or more. In such a case, the duration of the contract may be extended by up to the duration of the government action. Any extension must specify the duration of the extension and must be filed with the county auditor. Property owners subject to reimbursement obligations must be notified of the extension by the local government.

Local governments can participate in the financing of a street project, or undertake the financing on their own, and can receive reimbursement on the same terms as a contracting property owner.

In the case of each kind of reimbursement contract, the property owner who is entitled to reimbursement under the contract must provide the government entity with their current contact information every two years. If the property owner fails to do so within 60 days of the deadline for providing this information, then the government entity may collect and retain the reimbursement funds.

#### The National Bureau of Economic Research.

The National Bureau of Economic Research is a private, nonpartisan organization that undertakes and disseminates economic research. Its Business Cycle Dating Committee (Committee) maintains a chronology of business cycles in the United States. It identifies recessions as a significant decline in economic activity that is spread across the country and that lasts more than a few months. The Committee looks at the depth of the decline, its diffusion across the economy, and the duration of the decline in making a determination of a recession has occurred. The most recent recession occurred in early 2020.

#### State of Emergency due to COVID-19.

On February 29, 2020, the Governor declared a state of emergency due to COVID-19. This state of emergency was terminated on October 31, 2022. The state of emergency thus lasted 2 years, 8 months, and 3 days.

**Summary of Bill:**

Water-sewer reimbursement contracts and street project reimbursement contracts, like water and sewer facility contracts, may last for up to 20 years.

The duration of all types of reimbursement contracts may provide for an extension for the duration of a national economic recession as declared by the Committee.

Contracts entered into prior to February 29, 2020, must be extended for the duration of the declared state of emergency due to the COVID-19 pandemic as long as a request for an extension is received by the government entity prior to March 31, 2025.

Government entities are not required to notify property owners subject to a reimbursement obligation of an extension of a reimbursement contract.

**Appropriation:** None.

**Fiscal Note:** Requested on January 17, 2024.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.