

University of Colorado Law School

## Colorado Law Scholarly Commons

---

Session Laws 1951-2000

Colorado Session Laws

---

1971

### Authorizing the Organization of Improvement Districts for the Underground Conversion of Utilites, Prescribing the Purposes and Powers Thereof

Colorado General Assembly

Follow this and additional works at: <https://scholar.law.colorado.edu/session-laws-1951-2000>

---

#### Recommended Citation

Colorado General Assembly, "Authorizing the Organization of Improvement Districts for the Underground Conversion of Utilites, Prescribing the Purposes and Powers Thereof" (1971). *Session Laws 1951-2000*. 5343.

<https://scholar.law.colorado.edu/session-laws-1951-2000/5343>

This Act is brought to you for free and open access by the Colorado Session Laws at Colorado Law Scholarly Commons. It has been accepted for inclusion in Session Laws 1951-2000 by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact [rebecca.ciota@colorado.edu](mailto:rebecca.ciota@colorado.edu).

## CHAPTER 246

## LOCAL IMPROVEMENT AND SERVICE DISTRICTS

## UNDERGROUND CONVERSION OF UTILITIES

Senate Bill No. 301. By Senators Williams, Anderson, Calabrese, DeBerard, Decker, Enstrom, Garnsey, G. Jackson, Kinnie, Kogovsek, V. Massari, Minister, Noble, Parker, and Stockton; also Representatives Moore, Burns, Byerly, Hinman, DeMoulin, Horst, Johnson, Kirscht, Koster, Lucero, McNeil, Pepper, Porter, Quinlan, Sack, Showalter, Strang, Wells, Younglund, Bishop, and Bryant.

## A N A C T

AUTHORIZING THE ORGANIZATION OF IMPROVEMENT DISTRICTS FOR THE UNDERGROUND CONVERSION OF UTILITIES, PRESCRIBING THE PURPOSES AND POWERS THEREOF.

*Be it enacted by the General Assembly of the State of Colorado:*

Section 1. Chapter 89, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

## ARTICLE 23

## UNDERGROUND CONVERSION OF UTILITIES

89-23-1. **Short title.** This article shall be known and may be cited as the "Colorado Underground Conversion of Utilities Act".

89-23-2. **Legislative declaration.** The general assembly finds that landowners, cities, towns, counties, and public utilities in many areas of the state desire to convert existing overhead electric and communication facilities to underground locations by means of improvement district proceedings. The general assembly declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken under this article, whether such areas be within the limits of a city or town or within a county.

89-23-3. **Definitions.** (1) As used in this article, unless the context otherwise requires:

(2) "Communication service" means the transmission of intelligence by electrical means, including, but not limited to, telephone, telegraph, messenger-call, block, police, fire alarm and traffic control circuits on the transmission of television or radio signals.

(3) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

(4) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including, but not limited to, poles, supports, tunnels, man-holes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cut-outs, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances. "Electric facilities" shall not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of fifteen thousand volts.

(5) "Electric service" means the distribution of electricity for heat, light, or power.

(6) "Governing body" means the board of commissioners or city council or board of trustees, as may be appropriate, depending on whether the improvement district is located in a county or within a city or town.

(7) "Net effective interest rate" means the net interest cost of bonds divided by the sum of the products derived by multiplying the principal amounts of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, the net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the bonds.

(8) "Overhead electric or communication facilities" means electric or communication facilities located, in whole or in part, above the surface of the ground.

(9) "Public utility" means one or more persons or corporations that provide electric or communication service to the public by means of electric or communication facilities and shall include any city, county, special district, or public corporation that provides electric or communication service to the public by means of electric or communication facilities.

(10) "Resolution" shall be construed to mean ordinance where the governing body properly acts by ordinance or resolution where the governing body is authorized to act by resolution.

(11) "Underground electric or communication facilities" means electric or communication facilities located, in whole or in part, beneath the surface of the ground, or facilities within the confines of a power substation. "Communication facilities" shall not include facilities used or intended to be used for the transmission of intelligence by microwave or radio or outdoor public telephones. "Underground facilities" shall include certain facilities even though such facilities shall remain above the surface, in accordance with standard underground practices, such as transformers, pull boxes, service terminals, meters, pedestal terminals, splice closures, apparatus cabinets, and similar facilities.

**89-23-4. Powers conferred.** The governing body of every county is authorized and empowered to create local improvement districts under

this article within the unincorporated portion of such county, and the governing body of every city and town is authorized and empowered to create local improvement districts under this article within its territorial limits: To provide for the conversion of existing overhead electric or communication facilities to underground locations and the construction, reconstruction, or relocation of any other electric or communication facilities which may be incidental thereto, under the provisions of this article.

**89-23-5. Basis of assessments.** When any improvement authorized to be made by any governing body by the terms of this article is ordered, the governing body shall provide for the apportionment of the cost and expenses thereof as in their judgment may be fair and equitable in consideration of the benefits accruing to the abutting, adjoining, contiguous, and adjacent lots and land, and to the lots and lands otherwise benefited and included within the improvement district formed. Each lot and parcel of the land shall be separately assessed for the cost and expenses thereof in proportion to the number of square feet of such lands and lots abutting, adjoining, contiguous, and adjacent thereto or included in the improvement district, or assessed upon a frontage, zone, or other equitable basis, in accordance with the benefits, as the same may be determined by the governing body. The entire cost of the improvement may be assessed against the benefited property as provided in this article or if money for paying part of such cost is available from any other source, the money so available may be so applied and the remaining cost so assessed against the benefited property. The cost and expenses to be assessed as provided in this article shall include the cost of the improvement, engineering and clerical service, advertising, cost of inspection, cost of collecting assessments, and interest upon bonds if issued, and for legal services for preparing proceedings and advising in regard thereto. Fee lands and property of public entities, such as the federal government, state of Colorado, or any county, city, or town, shall not be considered as lands or property benefited by any improvement district and unless such public entity within the boundaries of an improvement district consents in writing, filed before the governing body adopts the resolution provided for in section 89-23-9, the lands and property of such public entity shall not be subject to assessment for the payment of any of the cost or expense of such improvement.

**89-23-6. Resolution for cost and feasibility study.** (1) Any governing body may on its own initiative, or upon a petition signed by at least a majority of the property owners owning at least a majority of the assessable land of any proposed district requesting the creation of an improvement district as provided in this article, pass a resolution at any regular or special meeting declaring that it finds that the improvement district is in the public interest. It must be determined that the formation of the local improvement district for the purposes set out in this article will promote the public convenience, necessity, and welfare.

(2) The resolution must state that the costs and expenses will be levied and assessed upon the property benefited and further request that each public utility serving such area by overhead electric or communication facilities shall make a study of the cost of conversion of its facilities in such area to underground service.

(3) The report of said study shall be provided to the governing body and made available in its office to all owners of land within the proposed improvement district. The resolution of the governing body shall require that the public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known the description of the property and such other matters as may be required by the public utility in order to perform the work involved in the cost study.

(4) The resolution shall further state the governing body's preliminary determination as to the method of assessing each lot or parcel within the proposed improvement district area and shall provide the square feet or frontage feet of each lot or parcel, and zone or other information necessary for assessment in accordance with the governing body's preliminary determination. All public utilities serving such improvement district areas by overhead electric or communication facilities shall, within one hundred twenty days after receipt of the resolution, unless such time be extended, make a study of the costs of conversion of their facilities in such district to underground service, and the public utilities shall together provide to the governing body, and make available at their respective offices, a joint report as to the results of the study.

**89-23-7. Bond of petitioners.** At the time that action is commenced under section 89-23-6, or at any time prior to the time of the hearing provided for in section 89-23-12, and if requested by the governing body or public utility, a bond shall be filed, with security approved by the governing body or cash deposit made sufficient to pay all expenses of the governing body connected with the proceedings and of the public utilities for actual time and expenses incurred in regard to the cost and feasibility study in case the organization of the district is not effected. If at any time during the organization proceedings the governing body shall be satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it on its own initiative or at the request of a public utility may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days distant, and upon failure of the petitioners to file or deposit the same, the petition shall be dismissed.

**89-23-8. Costs and feasibility report.** (1) The public utility report shall set forth an estimate of the total underground conversion costs and shall also indicate the costs of underground conversion of facilities of the public utility located within the boundaries of the various parcels or lots then receiving service. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district.

(2) The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing their expertise in this area, and may amend the boundaries of the proposed improvement district provided that the costs and feasibility

report of the public utility contains a cost figure on the district as amended, or it may request a new costs and feasibility report from the public utility concerned on the basis of the amended district.

(3) The cost estimate contained in the report shall not be considered binding on the public utility if construction is not commenced within six months of the submission of the estimate for reasons not within the control of the public utility. Should such a delay result in a significant increase of the conversion cost, new hearings shall be held on the creation of the district. If only a minor increase results, only the hearing on the assessments need be held again.

**89-23-9. Resolution declaring intention to create district.** On the filing with the clerk of any governing body of the cost and feasibility report by the public utility, as hereinbefore provided and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a local improvement district. The resolution shall state that the costs and expenses of the district created are, except as otherwise provided for, to be levied and assessed upon the abutting, adjoining, and adjacent lots and land along or upon which improvements are to be made, and upon lots and lands benefited by such improvements and included in the improvement district created; that it is the intention of the governing body to make such improvement which will promote public convenience, necessity, and welfare; and shall further state the area and boundaries of the proposed improvement district, the character of the proposed improvement, the estimated total cost of the same, and the intention of the governing body to hold or cause to be held a public hearing on the proposed improvement.

**89-23-10. Notice of public hearing on proposed improvement — contents.** (1) (a) Following the passage of the resolution in section 89-23-9, the governing body shall cause a notice of a public hearing on the proposed improvement to be given in the manner provided in section 89-23-11. Such notice shall:

(b) Describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district;

(c) Describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district;

(d) State the estimated cost, as determined from the costs and feasibility report, and including the cost of the improvement and the cost of engineering and clerical service, advertising, inspection, collection of assessments, interests upon bonds, if issued, and for legal services for preparing proceedings and advising in regard thereto;

(e) State that it is proposed to assess the real property in the district to pay all or a designated portion of the cost of the improvement according to the benefits to be derived by each tract, block, lot, and parcel of land within the district, and the proposed means of apportioning such cost;

(f) State the time and place at which the governing body will conduct a public hearing upon the proposed improvement and on the

question of benefits to be derived by the real property in the district;

(g) State that all interested persons will be heard and that any property owner will be heard on the question of whether his property will be benefited by the proposed improvement.

89-23-11. Notice of public hearing on proposed improvement — manner of giving. Such notice shall be published in full one time in a newspaper of general circulation in the district or if there be no such newspaper, by publication in a newspaper of general circulation in the county, city, or town in which said district is located. A copy of such notice shall be mailed to the last known address of each owner of land within the proposed district whose property will be assessed for the cost of the improvement. The address to be used for said purpose shall be that last appearing on the real property records in the office of the county treasurer of the county wherein said property is located. In addition, a copy of such notice shall be addressed to "owner" and shall be so mailed, addressed to the street number of each piece of improved property to be affected by the assessment. Mailed notices and the published notice shall state where a copy of the resolution creating the district will be available for inspection by any interested parties.

89-23-12. Public hearing — changes in proposed improvements and area to be included in district. (1) On the date and at the time and place specified in the aforesaid notice, the governing body shall, in open and public session, hear all objections to the creation of the proposed district, the making of the proposed improvements, and the benefits accruing to any tract, block, lot, or parcel of land therein. Representatives of the public utility concerned shall be present at all such hearings. Such hearing may be adjourned from time to time to a fixed future time and place. If at any time during the hearings it shall appear to the governing body that changes in the proposed improvements or the proposed district should be made, which, after consultation with the public utility concerned, appear to affect either the cost or feasibility of the improvements, the hearing shall be adjourned to a fixed future time and place and a new cost and feasibility report prepared on the basis of the contemplated changes.

(2) If action on the creation of the improvement district was initiated by petition as set forth in section 89-23-6 and if it shall appear that said petition is not signed by at least a majority of the property owners owning at least a majority of the assessable land of the proposed district, or if it is shown that the proposed improvement will not confer a general benefit on the district, or that the cost of the improvement would be excessive as compared with the value of the property in the district, the governing body shall thereupon dismiss the petition and adjudge the cost against those executing the bond filed to pay such costs. No appeal shall lie from the order dismissing said proceedings. Nothing in this section may prevent the filing of subsequent petitions for a similar district. The right to renew such a proceeding is expressly granted and authorized.

(3) After the hearing has been concluded and after all persons desiring to be heard have been heard, the governing body shall consider the arguments put forth and may make such changes in the



area to be included in the district as it may consider desirable or necessary. However, no such changes shall be made unless a costs and feasibility report has been prepared on the basis of such changes.

(4) If at any time during the public hearing the governing body is presented with a petition signed by at least a majority of the property owners owning at least a majority of the assessable land of the proposed district protesting the proposed improvement, and such a petition is still outstanding at the close of the public hearing, the district and project shall be abandoned.

(5) If there is no such petition outstanding, the governing body, after consideration of matters brought forth at the public hearing, shall either abandon the district and project or adopt a resolution establishing the district and authorizing the project, either as described in the notice or with changes made as above authorized. Such resolution shall be published in the manner provided in section 89-23-11 but need not be mailed. If a resolution be adopted establishing the district, such resolution shall finally and conclusively establish the regular organization of the district against all persons, unless an action attacking the validity of the organization shall be commenced in a court of competent jurisdiction within thirty days after the adopting of such resolution. Such action shall be subject to the provisions of section 89-23-13. Thereafter, any such action shall be perpetually barred and the organization of said district shall not be directly or collaterally questioned in any suit, action, or proceeding.

**89-23-13. Waiver of objections.** Every person who has real property within the boundaries of the district and who fails to appear before the governing body at the hearing and make any objection he may have to the creation of the district, the making of the improvements and the inclusion of his real property in the district, shall be deemed to have waived every such objection. Such waiver shall not, however, preclude his right to object to the amount of the assessment at the hearing for which provision is made in section 89-23-17.

**89-23-14. Proposed assessment list.** After a decision is taken by a governing body to proceed with the district and project, it shall cause to be prepared an assessment list detailing the total amount to be assessed, the specific properties assessed, and the amount of assessment on each piece of property.

**89-23-15. Proposed assessment resolution.** After the preparation of the proposed assessment list, the governing body shall cause to be prepared for adoption at the hearing hereinafter provided for, a resolution declaring the entire cost of improvement, including the cost of construction as determined from the costs and feasibility report, other incidental costs, legal and fiscal fees and costs, the cost of the publication of notices and all other costs properly incident to the construction of the improvement and the financing and collecting thereof. Such resolution shall specify what share, if any, of the total cost is payable from sources other than the imposition of assessments and shall incorporate the proposed assessment list provided for in section 89-23-14.

**89-23-16. Notice of public hearing on proposed assessments.** (1) After the preparation of the aforesaid resolution, notice of a public



hearing on the proposed assessments shall be given. Such notice shall be published one time in a newspaper in which the first notice of hearing was published at least twenty days before the date fixed for the hearing, and shall be mailed not less than fifteen days prior to the date fixed for such hearing to each owner of real property whose property will be assessed for part of the cost of the improvement at the last known address of such owner using for such purpose the names and addresses appearing on the last completed real property assessment rolls of the county wherein said affected property is located. In addition, a copy of such notice shall be addressed to "owner" and shall be so mailed, addressed to the street number of each piece of improved property to be affected by such assessment.

(2) Each notice shall state that at the specified time and place, the governing body will hold a public hearing upon the proposed assessments and shall state that any owner of any property to be assessed pursuant to the resolution will be heard on the question of whether his property will be benefited by the proposed improvement to the amount of the proposed assessment against his property and whether the amount assessed against his property constitutes more than his proper proportional share of the total cost of the improvement.

(3) The notice shall further state where a copy of the resolution proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection, and that subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the resolution at the conclusion of the hearing.

(4) The public notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this article.

**89-23-17. Public hearing on proposed assessment resolution.** (1) On the date and at the time and place specified in the aforesaid notice, the governing body shall, in open and public session, hear all arguments relating to the benefits accruing to any tract, block, lot, or parcel of land therein and the amounts proposed to be assessed against any such tract, block, lot, or parcel. The hearing may be adjourned from time to time to a fixed future time and place. After the hearing has been concluded and all persons desiring to be heard have been heard, the governing body shall consider the arguments presented and shall make such corrections in the assessment list as may be considered just and equitable. Such corrections may eliminate, may increase, or may decrease the amount of the assessment proposed to be levied against any piece of property. However, no increase of any proposed assessment shall be valid unless the owner of the property is given notice and an opportunity to be heard.

(2) After such corrections have been made, the governing body shall make a specific finding that no proposed assessment on the cor-

rected assessment list exceeds the benefit to be derived from the improvement by the piece of property to be so assessed and that no piece of property so listed will bear more than its proper proportionate share of the cost of such improvement.

**89-23-18. Adoption of the assessment resolution.** After the public hearing has been concluded and all corrections made to the assessment list, the governing body shall proceed to adopt the assessment resolution. The adoption of such resolution shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments, and that such assessments have been lawfully levied.

**89-23-19. Assessment roll.** The clerk of the governing body shall prepare a local assessment roll in book form, showing in suitable columns, each piece of land assessed, the total amount of assessment, the amount of each installment of principal and interest, if in pursuance of this article, the same be payable in installments, and the date when each installment will become due, with suitable columns for use, in case of payment of the whole amount or of any installment or penalty, and deliver the same, duly certified, under seal as appropriate, to the appropriate officer for collection.

**89-23-20. Payment of assessment.** All assessments shall be due and payable within thirty days after the final publication of the assessing resolution without demand; except that all such assessments may be paid, at the election of the owner, in installments, with interest, as provided in section 89-23-21.

**89-23-21. Installment payments.** Failure to pay the whole assessment within said period of thirty days shall be conclusively considered and held to be an election on the part of all persons interested, whether under disability or otherwise, to pay in such installments. In case of such election, the assessment shall be payable in equal annual or semiannual installments of principal, the first of which installments shall be payable as prescribed by the governing body, and the last installment within not more than twenty years, with interest in all cases on the unpaid principal, payable annually or semiannually at a rate not exceeding the maximum net effective interest rate authorized by the governing body. The number of installments, the period of payments, the date of the initial payment and the maximum net effective interest rate shall be determined by the governing body and set forth in the resolution required by section 89-23-15.

**89-23-22. Failure to pay installments.** Failure to pay any installment, whether of principal or interest, when due, shall cause the whole of the unpaid principal to become due and collectable immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of one percent per month or fraction of a month until the day of sale; but at any time prior to the day of sale, the owner may pay the amount of all unpaid installments, with interest at one percent per month or fraction of a month, and all penalties accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if the default had not been suffered. \

**89-23-23. Discount — assessment roll returned.** Payment may be made to the city or town treasurer at any time within thirty days

after the final publication of the assessing resolution and an allowance of five percent shall be made on all payments made during such period, but not thereafter. In the case of cities and towns, at the expiration of said thirty-day period, the city or town treasurer shall return the local assessment roll to the clerk, therein showing all payments made thereon, with the date of each payment. Said roll shall be certified by the city or town clerk under the seal of the city or town, and be hand delivered to the county treasurer of the same county, with his warrant for the collection of the same. The county treasurer shall show receipt for the same and all such rolls shall be numbered for convenient reference.

**89-23-24. Sale of property for nonpayment.** The county treasurer shall receive payment of all installment payments of assessments appearing upon the assessment roll, with interest. In case of default in the payment of any installment of principal or interest when due, the county treasurer shall advertise and sell any property concerning which such default is suffered, for the payment of the whole of the unpaid assessment thereon. Said advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties and with the same effect as are provided by general law for sales of real estate in default of payment of general taxes.

**89-23-25. Owner of interest may pay share.** The owner of any divided or undivided interest in the property assessed may pay his share of any assessment, upon producing evidence of the extent of his interest, satisfactory to the treasurer having the roll in charge.

**89-23-26. When collections paid city.** In the case of improvement districts located within cities or towns, all collections made by the county treasurer upon such assessment roll in any calendar month shall be accounted for and paid over to the city or town treasurer on or before the tenth day of the next succeeding calendar month, with separate statements for all such collections for each improvement district.

**89-23-27. Assessment lien.** All assessments made under this article, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, shall constitute, from the date of the final publication of the assessing resolution, a perpetual lien in the several amounts assessed against each lot or tract of land, and shall have priority over all other liens excepting general tax liens. No sale of property for the nonpayment of taxes or other special assessments shall extinguish the lien of other than the taxes or special assessments for the nonpayment of which such sale is had.

**89-23-28. Advance payment of assessment installations.** The governing body may, in the resolution levying the assessments, provide that all unpaid installments of assessments levied against any piece of property may (but only in their entirety) be paid prior to the dates on which they become due, if the property owner paying such installments pays all interest which would accrue thereon to the next succeeding date on which interest is payable on the bonds issued in anticipation of the collection of the assessments. In addition, the property owner must pay such additional amount of interest as in

the opinion of the governing body is necessary to assure the availability of money fully sufficient to pay interest on the bonds as interest becomes due, and any redemption premiums which may become payable on the bonds in order to retire, in advance of maturity, bonds in a sufficient amount to utilize the assessments thus paid in advance. If no bonds have been issued then all unpaid installments of assessments levied against any piece of property may be paid in their entirety prior to the date upon which they become due by paying the principal amount due and the interest accrued thereon to the date of payment.

89-23-29. Issuance of bonds. (1) After the expiration of thirty days from the effective date of the resolution levying the assessments, the governing body may borrow money and issue negotiable interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. Said bonds shall be authorized by resolution of the governing body without the necessity of submitting the question of their issuance to the qualified electors of the district, or at all. Said resolution shall prescribe the form of said bonds, the manner of their execution, which may be effected by the use of the facsimile signatures of the officers of the governing body in accordance with the laws of the state in effect at the time of their execution, shall provide for the terms thereof, including the maximum net effective interest rate for the issue of bonds, and may direct that said bonds shall be sold at public or private sale at or below par. Such bonds shall not be sold at a price or prices such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(2) The governing body shall prescribe other details in connection with the issue of bonds. The bonds so authorized shall mature serially over a period of not exceeding twenty years, but in no event shall such bonds extend over a longer period of time than the period of time over which such installments of special assessments are due and payable and ninety days thereafter.

(3) The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place, and shall be sold, authorized, and issued in such manner as the governing body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest, and shall be secured by and payable from the irrevocable pledge and dedication of the funds derived from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Said resolution and bonds may also include such other terms or recitals which, in the judgment of the governing body are necessary or proper to render the same marketable.

(4) Any premium received on the sale of the bonds may be applied as other bond proceeds or if not so applied, the same shall be placed in the fund for the payment of principal of and interest on the bonds. The bonds shall be callable for redemption from the proceeds of the sale of any property sold for the nonpayment of special assessments but not otherwise unless the bonds on the face thereof provide for redemption prior to maturity. The governing body may provide that the bonds shall be redeemable on any interest payment

date or dates prior to maturity pursuant to such notice and at such premiums as it deems advisable. Interest may be evidenced by interest coupons attached to such bonds and signed by a facsimile signature as above provided, of one of the individuals who signed the bonds.

**89-23-30. Civil action — grounds.** (1) (a) No civil action shall be brought or maintained to enjoin the collection of assessments or otherwise test the validity of assessments levied under this article except upon the following grounds:

(b) That notice of a hearing upon the amount of the assessment was not given as required in this article. Any person presenting objections to the governing body at or before the hearing on assessment shall be deemed to have waived this ground;

(c) That the hearing upon the amount of the assessment as provided in this article was not held;

(d) That the improvement ordered was not one authorized by this article;

(e) That the assessment levied exceeds the benefits received by the property assessed.

(2) Every person whose property is subject to such special assessment and who fails to appear during the public hearings on said assessment to raise his objection to such assessment shall be deemed to have waived all objection to such assessment except objections on grounds specified in subsections (1) (b) and (1) (c) of this section. Any action brought under this article shall be commenced within thirty days after the passage of the assessing resolution or else be thereafter perpetually barred. Any such action shall be given preference in the courts of the state. If such action is unsuccessful, the courts may order the plaintiff to pay the costs thereof, and, in its discretion, may require a bond in a sufficient amount to cover such costs at the commencement of such action. The burden of proof to show that such special assessment or part thereof is invalid, inequitable, or unjust shall rest upon the party who brings such suit.

**89-23-31. Conversion costs.** (1) (a) In determining the conversion costs included in the costs and feasibility report required by section 89-23-8, the public utility shall be entitled to amounts sufficient to repay them, with a reasonable allowance for overhead expense, for the following, as computed and reflected by the uniform system of accounts approved by the public utilities commission or federal communications commission, or in the event the public utility is not subject to regulation by either of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of said public utility:

(b) The original costs less depreciation taken of the existing overhead electric and communication facilities to be removed;

(c) The estimated costs of removing such overhead electric and communication facilities, less the salvage value of the facilities removed;

(d) If the estimated cost of constructing underground facilities exceeds the original cost of existing overhead electric and communication facilities, then the difference between the two;

(e). The cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for aboveground facilities, or where the preexisting easements are insufficient for the underground facilities.

(2) However, in the event that conversion costs are included in tariffs, rules, or regulations filed and in effect with the public utilities commission, such conversion costs shall be the cost included in the costs and feasibility report.

89-23-32. Maintenance, construction, and title to converted facilities. The public utility shall have the duty to maintain, repair, and replace all underground facilities installed under this article. There shall be no competitive bidding as to the construction of the converted facilities since existing facilities are owned, maintained, and operated by the public utility and the continuity of service of the utility is essential, both of which make construction work by third persons impracticable. Therefore, the public utility concerned shall be responsible for the accomplishment of all construction work and may contract out such of the construction work as it deems desirable. Title to the converted facilities shall be at all time solely and exclusively in the public utility involved, as the public is only purchasing the intangible benefits which come from converted facilities; that is, the removal of the overhead facilities and replacement by underground facilities.

89-23-33. Conversion costs and service connection. (1) The public utility performing the conversion shall, at the expense of the property owner, convert to underground all electric and communication service facilities located upon any lot or parcel of land within the improvement district and not within the easement for distribution. This shall include the digging and the back filling of a trench upon such lot or parcel, unless the owner shall execute a written objection thereto and file the same with the clerk of the governing body not later than the date set for hearing objections to the improvement district as provided by law. Failure to file such written objection shall be taken as a consent and grant of easement to the public utility and shall be construed as express authority to the public utility and their respective officers, agents, and employees to enter upon such lot or parcel for such purpose, and through failure to object, any right of protest or objection in respect of the doing of such work shall be waived. If an owner does file such written objection, he shall then be responsible for providing a trench which is in accordance with applicable rules, regulations, or tariffs from the owner's service entrance to a point designated by the public utility and for back filling a trench following installation of the underground service by the public utility involved.

(2) In any event, the cost of any work done by the public utility shall be included in the assessment to be levied upon such lot or parcel. Should a written objection be filed as provided in the above paragraph, the owner involved shall be obligated for and the public utility involved shall be entitled to payment for the actual cost for such work accomplished upon the owner's property by the public utility; such amount shall be less than the cost if the public utility had performed the trenching and back filling.



(3) The owner shall, at his expense, make all necessary changes in the service entrance equipment to accept underground service.

**89-23-34. Notice of possible disconnection.** There shall be included in the notice of the public hearing concerning the improvements required by section 89-23-10, notice that all owners of land within the local improvement district may file written requests for inclusion of the cost of conversion of utility facilities upon their property within the contemplation of section 89-23-33. Such notice shall further advise that any owner who does not execute the request provided for in section 89-23-33, or otherwise provide for underground service connections to his property, in a manner satisfactory to the public utility involved, shall be subject to disconnection from the electric or communication facilities providing service to all buildings, structures, and improvements located upon the lot or parcel.

**89-23-35. Notice of disconnection.** If the owner or person in possession of any lot or parcel of land shall prevent entrance upon the lot or parcel for conversion purposes, or shall fail to perform under section 89-23-33 and has not otherwise provided for underground service connections to the property in a manner satisfactory to the public utility involved, within sixty days from the time the converted facilities are ready for connection to the property, the electric or communication service shall be disconnected and removed and all overhead electric or communication facilities providing service to any building, structure, and improvement located upon such lot or parcel shall be disconnected. Written notice of disconnection shall be given at least twenty days prior to disconnection by leaving a copy of such notice at the principal building, structure, or improvement located upon such lot or parcel.

**89-23-36. Payment of public utility.** Upon completion of the conversion contemplated by this article, the public utility shall present the governing body with its verified bill for conversion costs, as computed under section 89-23-31, but based upon the actual cost of constructing the underground facility rather than the estimated cost of the facility. In no event shall the bill for conversion cost presented by the public utility exceed the amount of estimated conversion costs by the public utility. In the event the conversion costs are less than the estimated conversion costs, each owner within the improvement district shall receive the benefit, prorated in such form and at such time or times as the governing body may determine. The bill of the public utility shall be paid within thirty days by the governing body from the improvement district funds or such other source as is properly designated by the governing body. In determining the actual cost of constructing the underground facility, the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the federal communications commission and as is in use at the time of the conversion by the public utility involved, as described in section 89-23-31.

**89-23-37. Reinstallation of overhead facilities not permitted.** Once removed, no overhead electric or communication facilities may be installed in a local improvement district for conversion of overhead electric and communication facilities.



**89-23-38. No limitation on public utilities commission jurisdiction or franchises.** Nothing contained in this article shall vest any jurisdiction over any public utility in the governing bodies. The public utilities commission shall retain all jurisdiction now or hereafter conferred on it by law. Nothing contained in this article shall be interpreted in such a way as to be in conflict with franchises granted to any public utility, and in the event of any conflict, such franchises shall control over the requirements of this article.

**89-23-39. Nonseverability.** If any provision of this article is held invalid, such invalidity shall invalidate this article in its entirety, and to this end the provisions of this article are declared to be nonseverable.

**89-23-40. Abatement of construction.** If an improvement district is established under this article, the public utility involved shall not be required to commence conversion until the resolution, the assessment roll, and issuance of bonds have become final and no civil action has been filed, or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.

**89-23-41. Early hearings.** All cases in which there may arise a question of validity of the organization of a district, or a question of the validity of any proceeding under this article, shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purpose of this article.

**89-23-42. Liberal construction.** This article being necessary to secure and preserve the public health, safety, and general welfare, it shall be liberally construed to effect its purpose.

**Section 2. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 6, 1971