

**CHAPTER 40-26**  
**CORRECTION, REASSESSMENTS, AND FUND DEFICIENCIES**

**40-26-01. Courts to review levy and apportionment of special assessments - De novo review for agricultural property assessments.**

The courts shall review the levy and apportionment of the special assessments in all actions and proceedings involving the validity or apportionment of any special assessment for local or special improvements. If an action challenges the determination of benefits and special assessments imposed for agricultural property, the decision of the special assessment commission regarding agricultural property is not entitled to deference by the court and the court shall consider the determination of benefits and special assessments imposed for agricultural property de novo. An appeal taken under this section must be in accordance with the procedure provided in section 28-34-01.

**40-26-02. Correcting errors, mistakes, and deficiencies in special assessments.**

If errors or mistakes occur in making an assessment in respect to the total cost of the improvement or otherwise, or if there was a deficiency in any assessment, the governing body shall cause additional assessments to be made in the manner provided in section 40-26-03 to supply such deficiencies or correct such errors or mistakes. The total of all special assessments for an improvement shall not exceed the benefits to the property derived from such improvement. An additional assessment shall be a lien upon the lots and lands on which it is levied, shall be payable in the same manner and in the same installments, shall draw interest at the same rate, and shall be enforced through the same procedure as the original assessment.

**40-26-03. Reassessment - Regulations governing - Enforcement and collection.**

When a special assessment, or any part thereof, as to any lot, lots, or parcels of land assessed under any of the provisions of the laws of this state shall be set aside or declared void by any court for any cause, the governing body, without unnecessary delay, shall cause a reassessment or new assessment to be made to defray the expense of such improvement. Such reassessment or new assessment shall comply as closely as possible with the making of the assessment in the first instance and may bear interest from the date of the approval of the assessment so set aside. When the reassessment or new assessment shall have been made and confirmed by the governing body, it shall be enforced and collected in the same manner that other special assessments are enforced and collected.

**40-26-04. Reassessment made upon refusal of judgment for collection of special assessments or assessment declared void.**

When judgment for the collection or enforcement of any special assessment shall be refused or denied by any court, or when any court shall set aside any special assessment upon any lot or parcel of land or declare the same to be void for any cause, such lot or parcel of land may be reassessed or newly assessed from time to time until each separate lot, piece, or parcel of land has paid its proportionate part of the costs and expenses of such improvement.

**40-26-05. Supreme court setting aside judgment - Effect - Reassessment.**

When any special assessment shall be declared void or shall be set aside by the judgment of the supreme court for a cause affecting other like assessments, all assessments affected may be vacated by a resolution of the governing body of the municipality in which any such assessment was spread. A reassessment of the property affected thereby shall be made and may bear interest as is provided in section 40-26-03.

**40-26-06. Error or omission does not vitiate assessment - Assessment altered if substantial injury has been done.**

No error or omission which may be made in the proceedings of the governing body, or of any officer of a municipality in referring, reporting upon, ordering, or otherwise acting upon any local improvement to be financed by special assessments or in making or certifying any such

assessment shall vitiate or in any way affect the assessment. If it shall appear that by reason of any such error or omission substantial injury has been done to any party or parties claiming to be aggrieved thereby, the court shall alter such assessment as may be just, and the same then shall be enforced.

**40-26-07. Actions to restrain collection of special assessments, avoid tax judgments - Duty of court.**

The court shall determine the true and just amount which any property attempted to be specially assessed for a special improvement should pay to make the same uniform with other special assessments for the same purpose, whenever any action or proceeding shall be commenced and maintained before the court to prevent or restrain the collection of any special assessment or part thereof made or levied by the officers of any municipality for any purpose authorized by law, if such assessment shall be held to be void by reason of noncompliance with any provision of the laws of this state. Unless the action challenges the determination of benefits and special assessments imposed for agricultural property, the amount of the assessment as the same appears on the assessment list shall be prima facie evidence of the true and just amount, and judgment must be rendered and given therefor against the party liable for such special assessment without regard to the proceedings had for the levy thereof. The judgment shall be a lien upon the property upon which a special assessment shall have been levied, of the same force and effect as the lien of a special assessment, and the lien of such special judgment shall be enforced by the court in such action. No action for said purposes shall be maintained unless it is commenced within six months after the special assessment is approved.

**40-26-08. Municipality liable generally for deficiencies in special improvement fund.**

Whenever all special assessments and all utility revenues and taxes, if any, appropriated and theretofore collected for a special improvement, made under authority of any law authorizing the payment of the cost thereof in whole or in part from special assessments, are insufficient to pay principal or interest then due on the special improvement warrants issued against such improvement, the governing body shall levy a tax upon all of the taxable property in the municipality for the payment of such deficiency. If at any time a deficiency is likely to occur within one year in such special improvement fund for the payment of principal and interest due on such warrants, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of such deficiency. This section applies to any deficiency in a special improvement fund, including a sewer and water connections assessment fund under chapter 40-28, sidewalk special fund under chapter 40-29, curbing special fund under chapter 40-31, and boulevard special fund under chapter 40-32. In case a balance remains unexpended in a special improvement fund after the payment of all warrants drawn thereon with interest, it shall be paid over or transferred to the general fund of the municipality.