



Creating News Oases in the Garden State

How New Jersey's special improvement districts could revitalize local news ecosystems

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About The Community Info Coop

The Community Information Cooperative is a New Jersey-based nonprofit dedicated to the democratization of journalism, media, and technology.

We equip people with the tools and information they need to design and sustain information ecosystems that strengthen local democracy and increase civic engagement.

Our flagship program is the Info Districts Project, which seeks to establish a national network of special districts that fund participatory media and civic communications projects to meet local news and information needs.

The info district framework was incubated at the Craig Newmark Graduate School of Journalism in 2016 with support from the Center for Cooperative Media at Montclair State University.

After a successful Kickstarter campaign in 2018, the Reynolds Journalism Institute awarded a fellowship to the Community Info Coop to continue development of the info district framework. In 2020, we were awarded a grant from Geraldine R. Dodge Foundation and the Reynolds Journalism Institute to launch our first info district organizing campaign in Bloomfield, New Jersey.

Find out more about us at infodistricts.org or reach us by email at connect@infodistricts.org.

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Executive Summary

In 2019, with support from Pro Bono Partnership, we commissioned Dechert LLP to conduct an analysis of New Jersey’s special district laws to understand how they might be used to establish info districts.

Referred to as “community information districts” in the analysis below, info districts are a proposed type of special taxing district – defined by geographic boundaries and overseen by a public board – that funds local news and information projects to facilitate civic engagement.

An info district is organized by engaging a community in outlining their information needs and designing solutions to them. This process informs the charter of the district and determines how it will serve its constituents. Established by referendum, the district should be reauthorized by the public every few years to ensure it maintains its mission-alignment.

This new hyperlocal public funding model is uniquely suited to address the needs of hundreds of communities across the U.S. suffering from a lack of quality local news and information. You can read more about info districts in our guide to launching them [here](#).

New Jersey is uniquely suited to be the first in the nation to pilot an info district. In 2018, it [established](#) the country’s first state fund for local news and information projects. Keystone organizations like the [Center for Cooperative Media](#) and [Sustainable Jersey](#) support local news providers and governments, respectively, to help them keep the public informed and engaged. And there are multitudes of local journalists in the state with the capacity to serve their communities if they can receive the financial support to do so.

The analysis below finds that New Jersey’s special district law was not intended to establish info districts, as we expected. The law was written to allow local

governments to promote economic welfare. But evidence shows that local journalism can have a positive impact on [government borrowing costs](#), [increase civic participation](#), and [improve public health outcomes](#). So, as the analysis notes, evidence of positive economic impact would be crucial to establishing an info district in the state.

The analysis also suggests the possibility of pairing info district activities with the typical activities of a special district in New Jersey – things like business directories, local online marketplaces, or physical improvements.

Info districts can reform and revitalize local journalism across the U.S. and create new, participatory public institutions that will serve communities for decades to come. New Jersey can lead that change. We hope it does.

Legal Analysis

Introduction

The following represents our analysis of the application of New Jersey's Special Improvement District ("SID") legislation to a potential Community Information District ("CID"). We believe that 1) the creation of a SID for the sole purpose of establishing a CID may be viewed as arguably beyond the scope of the statute and would therefore be vulnerable to a legal challenge, but that 2) the inclusion of a CID in an existing SID would be less vulnerable to such a challenge.

Background

New Jersey law empowers a municipality to establish a SID and to impose special assessments on the property within such district "for the purposes of promoting the economic and general welfare of the district and the municipality." A SID is defined as "an area within a municipality" so designated by municipal ordinance for such purposes. Any funds collected through special assessments within the SID would be administered by a district management corporation. In the view of the New Jersey's Department of Community Affairs, SIDs "enabl[e] a collective, organized response to problems as well as opportunities, leveraging the district's assets to mitigate its issues" by "allowing the businesses of a municipality to operate more like the businesses in a mall, managed by a single group rather than by each individual merchant on his or her own."

SIDs are the product of amendments made by New Jersey legislature in 1984 to statutes governing the creation of pedestrian malls. New Jersey's SID legislation relevantly declares that it is New Jersey public policy to "to permit the governing body of any municipality...to preserve and enhance the function and appearance of the business districts of such municipalities" by adoption of ordinances establishing special improvement districts. The legislation further reflects the following determination by the New Jersey legislature:

(1) that district management corporations may assist municipalities in promoting economic growth and employment within business districts; (2) that municipalities should be encouraged to create self-financing special improvement districts and designated district management corporations to execute self-help programs to enhance their local business climates; and (3) that municipalities should be given the broadest possible discretion in establishing by local ordinance the self-help programs most consistent with their local needs, goals and objectives.

In order to create a SID, a municipality's governing body must first make certain findings. The governing body must make a finding that "an area within the municipality, as described by lot and block numbers and by street addresses in the enabling ordinance, would benefit from being designated as a special improvement district" and that "it is in the best interests of the municipality and the public to create a special improvement district and to designate a district management corporation."

For example, a SID refers to "an area...in which a special assessment on property within the district shall be imposed." Likewise, the predicate findings necessary for adoption of an ordinance creating a SID are tied to a specific area, and the range of permissible uses of a SID is defined in reference to physical space. Further, New Jersey's Department of Community Affairs characterizes a SID as a "defined area, generally in the central business district of a downtown or a mixeduse corridor in a larger city."

Notwithstanding this emphasis on physical space, the SID legislation does not limit a municipality solely to making improvements to physical space. The legislation evinces a broader purpose of enhancing the local business climate. In this regard, municipalities are to be "given the broadest possible discretion in establishing by local ordinance the self-help programs most consistent with their local needs, goals and objectives."

The New Jersey Supreme Court has recognized that improvements made pursuant to the SID legislation are “not necessarily physical, concrete, or permanent, nor are they directly adherent to the specific commercial properties that are assessed” and that benefits provided by such improvements are “generalized and relatively intangible.” However, any special assessments imposed in connection with SIDs must be “‘as nearly as may be in proportion’ to the benefit received” and not in “‘substantial excess’ of the special benefits to the land.”

The SID legislation does not provide a specific guidance explaining what is meant by an “enhanced” local business climate. Case law speaks in general terms about “the creation of a commercial climate that encourages stores to open and remain in business.” Likewise, the New Jersey Department of Community Affairs describes the SID concept as “a mechanism to improve the economic, physical, social, and civic value of the commercial district in question.” Given the vague statutory language and deference afforded municipalities under the SID legislation, however, what likely matters most is that the municipality makes the necessary predicate findings. In this respect, any evidence supporting any nexus between the proposed SID and an enhanced business climate would be helpful.

Viability of SID created solely to establish CID

Given the statutory purposes underlying the SID legislation and the broad discretion it affords municipalities, a CID arguably falls within the scope of the SID legislation and could potentially form the basis of a standalone SID. However, such an approach could leave the municipality vulnerable to challenge.

Municipal ordinances are presumptively valid and will be upheld “[u]nless the challenger meets the heavy burden of showing the municipal ordinance is arbitrary, capricious or unreasonable.” Moreover, a court’s interpretation of such an ordinance would be guided by “the plain meaning of the language used by the municipality.” Most significantly, a court considering the validity of a SID does not “pass on the wisdom” of a given plan, but rather decides “only whether the

ordinance represents a reasonable exercise of the Legislature's delegation of authority to municipalities.”

A CID is established with the specific purpose of supporting a community’s local news and information needs and would operate in a manner similar to a SID. A CID is “funded by fees assessed on residents and business owners” in a given community and “overseen by a nonprofit, community-managed organization” the purpose of which is to “oversee and approve the funding of local news and information projects.” Such a district may possibly fund projects could include “launching or supporting print or online newspapers” and “building public wifi networks,” among other informational services.

Although municipalities are afforded broad latitude under the SID legislation and courts will interpret municipal ordinances in a favorable manner, a SID established for the sole purpose of creating a CID may still be vulnerable to legal challenge. Special assessments are not strictly taxes, but they invite similar scrutiny over how and for what purposes they are used, and there have been numerous challenges to various SID ordinances through the years. Any SID special assessments imposed must be “‘as nearly as may be in proportion’ to the benefit received” and not in “‘substantial excess’ of the special benefits to the land,” and the validity of a SID established for the sole purpose of creating a CID thus will depend on whether the activities and benefits associated with a CID can, on their own, satisfy this standard.

A CID can indeed represent a defined area for purposes of the SID legislation. While a SID generally occurs in a central business district, district lines need not be drawn in such a manner. The statute only requires that the SID span an area within the municipality, that the ordinance describe this area in terms of lot and block numbers and street addresses, and that special assessments be imposed upon and collected on property within the district. A municipality otherwise enjoys great latitude in terms of how it draws district lines. It may exempt or include residential properties from special assessments. A New Jersey Court has also upheld a citywide SID on grounds that the relevant statutory provisions did not “specifically

prohibit” such a district, but rather “merely suggest[ed]” that a special improvement district “could be a small designated area within a municipality.” Against this backdrop, a CID could be tailored to be as compact or expansive as a municipality can justify, although such a determination is ultimately a question of political will rather than legal requirement.

The more difficult question is whether a municipality can establish the factual predicate necessary to support a SID creating a CID. A municipality must make findings that the area designated for improvement would benefit from being a SID and that, in turn, such a designation would be in the best interest of the municipality. Although the benefits derived under a SID may be generalized and intangible, there nevertheless must be a colorable argument, rooted in factual support, justifying the improvements being funded through the SID.

Although CIDs are not directly concerned with enhancing a local business climate, one can plausibly argue that the benefits of establishment of such a district is facilitative of that objective by driving civic engagement. This argument would depend on establishing a sufficient nexus between this civic engagement and enhancing the local business climate consistent with local needs and objectives. However, a court may also conclude that the connection between a municipality’s information needs and local business climate is too attenuated to, by itself, justify creation of such a SID. The court may further conclude that a district only indirectly addressing the policy concern of enhancing the local business climate – and which also does not include any of the physical features conventionally associated with an SID – cannot be reasonably construed as consistent with the plain language of the statute and the expressed legislative intent.

Viability of CID in existing SID

By contrast, an alternative path towards successful implementation of a CID under New Jersey’s SID legislation would be to establish the CID within an existing SID. Under this approach, the municipality would thread the CID through the SIDs existing activities and plans, placing projects funded through an existing CID

alongside the types of physical improvements that fit more explicitly within the scope of the SID legislation.

By presenting the CID within the broader context of an existing SID, a municipality faces less of a burden in demonstrating how a CID falls within the scope of the legislation. A CID in isolation presents the challenge of showing the link between a municipality's information needs and its local business climate; a CID that is part of a larger project and existing process can highlight the complementary, facilitative role a CID can play in vindicating statutory purposes. Establishing a connection between a CID's objectives and any indicia of enhanced local business climate could help persuade a municipality to make its necessary predicate findings. For example, a municipality could more easily link civic engagement and enhancing the local business climate consistent with local needs and objectives. The municipality could show how benefits associated with CID objectives can support the municipality's other efforts to improve its local business climate pursuant to its SID's mandate, through projects such as issuing an annual print issue featuring local, independent business owners and or workers in the community.

This approach would strengthen the argument that the benefits of a CID are reasonable in relation to the special assessments such a project would impose, as well as make it easier for a municipality to justify its creation of the CID under the SID framework as a reasonable exercise of delegated authority. It allows a municipality to make more compelling arguments as to why a CID is within the scope of municipal authority delegated under the SID legislation and how a CID can further a SID's statutory purpose of enhancing local business climate. For example a municipality would be able to more credibly make the argument that improved civic engagement derived from a CID can in turn enhance the local business climate consistent with the SID legislation's policy objectives, as it would be able to demonstrate how the CID operates in conjunction with other improvements funded through the SID instead of arguing that such other improvements are necessary to justify the CID.

Conclusion

New Jersey's SID legislation affords municipalities broad discretion with respect to how they structure their SIDs. That discretion, however, is not without limitation, and a SID is susceptible to legal challenge to the extent that it goes beyond the core focus of enhancing the local business climate, that it imposes special assessments substantially in excess of the benefits those special assessments fund, or that it does not include the types of physical improvements conventionally associated with a SID. The creation of a SID for the sole purpose of establishing a CID would be more vulnerable to a legal challenge than a CID implemented through an existing SID, as it would rely on the argument that the benefits of a CID are sufficiently related to the policy purposes of a SID that a CID alone can justify the special assessments authorized under the SID legislation. A CID implemented through an existing SID is more likely to be viewed as a reasonable exercise of delegated authority, as it would present the CID in the context of a broader SID plan that more squarely vindicates statutory purposes.