



## Legislation Text

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File #: O-309-18, Version: 1

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All Council Members

**Determining to proceed with certain Barone Brothers Energy Improvement Project by way of special assessments in accordance with Chapters 1710 and 727 of the Ohio Revised Code; and declaring an emergency.**

**SUMMARY & BACKGROUND:**

The City of Toledo, City of Oregon, City of Maumee, City of Northwood, Township of Monclova, Township of Springfield, Township of Swanton, Township of Sylvania, Ohio and the Toledo-Lucas County Port Authority (“Port Authority”) have partnered to create an Energy Special Improvement District (“District”) under Ohio Revised Code Chapter 1710 and a non-profit corporation, known as the Northwest Ohio Advanced Energy Improvement District (“Corporation”), to govern the District. Property owners within the District are permitted to make certain “energy efficiency improvements” to their properties, which constitute a “special energy improvement project”, and pay for the cost of the special energy improvement project by way of special assessments in accordance with the process set out in Chapters 727 and 1710 of the Ohio Revised Code. Revised Code Section 1710.01(G) provides that special energy improvement projects (including energy efficiency improvements) constitute public improvements and are therefore subject to special assessments.

Barone Brothers, LLC (the “Petitioner”) is the owner of 100% of the property described on **Exhibit A** attached hereto (the “Property”). The Petitioner has executed an Agreement to Impose Special Assessments (the “Agreement”) which appoints the Chairperson of the Corporation, as the attorney-in-fact and agent for the Petitioner with the authority to act on behalf of the Petitioner in the special assessment process. A copy of the Agreement to Impose Special Assessments is attached to the Petition as **Exhibit C**.

Pursuant to the Agreement, and upon Application to the Northwest Ohio Advanced Energy Improvement District for membership and financing of special energy improvement projects to the Property; the Port Authority, Corporation, and Barone Brothers, LLC. have caused an energy audit to the property to be completed.

The energy audit has identified energy conservation measures, all of which qualify as energy efficiency improvements as defined in Revised Code Section 1710.01(K), which Barone Brothers, LLC has determined to proceed with implementation, and to pay by way of special assessments.

Barone Brothers, LLC., has submitted to this Council a petition (“Petition”) seeking (i) the addition certain of its property to the District and (ii) approval of an amendment to the District’s comprehensive plan for special energy improvement projects to include the Barone Brothers Energy Improvement Project (the “Project” or the “Barone Brothers Improvement Project”) and requesting that the Project be undertaken by the District and that the costs thereof be specially assessed against the Property of the Barone Brothers, LLC specially benefited thereby.

A complete list and description of the Barone Brothers Energy Improvement Project is on file with the Clerk of Toledo City Council and is attached as Exhibit B to this Resolution. Exhibit B provides the following information for the Barone Brothers Energy Improvement Project:

1. Identification of the parcels numbers and name of the property/building to be improved;
2. A description of the nature of the special energy improvement project for the particular parcels;
3. The estimated amount of the special assessment to be levied against each parcel of property and the number of years the special assessment will be collected (if not paid in cash within 30 days after the passage of the assessing ordinance as provided by law).

The total dollar cost of the Barone Brothers Energy Improvement Project, capitalized interest on the Port Authority's revenue bonds, reserve fund for the Port Authority's bonds, the cost of issuance of the Port Authority's revenue bonds, or the associated costs of issuance of the Northwest Ohio Advanced Energy Improvement District' revolving loan fund (collectively, the "Project"), is estimated to be One Million, Eight Hundred Six Thousand Seven Hundred Seventy-Seven Dollars and Twenty-Two Cents (\$1,806,777.22). Each semi-annual payment represents the payment of a portion of the principal of and interest on the Port Authority's revenue bonds and the scheduled amounts payable as the Port Authority administrative fee, the Port authority program administration fee, the trustee fee and the Lucas County, Ohio special assessment collection fee due with respect to each semi-annual payment.

The Port Authority and the District will fund the cost of the Project through either the issuance of bonds or the revolving loan fund. Ultimately, the loan will be repaid over time from the amounts Barone Brothers, LLC. pays as special assessments. Barone Brothers, LLC, in turn, is expected to be able to pay the special assessments from the energy savings estimated to be achieved as a result of the Project.

The annual special assessments for the Project are to be paid in semi-annual payments over fifteen (15) years. The plans and specifications for the Barone Brothers Energy Improvement Project are on file with the Clerk of Council. The Barone Brothers, LLC petition also waives all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Chapter 727 of the Revised Code, the Toledo City Charter and the Toledo Municipal Code. Barone Brothers, LLC consents to the immediate imposition of the special assessments upon the Property specially benefited by the Project.

This special assessment process is a voluntary process with one hundred percent of the cost of the special energy improvement projects being assigned to the specially benefited property. This resolution accepts and approves the petition from Barone Brothers, LLC to begin that special assessment process, and is accompanied by an ordinance to proceed with the Barone Brothers Energy Improvement Project. When the Barone Brothers Energy Improvement Project are complete and the final costs known, an assessing ordinance directing that the necessary special assessments be made against the benefited Property will be presented to the Council.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That this Council hereby determines to proceed with the Barone Brothers Energy Improvement Project as described in the Barone Brothers, LLC Petition and in the Resolution of Necessity, including the Exhibit B thereto, and in accordance with the plans, specifications, profiles and estimates of costs previously approved and now on file with the Clerk of Council.

SECTION 2. That the Corporation shall cause the Barone Brothers Energy Improvement Project to be constructed under such contracts as it determines to be appropriate under law and in accordance with the plans and specifications approved by this Council.

SECTION 3. That the total cost of the Barone Brothers Energy Improvement Project to be assessed in accordance with the Resolution of Necessity shall be assessed on the property in the manner and pursuant to the payment schedule set forth in the Resolution of Necessity, and the estimated special assessments prepared and filed in the Office of the Clerk of Council are adopted.

SECTION 4. That the Clerk of Council is hereby directed to deliver a certified copy of this Ordinance to the County Auditor within fifteen (15) days after its passage, but in no event later than the second Monday in September, 2018 (or by such other date as may be specified in the Ohio Revised Code or acceptable to the County Auditor of Lucas County, Ohio for the certification of assessments in connection with the preparation of the general tax list for tax year 2018).

SECTION 5. That this Council finds and determines that all formal actions of this Council and any of its Committees concerning and relating to the passage of this Ordinance were taken, and that all deliberations of this Council or any of its Committees that resulted in such formal action were held in meetings open to the public, in compliance with all legal requirements including those of Section 121.22 of the Ohio Revised Code.

SECTION 6. That this Ordinance is declared to be an emergency measure and shall take effect and be in force from and after its passage. The reason for the emergency lies in the fact that this Ordinance is necessary for the immediate preservation of the public peace, health, safety and property; and for the further reason that immediate action is necessary in order to conserve energy, protect the environment of the City and undertake the construction of necessary public improvements, as well as, enable and provide for the timely levying, certification and collection of special assessments for the Barone Brothers Energy Improvement Project.

Vote on emergency clause: yeas \_\_\_\_\_, nays \_\_\_\_\_.

Passed: \_\_\_\_\_, as an emergency measure: yeas \_\_\_\_\_, nays \_\_\_\_\_.

Attest: \_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
President of Council

Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council

\_\_\_\_\_.

Attest: \_\_\_\_\_  
Clerk of Council