Legislature Enacts Community Facilities District Legislation – A Very Modest Step

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The 2010 Washington Legislature has created a new local government financing tool through the enactment of ESSB 6241 (Chap. 7, Laws of 2010). The bill allows cities and counties to create community facilities districts ("CFDs") to finance infrastructure improvements through special assessment districts. ESSB 6241 began as a sprawling bill that meant to vest a remarkable array of finance powers in mini-governments created by property owners within existing municipalities. The initial concept was to mimic "Mello-Roos" districts in California and similar developer-driven financing districts in other states. There were many legal and financing issues raised by the legislation as originally proposed, and the Washington statute, as enacted, is quite modest in scope.

Under ESSB 6241, formation of a CFD requires a petition from 100% of the landowners within the proposed district. The petition sets the district's boundaries, describes the specific facilities to be financed, lists property owners willing to serve on the CFD's board of supervisors, proposes a method of assessment and preliminary assessment roll, and describes the proposed security for timely payment of assessments and bonds. After a public hearing process, the legislative authority of the city or county may choose to create the CFD. If created, the board of supervisors consists of three members of the legislative authority and two of the landowners.

Once formed, the CFD may proceed with the formation of a special assessment district to finance a broad array of planned improvements—water, sewer, storm drainage, roads, sidewalks, lighting, traffic signals, and many other types of infrastructure. The list is comparable to the range of improvements that can be financed through a city local improvement district under RCW 35.43.040. The board of supervisors both creates the special assessment district and determines the final assessments. The CFD may issue assessment bonds to finance the improvements. The CFD also may foreclose on properties that fail to timely pay assessments.

ESSB 6241 may be a useful tool in certain circumstances. The formation of a CFD gives property owners a bit more control over the special assessment district than they have in the traditional local improvement district process. And, under current law, local improvement districts and road improvements formed by counties for unincorporated areas may finance only water, sewer, stormwater, road street light and certain related projects—the CFD adds to the list of eligible improvements in unincorporated areas (including parks, playgrounds, utility undergrounding, mass transit facilities, parking, dikes, and programs of aquatic plant control, lake or river restoration or water quality enhancement). Apart from that, a CFD adds little to what can be accomplished with LIDs formed by cities or counties in response to landowner petitions. In fact, CFDs might turn out to be more difficult to create, since they require 100% property owner approval while traditional LIDs require petitions signed by just 51% of the owners of land subject to assessment. Further, many cities and counties may be resistant to creating another level of government when the benefits are so modest.

The biggest challenge to CFDs will be providing adequate security for CFD bonds when the land involved is undeveloped and not worth sufficiently more than the assessment roll. While cities and counties typically have an ongoing local improvement guaranty funds to back their bonds, and cities have a special property tax that is imposed city-wide if the guaranty fund runs out, CFDs will not have the backing of an established guaranty fund. CFDs will be able to size their assessment rolls sufficient to create reserve funds from bond proceeds. However, in many instances that still might not provide sufficient security for bondowners, and underwriters will require letters of credit, certificates of deposit or other types of security from the landowners to ensure payment of assessments until the related land values are many times higher than the value of outstanding assessments.

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