PACIFICA
LAW GROUP

# Washington State Legislative Update: Public Finance

The Washington State Legislature passed tax increment financing legislation and a number of affordable housing bills in the most recent session. In addition, the Legislature amended the county treasurer statute in response to COVID-19, requiring property tax deferrals in some circumstances. The following provides a brief overview of public-finance and housing related legislation.

## Tax Increment Financing

Tax increment financing, or "TIF," is a traditional public financing method that has been used in countries, including the United States, for almost 70 years. TIF is a "value capture" approach to financing public improvements. TIF bonds are issued to finance public improvements. The bonds are paid from increased property taxes (the captured value) in the TIF area generated by rising property values resulting from the public improvements. TIF is similar to another traditional value capture public financing method: local improvement districts or "LIDS." LID bonds are issued to finance public improvements that increase nearby property values, but are paid from assessments on the specially benefitted property rather than property taxes.

LIDs have served as the value capture public financing method in Washington State, rather than TIF, because TIF has conflicted with certain provisions of Washington law. An early TIF statute was invalidated by the Washington State Supreme Court because the captured property taxes used to pay the TIF bonds included state property taxes, which are required under the State constitution to be dedicated to the support of the common schools. Subsequent TIF-like statutes removed state property taxes from the value capture mechanism, and relied instead on state sales tax credits or other proxies. Any financing method that relies on any property taxes stemming from increased property values, however, also has conflicted with the 101% limitation on annual increases in the total dollar amount of regular property taxes under Chap. 84.55 RCW. Although the 101% limitation includes an exception for increases in assessed value resulting from new construction, the 101% limitation does not include an exception for other increases from rising property values in an improved area, defeating the TIF value capture mechanism.

The Washington Legislature adopted a new TIF statute that attempts to address both of these state law limitations. (ESHB 1189, the "TIF Act") (Sponsors: Duerr, Boehnke). The TIF Act excludes state property taxes (as well as excess levies and port and public utility district levies for debt service) from the TIF value capture mechanism and amends the 101% limitation to allow capture of local property taxes resulting from increased property values within the increment area. Specifically, the TIF Act amends RCW 84.55.010 to add an exception from the 101% limitation for any increase in the assessed value of real property within an increment area, provided that such increase is not included elsewhere under another exception (such as the exception for new construction).

The TIF Act allows counties, cities and port districts (or any combination of the three) to form increment areas, and allocates regular property taxes of overlapping local taxing districts generated by increased property tax values within the increment area to the sponsoring entity to finance public improvement costs. Public improvements eligible for TIF financing include street and sidewalk improvements, utility improvements, parking, terminal, and dock facilities, park and ride facilities or other transit facilities, park

and community facilities and recreational areas, brownfield mitigation; eligible costs include energy efficiency projects, affordable housing, childcare facilities, maintenance and security, and historic preservation costs.

Any sponsoring jurisdiction will receive property taxes on the increment value. Once the increment area has been formed, the county treasurer is directed to distribute receipts from regular property taxes imposed on real property located in the increment area. Each taxing district will receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the "tax allocation base value" (the assessed value of real property located within an increment area for taxes imposed in the year in which the increment area is first designated) for that increment area and the sponsoring jurisdiction will receive an additional amount equal to the amount derived from the regular property taxes levied by *or for* each taxing district upon the "increment value" (the increase in property values in the increment area after formation of the increment area). The sponsoring jurisdiction is to receive no more than is needed to pay or repay costs directly associated with the public improvements and may agree to receive less than the full amount as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of the additional tax receipts are to be allocated to the taxing districts that imposed regular property taxes, or have regular property taxes imposed for them, in the increment area for collection that year in proportion to their regular tax levy rates for collection that year.

The TIF Act includes procedural requirements for, and limitations on, the formation of increment areas. A sponsoring jurisdiction is able to create only two, non-overlapping increment areas that are active at any time, and the increment area (or both areas if there are two) may not have an assessed valuation of more than $200 million or more than 20 percent of the sponsoring jurisdiction's total assessed valuation. The increment areas are subject to a 25 year sunset date. The forming ordinance must set a deadline for commencement of construction of the public improvements. The sponsoring jurisdiction must make a number of specific findings regarding the private investment expected to be generated by the public improvements, and must complete an analysis that includes an assessment of impacts to – and necessary mitigation of – affordable and low-income housing as well as the local business community, school district and fire service. The TIF Act also requires the sponsoring jurisdiction to submit its project analysis to the Office of the State Treasurer for review and consider any comments that the treasurer may provide. The TIF Act allows the sponsoring jurisdiction to reimburse the county treasurer and assessor, as applicable, for expenses incurred in revaluing real property for the purpose of determining the tax allocation base value and in apportioning taxes.

The TIF Act represents the Legislature's effort to authorize as close to a traditional TIF value-capture public financing method as is permitted under the Washington State Constitution. The TIF Act authorizes increment areas that are limited in size and amount to serve, in effect, as a TIF pilot program.

Washington's budget-based property tax system already is complex as a result of the various limitations on both total dollar amount and levy rate. As sponsoring jurisdictions proceed under the TIF Act it will be important to work with the county assessor, county treasurer and the other overlapping taxing districts in the increment area. Although the TIF Act does not *require* that the sponsoring jurisdiction and the other overlapping taxing districts enter into an interlocal agreement (except in the event the increment area will impact at least 20 percent of the assessed value in a fire protection district or regional fire protection service authority or the fire service agency's annual report demonstrates an increased level of service

directly related to the increment area, in which case a mitigation plan is required to be negotiated), the TIF Act permits interlocal agreements with other local governments for the administration or other activities related to tax increment financing.

Communication among the sponsoring jurisdiction and the other overlapping taxing districts will be important in confirming that the proposed public improvements will support the public investment objectives and will benefit the taxpayers in the overlapping jurisdictions who will fund the improvements, in quantifying and if necessary mitigating the effects of the increment area on the various jurisdictions, and in planning for effective administration of the increment area over the 25-year term. The TIF Act requires some level of communication through the procedural requirements for forming an increment area (including the requirement to complete project analysis), and a sponsoring jurisdiction and the other overlapping taxing district may be well served by documenting their shared understanding by interlocal agreement.

## Key Housing Bills

**Engrossed Substitute House Bill 1070** (Sponsors: Ryu, Macri), signed by the Governor on April 14, 2021, assists with the implementation of important, resource-granting affordable housing legislation approved in the last few years. Cities and counties were previously authorized to impose a 0.1 percent sales and use tax by councilmanic action or voter approval to fund housing and related services. Sixty percent of the revenues collected were required to be used for constructing affordable housing or facilities providing housing-related services or mental or behavioral health services, or to fund the operations and maintenance costs of such housing and facilities. SB 1070 expands the use of local sales and use tax revenues to include the acquisition of affordable housing, facilities providing housing-related services, behavioral health-related services or land for such purposes. SB 1070 further amends the previously approved “hotel-motel tax” for affordable housing to permit its use for housing or facilities for homeless youth and modifies the definition of “affordable workforce housing” to include housing for persons whose income is at or below 80 percent of area median income.

**Engrossed Second Substitute House Bill 1220** (Sponsors: Peterson, Macri), which was delivered to the Governor on April 22, 2021, updates the housing elements in the Growth Management Act (“GMA”) to include planning for and accommodating affordable housing. This broad bill expands the list of items jurisdictions must address in the GMA housing element to include a Department of Commerce provided inventory of existing and projected housing needs across the income spectrum; a policy statement that includes moderate housing density options such as duplexes, triplexes and townhomes within urban growth boundaries; identification of land capacity for all housing types; and adequate provision of housing for all economic segments of the community, including moderate, low, very low and extremely low-income households, emergency housing, shelter and permanent supportive housing. Jurisdictions must identify and address policies – including zoning – that result in racially disparate impacts, displacement and exclusion in housing. Cities are also barred from prohibiting transitional or homeless housing in zones where housing or hotels are allowed and also from prohibiting indoor emergency shelters and housing where hotels are allowed beginning September 30, 2021.

**Engrossed Second Substitute Senate Bill 5160** (Sponsors: Kuderer, Liias) was signed by the Governor, with a partial veto, on April 22, 2021. E2SSB 5160 amends the State Residential Landlord-Tenant Act to provide, among other things, that a landlord may not impose late fees or other charges for a tenant’s nonpayment

of rent that became due between March 1, 2020, and six (6) months following the Governor's eviction moratorium (which is declared to end June 30, 2021). If a tenant has remaining unpaid rent accrued between March 1, 2020, and six (6) months following expiration of the Governor's eviction moratorium or the end of the public health emergency, whichever is greater, the landlord must offer tenants a reasonable schedule for repayment of the unpaid rent, as further described in the Act. The legislation also provides for a Landlord Mitigation Program ("LMP"); under the program a landlord is eligible to file a reimbursement claim under the LMP up to $15,000 for any unpaid rent that accrued between March 1, 2020, and six (6) months following expiration of the Governor's eviction moratorium, when the tenant being low-income or resource-limited or experiencing hardship has voluntarily vacated or abandoned the tenancy, but not if vacated due to an unlawful detainer action based on nonpayment of such rent. A landlord is also eligible to file a reimbursement claim under the LMP up to $15,000 for any remaining rent after the tenant defaults on a repayment plan as long as the tenancy has not been terminated at the time of reimbursement. After reimbursement under either type of claim, the landlord may not take legal action or pursue a collection action against the tenant for damages or to seek any remaining unpaid rent accrued between March 1, 2020, and six (6) months following expiration of the Governor's eviction moratorium. E2SSB 5160 also provides for tenant legal representation in eviction cases and establishes an eviction resolution pilot program for nonpayment of rent cases. The Governor vetoed two sections of E2SSB 5160 which would have allowed landlords to access certain state rental assistance programs.

**Engrossed Second Substitute Senate Bill 5287** (Sponsors: Das, Kuderer) was signed by the Governor on May 3, 2021 and amends the State's Multifamily Property Tax-Exemption program, also referred to commonly as the MFTE. The amendments expand the program to include previously ineligible cities and counties, eliminate the concept of "high-cost areas" for purposes of income thresholds and allow properties currently enrolled in the MFTE program and within 18 months of expiration, to extend for an additional twelve years of exemption provided locally adopted affordability requirements are met. The extension provisions are a welcome solution to the looming "cliff" of expiring MFTE units. E2SSB 5287 also imposes new requirements for tenant relocation assistance at the end of the exemption period and allows local jurisdictions to adopt prevailing wage and apprenticeship requirements. In addition, at the end of the exemption period, a jurisdiction is permitted to count the value of the housing, construction, conversion or rehabilitation as new construction for property tax calculation purposes, eliminating a prior hurdle to participation by local jurisdictions. The bill also creates a new 20-year tax exemption for cities with a population of 65,000 or less, which have a 99-year mandatory inclusionary zoning requirement for affordable housing for properties that are within a mile of high-capacity transit and that commit to affordability for at least 99 years. A second 20-year tax-exemption is created for properties that sell or rent 25 percent of their units to non-profits or government partners for permanent homeownership for households earning no more than 80 percent of area median income. The Department of Commerce is required to report annually on the MFTE program and to establish an audit program.

### COVID-19 Related Property Tax Deferrals

On April 16, 2021, Governor Inslee signed into law a bill granting certain qualifying businesses a property tax deferral during the COVID-19 pandemic (ESHB 1332) (Sponsors: Sullivan, Ramel). Under the new law, county treasurers must grant a deferral for any unpaid, non-delinquent property taxes payable in 2021, if the taxpayer can demonstrate a revenue loss of at least 25 percent of its revenue attributable to that real property for calendar year 2020 compared to calendar year 2019. For such qualifying taxpayers, the

county treasurer must establish a property tax payment plan, and cannot apply penalties or interest on the taxes due so long as the taxpayer complies with the plan's terms.

With regard to payment plan specifics, the new law affords county treasurers broad discretion in setting terms. Treasurers must, however, consider the financial impacts to all relevant taxing jurisdictions, and must prioritize payment plan expenditures to protect scheduled bond payments. Notably, a county treasurer may refuse to grant a deferral to an otherwise eligible taxpayer if the deferral would result in any taxing jurisdiction being unable to make such bond payments.

Taxpayers seeking a deferral must have applied by April 30, 2021, and county treasurers must process all applications by June 30, 2021. The bill expires January 1, 2022.

If you have any questions regarding this information, please contact us.


| | | |
|---|---|---|
| Alison Benge | Alison.Benge@pacificalawgroup.com | 206.602.1210 |
| Deanna Gregory | Deanna.Gregory@pacificalawgroup.com | 206.245.1716 |
| Stacey Lewis | Stacey.Lewis@pacificalawgroup.com | 206.245.1714 |
| Jon Jurich | Jon.Jurich@pacificalawgroup.com | 206.245.1717 |
| Faith Li Pettis | Faith.Pettis@pacificalawgroup.com | 206.245.1715 |
| Toby Tobler | Tobias.Tobler@pacificalawgroup.com | 206.602.1215 |


Dated: May 11, 2021.

*A Note: This publication is for informational purposes and does not provide legal advice. It is not intended to be used or relied upon as legal advice in connection with any particular situation or facts. The information herein is provided as of the date it is written. Copyright © 2021 Pacifica Law Group LLP. All rights reserved.*

To subscribe to our mailing list, please contact Mia Wiltse at Mia.Wiltse@pacificalawgroup.com.