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Basics about LOCAL IMPROVEMENT DISTRICTS

Local improvement districts, or special assessment districts, function as mainstays of local improvement financing. Special assessment was used as early as the thirteenth century, when an English law provided for special assessment to finance construction and maintenance of a drainage system in certain marsh lands. This English special assessment system was adopted by the American colonies, and after independence, local governments continued to use special assessment under authority of state laws.

A local improvement district is a geographic area in which real property is taxed to defray all or part of the costs of a public improvement. The distinctive feature of a special assessment is that its costs are apportioned according to the estimated benefit that will accrue to each property. In Oregon, local improvement districts are governed by local ordinances, but the Bancroft Bonding Act (ORS 223.205-295) addresses the means by which local governments may finance public improvements. The tax limitation brought about by Ballot Measure 5 (1990) created several changes to the ways in which local governments can finance public improvements, marking perhaps the most significant change to special assessments in recent years.

Are local improvement districts the same thing as special districts or economic improvement districts?

No. *Special districts*, such as water districts or mosquito abatement districts, are separate government organizations with their own governance structures. *Economic improvement districts* (sometimes called "empowerment zones") are districts created within cities in order to support business recruitment, development, and commercial activities in particular locations. In Oregon, *local improvement districts* use special assessments to finance local improvements in cities, counties, and some special districts. Common improvements include such things as storm and sanitary sewers, street paving, curbs, sidewalks, water lines, recreational facilities, street lighting, and off-street parking. In addition, special assessments are used to finance reconstruction of deteriorated, substandard, or outmoded facilities, both in older developed areas and in areas newly annexed to a city.

On what basis may local governments designate local improvement districts?

The basic principle of special assessment is that it is a charge imposed upon property owners who receive special benefits from an improvement beyond the general benefits received by all citizens of the community. Three "principles of benefit" describe the main factors to be considered by a public agency when deciding to use special assessment. They are:

- *Direct Service*. An example would be the construction of a street that gives access to a property previously without access. The benefit exists in terms of improved land development value.
- *Obligation to Others*. This is not an intuitively obvious benefit. An example would be the construction of a storm sewer and catch basin, which would have no direct service benefit to a property on the top of a hill. The benefit exists in the fact that the uphill land may be

developed and provided access without causing damage to downhill land.

- *Equal Sharing*. An example would be a sidewalk down the length of a street. Each property owner is usually responsible for the sidewalk in front of the property, not always because the property owner desires a sidewalk, but because all properties served by the sidewalk system benefit equally from it.

How does a local government determine the benefits of a public works project financed by special assessment?

Governing bodies need to exercise discretion in determining the benefits of a project financed by special assessment. Considerations include the following.

- Each project should meet the standards applied to other public works in the community. In the majority of cases, local improvement districts are created in order to finance public improvements in new developments. Therefore, the governing body is responsible for establishing standards for a project.
- The facility should *initially* be built in accordance with this community-wide standard. Property owners are not easily persuaded that a *new* special benefit is received from the reconstruction of a project that is already in place.
- The assessed cost must be distributed among property owners according to the proportionate benefits to each owner's land. Since individuals do not always agree on the value of the project, a governing body may consider objections from those charged.
- A developer may be granted the privilege of special assessment financing for new facilities. Using the lower interest rate on municipal borrowing reduces the developer's cost. Since there may be risks to all citizens of the jurisdiction, some governing bodies do not allow this use of special assessment.

What gives local governments legal authority for collecting special assessments?

Special assessment usually is upheld as a valid exercise of state taxing power, and less frequently as an exercise of eminent domain or police power. The Oregon Constitution requires uniform taxation on the same class of subjects, and the Oregon Supreme Court held near the turn of this century that apportionment according to benefit constitutes a sufficient kind of uniformity, and therefore special assessment is a valid form of taxation.

The Oregon Constitution gives cities the power to assume authority under home rule charters to finance local improvements by special assessment. The Legislature has provided cities with a procedure for special assessment financing (ORS 223.387-399) which applies when city charter or ordinance provisions do not specify otherwise. Cities are also specifically empowered by statute to provide for improvements and assessments in specific situations, including the provision of off-street parking and the installation of pedestrian malls.

The Oregon Constitution also allows counties to adopt home rule charters by which they may assume authority to undertake special assessment improvement projects. A county may be able to exercise local improvement district and special assessment prerogatives under the broad general powers granted to counties in 1973 under ORS 203.030-065. This has been construed by the attorney general as granting non-home rule counties the same authority in matters of county concern (except in the area of the structure and organization of county government)as is possessed by counties operating under home rule charters.

How did Ballot Measure 5 (1990) change the way in which local governments finance public improvements?

Local governments in Oregon are financed primarily through property taxes. Ballot Measure 5 (1990) limited the amount of tax local governments can levy for funding the operations of public schools and other local government services. Current maximum allowable taxes for schools are $5 per $1000 of a property's real market value; the maximum for local government operations is $10 per $1000 of a property's real market value. Should local taxes exceed the $10 per thousand limit, the taxes must be reduced evenly by the percentage necessary to meet the limitation for that category. (The local taxes could, for example, exceed the limit for school taxes but not exceed the limit for government operations taxes, In that instance, only school taxes would be reduced.)

But what does the property tax limitation have to do with special assessments?

Measure 5 changed the way in which local governments finance public works projects. Prior to 1990, the Bancroft Bonding Act (ORS 223.205-295) allowed local governments to assess property owners for their share of specific local improvements. Bonds could then be sold in the amount of the improvement, secured directly by the assessments charged the property owners, and indirectly by the lien against the assessed property. Under Measure 5, if bonds for particular projects have been approved by voters in an election, they may be issued as general obligation bonds not subject to property tax rate limitations. The Portland area, for example, has passed several bond issues recently for the benefit of such things as parks, libraries, and the zoo. If the bonds have **not** been approved by the voters, and are issued as limited tax bonds, they fall under the tax rate limitation for government operations of $10 per $1000 of real market value[i]. This means that if a local government has reached its taxing limits, it cannot issue Bancroft bonds without voter approval. When governments in all areas of the state come under tax rate compression (meaning they are taxing at the full $15 per $1000 combined rate for schools and government operations), their capacity for issuing Bancroft bonds for local public improvements without voter approval will be eliminated.

Will Measure 50 (1997) affect Local Improvement Districts?

Passage of Measure 50 (1997) does not affect special improvement assessments themselves. Measure 50 could, however, indirectly affect ability to sell bonds for the improvement if the bonds are only backed by the special assessments and cannot be backed by property taxes.

Surely there are other ways in which local governments can finance public improvements!

There are other means by which local governments can finance public improvements, though they are not exactly comparable to special assessments. As mentioned above, a local jurisdiction may issue general obligation bonds with voter approval. This requirement asks *all* the citizens of a jurisdiction to pay for improvements to a particular neighborhood. In the majority of cases, local improvement districts are formed in order to pay for the infrastructure requirements of new development, and thus general obligation bonds require that citizens of established communities pay for new development, violating the fundamental principle of special assessments that properties receiving special benefits should pay for them. In addition, as Bancroft bonding is a means for allowing private developers to share the risk of new development with local government (through the use of lower government interest rates), the costs of new development are driven up as the developer must assume all up-front costs of the necessary public improvements.

Local governments may also issue revenue bonds, which are backed by the revenues generated from the operation of the financed improvement. Revenue bonds thus may be issued only for those activities which generate revenues, such as water lines or sewer systems. Curbs and sidewalks, for example, would not be eligible for revenue bond financing. Finally, there are "pure" assessment bonds, backed only by the private properties directly affected by the financed improvement. Bond underwriters consider these to be extremely risky, as they are not as secure as publicly-backed bonds, and so they are difficult or nearly impossible--especially for small and/or rural communities to sell on the bond market.

Oregon law also gives local governments authority to assess Systems Development Charges (SDCs) on new development to pay for sewer, water, street, or park capital improvements. The state law specifies that the assessments be within an amount determined by the local government as the cost of accommodating the new development.

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[i] Oregon Laws 1991, Ch. 902, Section 98 (8): "'Limited tax bond' means a bond or other obligation which is a full faith and credit obligation, and which is payable from any taxes which the issuer may levy within the limitations of section 11 or 11b, Article XI of the Oregon Constitution."

Background material is taken from the report *Financing Local Improvements by Special Assessment,* Bureau of Governmental Research and Service, University of Oregon, 1982. (BGRS Report #82-1)