

Federal Highway Administration Webinar on Value Capture Techniques: Special Assessments

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General Questions about Special Assessments

Who can initiate the process of creating a special assessment district?

Typically, any jurisdiction that can levy a property tax can initiate a special assessment; it is usually in the same part of a State's code. However, it depends on the State enabling statute. A State's enabling statute will determine both the procedural and substantive requirements for creating a special assessment district.

Can metropolitan planning organizations (MPOs) obtain legislative authority to impose a special assessment, or is it something only a land-use authority like a city can impose?

The answer will depend on the enabling legislation for MPOs in a given State. Some MPOs are just advisory, whereas others can levy taxes. The answer for an MPO in a multistate area is more complicated. No individual State can grant an MPO with legislative authority over a multistate area. Congress would need to enact a multistate compact.

How have agencies addressed local legislators' concern that a special assessment district commits future elected parties to long-term political and financial obligations?

It is a common practice for cities to issue bonds (a long-term obligation) to finance infrastructure investments. The special assessment model is unique in that dedicated revenues support the repayment of those long-term obligations. In Kansas City, having dedicated, long-term revenue streams that were approved by voters made it easier for local elected officials to make long-term commitments.

In Seattle, it has been a long-term goal of the City to re-imagine the waterfront. Planning and economic development officials have found it helpful to "lay a trail of breadcrumbs" with the City Council over the years. New City Council members can look back at history and see the evidence of longstanding support from past City Councils.

How do special assessment districts work differently in California given Proposition 13's limitation on growth in assessed value? Could another metric like parcel square footage be used as an alternative basis for a special assessment?

In California, Proposition 13 applies to taxes but not special assessments, which are fees, not taxes. This distinction has been affirmed by court cases such as *County of Fresno v. Malmstrom* (1979).¹ In fact, the passage of Proposition 13 in 1978 spurred California cities to create special

¹ *County of Fresno v. Malmstrom*, 94 Cal. App. 3d 974 (1979). See also Dean Misczynski, "Special Assessments in California: 35 Years of Expansion and Restriction," in *Value Capture and Land Policies*, Proceedings of the 2011

assessment districts to raise funds for public capital improvements.² Proposition 218, passed in 1996, established new procedural and substantive requirements for special assessments.³

In Washington State, the benefit is not based on the property tax assessment, but rather on an appraisal of property value before and after the improvement. Therefore, the local assessor's value does not matter. Some opponents of special assessments have pointed to their assessments to argue the benefit analysis is wrong, but that is not relevant to how the special assessment for a given parcel is determined in Washington State.

Questions about Local Improvement Districts (LIDs) in Seattle and in Washington State

What are the requirements to form a Local Improvement District in Washington State?

The basic LID processes for cities in Washington State are specified in chapters [35.43 through 35.56](#) of the Revised Code of Washington (RCW). Counties in Washington State must follow the procedures in chapter [36.88](#) RCW to create assessment districts for road improvement projects. Counties can also use LIDs for water, sewer, and storm sewer facilities under chapter [36.94](#) RCW.⁴

Who can initiate the Local Improvement District (LID) process: property owners or city of Seattle?

Either party can initiate the process. If property owners want to initiate the process, they need to have the agreement of owners of over 60 percent of assessed value within the district. For municipalities, if property owners of more than 60 percent of assessed value decide to protest the formation of the LID, it cannot be formed. (see [35.43.180](#) RCW).

Is the LID assessment enforceable? Who would be responsible for the LID if the property is sold?

In Washington State (and likely most States), an LID or SAD is very enforceable. A lien is placed on the property, and if the property is sold, the assessment either passes to the new property owner or is paid at the time of sale (see [35.50](#) RCW). SADs are considered a safe investment in the finance (bonding) community, particularly in metropolitan areas, because they are backed by property values. The lien does make some residential property owners feel like they are having their property "taken," particularly if they are on a fixed income. For the Seattle Waterfront LID, there are over 6,000 parcels in the district. Some escrow payments have

Land Policy Conference, Lincoln Institute of Land Policy,

https://www.lincolinst.edu/sites/default/files/pubfiles/special-assessment-california_0.pdf.

² California Debt and Investment Advisory Commission, Funding and Financing of Maintenance and Public Infrastructure Using Special Assessments: Approaches for Achieving Successful Outcomes, September 18, 2014, <https://www.treasurer.ca.gov/cdiac/seminars/2014/20140918/presentation.pdf>.

³ Michael Colantuono, "A History of Local Government Revenues under California Law: Proposition 13 through Proposition 26," presented to the League of California Cities, City Attorneys Department, May 9, 2013, pp. 22-29, https://chwlw.us/papers/History_of_Props_13_%202018_26.pdf.

⁴ Municipal Research and Services Center, "Local Improvement Districts," <https://mrsc.org/Home/Explore-Topics/Public-Works/Finance/Local-Improvement-Districts.aspx>.

already been made because of sales of parcels in the one month since the final assessment roll was effective.

In Seattle, what was the percentage of final assessments that were protested by the same parties that supported the preliminary assessments and project advancement?

The final requirement for an LID in Washington State is allowing property owners to appeal their assessment to the county Superior Court. About 20 property owners (less than 1 percent of property owners) protested their final assessments. Collectively, they represent approximately 10 percent of the total assessment. Of the 6,400 properties in the final assessment roll, owners of about 4,400 properties paid in the first month after the final assessment notices were sent.

How did property owners waive their legal right to protest final assessments?

An agreement was signed by more than 60 percent of the property owners prior to the finalization of the LID assessment. Within that agreement, the property owners waived their right to protest.

What contributes to the \$6 million to \$7 million in costs to administer the LID?

That money covered items like legal fees, the feasibility/special benefit studies, and outreach. The outreach efforts included development of materials to describe the LID process for both the public and city council. Administrative costs also included all of the time of Seattle city staff used to work with property owners to gain their support for the LID.