UTAH SENATE BILL 228 – PUBLIC INFRASTRUCTURE DISTRICT ACT

Senate Bill 228 grants Cities and Counties in Utah the power to create Public Infrastructure Districts (PIDs) to finance public infrastructure for new development. This infrastructure may be financed by issuing bonds repayable from property taxes or assessments on the property owners of the development. PIDs are an exciting new economic development tool for Cities and Counties along with property owners. -- *SB 228 became effective on May 14, 2019.*

Summary

- PIDs are local districts under Title 17B and constitute independent political subdivisions, as such they are not a component unit of the City or County that creates the PID (Creating Entity).
- Debt issued by PIDs is not a liability of the Creating Entity or the State, therefore PID debt is a non-balance sheet item.
- Debt is repaid solely from a Limited Property Tax or Assessments imposed by the PID.
- Formation requires 100% consent of property owners and any voters in the PID boundaries.
- PIDs have fairly broad powers to finance public infrastructure of many types generally including any improvement that will be owned by a state or local government, including the PID.
- PIDs have authority to finance capital costs of improvements in an energy assessment area, commonly referred to as Property Assessed Clean Energy (PACE) improvements.

PID Formation and Governance

PIDs are formed similarly to other local districts except for the additional requirement of consent of 100% of property owners and voters within PID boundaries. The creation of a PID is at the discretion of the Creating Entity. We recommend that each potential Creating Entity adopt standard policies for how it will evaluate all PID requests in light of its overall objectives. Negotiations with any property owner on a PID request should require legal representation of counsel to the City, with all costs paid by the property owner and not contingent on a successful PID creation. Creating Entities may also consider utilizing a financial advisor under similar circumstances. We recommend that property owners applying for a PID also obtain their own legal representation.

In addition to the statutory requirements, PIDs are governed by a Governing Document agreed to at the time of creation with the Creating Entity. The Governing Document may include limitations on the powers of the PID, establish reporting requirements, establish debt and mill rate levy limits, in addition to other limitations in accordance with the Creating Entity's policies and objectives. The Governing Document is enforced contractually through an Interlocal Agreement between the Creating Entity and the PID. Again here, the Creating Entity and the property owner should each be represented by counsel at the expense of the property owner.

PIDs are governed by a Board initially appointed by the Creating Entity with initial members being property owners or designated representatives of property owners. The appointed Board then transitions to an elected board after new electors reside or own property in the PID, as established in the Governing Document.

Debt Issuance

In addition to special assessment and standard general obligation bonds, PIDs may issue limited tax bonds which are repaid from a limited ad valorem property tax not to exceed more than 15 mills (or any lower limit established in the Governing Document or bond documents). In the event the proceeds of the limited tax are insufficient to meet annual debt service as it comes due, the bondholder has no statutory remedy to require additional taxes or fees of the PID, nor statutory recourse to the property or the property owner. Limited tax bonds must mature within 40 years of issuance and unlike general obligation bonds, are not constrained by a ratio compared to fair market value. The statute limits sale of limited tax bonds to qualified institutional buyers or to be sold in denominations of $500,000.

Considerations for the Creating Entity in Drafting the Governing Document:

- The statute only establishes the outer limits of what a PID can do, the Creating Entity may consider additional limits to each PID in the Governing Document.
- Board member term lengths and transition to elected board seats, including the possibility of divisions and interlinked PIDs for phases of development.
- Improvements that the Creating Entity will allow the PID to finance (can be used in conjunction with the development agreement to finance improvements/benefits to the property owner and the Creating Entity).
- Establish a mill rate limit appropriate to accomplish financing of approved improvements.
- Establish standards for general obligation bonding, procurement (including requiring third-party engineer certifications as to fair market value for acquisitions of improvements by PID), PID lifespan and dissolution if no activity within a certain timeframe, etc.
- Creating Entity input into any enhanced disclosure to future property owners.
- Proper legal tax analysis over all Governing Document negotiations to ensure eligibility for desired tax-exempt financing and that the PID constitutes a "separate political subdivision" for tax purposes.
- Ability to leverage with TIF, assessment, and other economic development revenues.
- Interaction with capital facility plans and impact fees.

For further information, please contact:

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