



SESSION TWO

Legal and Legislative Updates In Land-Secured Finance

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**CURRENT TOPICS AND PRACTICES IN
LAND-SECURED AND DEVELOPMENT FINANCE**

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LEGISLATIVE UPDATES

The Taxpayer Initiative and Government Accountability Act (the “Taxpayer Initiative”)

- Taxpayer Initiative that is on the November 2024 ballot.
- Intent is to increase transparency and accountability for all new taxes and other charges put to voters.
- Amends Articles XIII A and C of the California Constitution.
- Would require new or increased State taxes to be passed by a two-thirds legislative vote in each chamber and approved by a simple majority of voters.
- Would also increase the vote requirement for local taxes proposed by local government or citizens to a two-thirds vote of the local electorate.

Taxpayer Initiative (Continued)

- Retroactive effective date – January 1, 2022; May invalidate voter approved taxes approved after January 1, 2022 if not compliant with the Taxpayer Initiative.
- Requires that certain information re proposed new taxes or charges be placed in the ballot measure, including the type and rate of the tax, the duration of the tax, the use and estimated annual amount of the revenue generated by the tax.
- Mello-Roos Act requires a 2/3 vote to approve any Special Tax (One vote per acre if less than 12 registered voters with the proposed boundaries).
- Most CFD formation ballots do not contain all of the above information in the ballot measure itself.

Taxpayer Initiative (Continued)

COURT INTERPRETATION AND APPLICATION OF THE TAXPAYER INITIATIVE

- Courts would likely apply a “substantial compliance with the statute” approach.
- Landowner Waivers and Retroactive Affirmations
- Status of Challenges to the Legality of the Taxpayer Initiative

Other Legislation

AB 516 (Ramos) Mitigation Fee Act

(Gov't Code Section 66000 et. Seq.)

Amends Mitigation Fee Act to:

- Require that annual reports include certain additional information, such as identifying public improvements in previous annual reports and whether construction began on the date previously identified, and provide the reason for delay and a revised approximate date the local agency will commence construction for projects that did not begin timely.
- Require that local agencies provide certain information to anyone paying a fee, such as the right to request audits, the right to request written notice of the meetings where annual reports are approved and a link to the website where annual reports are available.
- Expand the purposes for which audits of fees may be requested.
- Effective January 1, 2024.

Other Legislation (Continued)

AB 557 (Hart) Brown Act Amendments

(Gov't Code Section 54950 et. Seq)

- Eliminates the January 1, 2026 sunset date on provisions of the Brown Act allowing local agencies to use teleconferencing without complying with specified Brown Act requirements during a proclaimed state of emergency.
- Effective January 1, 2024, the 'relaxed' teleconferencing rules established during COVID are still available when the Governor has proclaimed a state of emergency either statewide, or in the local agency's jurisdictional boundaries.
- Effective January 1, 2026, eliminates the ability of a member of a legislative body to use teleconferencing for a public meeting due to emergency circumstances or just cause.
- Effective January 1, 2024.

Other Legislation (Continued)

AB 1280 Fire Hazard Severity Zones Disclosures

(Civil Code Section 1103.2)

- Existing law generally requires the seller of a single-family residential property to make certain disclosures of natural hazards on a specified statement to a prospective buyer, including whether the property is in a very high fire hazard severity zone.
- AB 1280 requires that such disclosures now include high fire hazard severity zones as well.
- Clarifies that the natural hazard statement is required to include a disclosure as to whether the property is located within a high fire hazard severity zone in a state responsibility area, very high fire hazard severity zone in a state responsibility area, or very high fire hazard severity zone in a local responsibility area.
- Effective January 1, 2024.

Other Legislation (Continued)

SB 20 (Rubio) Regional Housing Trusts (Gov't Code Section 6539.1)

- Authorizes cities, counties, and tribal governments to enter into joint exercise of powers agreements to form housing trusts.
- Legislature previously created five separate joint powers authorities as housing trusts by individual legislation.
- Authorizes regional housing trusts to:
 - Fund planning, acquisition and construction of housing for homeless populations and extremely low, very low and low income.
 - Receive public and private financing and funds.
- Authorize and issue bonds, certificates of participation, or any other debt instrument repayable from funds and financing received from such financing and funds and pledged by the regional housing trust.
- Sets certain requirements for board membership (minimum five directors, with three elected members from a local agency; two additional members expert in homeless or housing policy that are not elected officials).
- Effective January 1, 2024.

Other Legislation (Continued)

Assembly Constitutional Amendment No. 1

- Statewide initiative placed on the November 5, 2024 ballot by the California legislature.
- If passed, ACA-1 would lower the voting threshold for certain city, county and special district general obligation bonds and special taxes from two-thirds to 55%.
- Bond proceeds would need to be used for construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing, or permanent supportive housing for persons at risk of chronic homelessness, including persons with mental illness, or the acquisition or lease of real property for public infrastructure, affordable housing, or permanent supportive housing for persons at risk of chronic homelessness, including persons with mental illness.
- Would apply to all elections that occur on and after November 5, 2024, and would require the creation of a bond oversight committee and annual performance and financial audits.

JUDICIAL UPDATES

Sheetz v. County of El Dorado, CA (SCOTUS, April, 2024)

- U.S. Supreme Court decision regarding traffic impact fees and the Takings Clause of the Fifth Amendment to the U.S. Constitution (“nor shall private property be taken without just compensation.”)
- Sheetz owned a parcel in rural El Dorado and applied for a building permit to build a small house.
- Due to a recent increase in traffic congestion, the County had instituted a traffic impact fee for building permits; the traffic impact fee was not based on the impact on traffic of a particular project but on a rate schedule based on the type of project and the location in the County (i.e., residential, commercial).
- Sheetz paid the traffic impact fee under protest, and filed an action in state court claiming that conditioning the building permit on paying the traffic impact fee was an unconstitutional “exaction” under the Takings Clause.
- Supreme Court held for Sheetz, holding that there is no difference between administrative and legislative conditions on land-use permits, and must be an “essential nexus” between the permit condition and the government’s land use interest.

JUDICIAL UPDATES (Continued)

Alliance San Diego v. City of San Diego (2023) (occupancy tax)

- Upheld finding that the general requirement that special taxes be approved by a two-thirds vote does not apply to citizen-sponsored initiative measures; hinted that “too much government involvement can mean an initiative is really presented by the local government” rather than by a citizen-led initiative.

County of Alameda v. Alameda County Taxpayers' Association, Inc. (2024)

- In June 2018, the County submitted a failed sales tax ordinance to the voters.
- Prior to the November 2018 election, the Board of Supervisors considered the same tax for a lesser term but tabled proposal after discussing the possibility of a “signature gathering campaign for the 2020 election.”
- Petition was circulated for the March 2020 primary election, with a Supervisor as a proponent and her chief of staff as the principal officer for the campaign committee.
- Court upheld the tax based on simple majority vote and explicitly disagreed with the implication in the *Alliance San Diego* court that “too much government involvement can mean an initiative is really presented by the local government” rather than by a citizen-led initiative.

JUDICIAL UPDATES (Continued)

Traiman v. Alameda Unified School District (2023)

- Measure A, a school district parcel tax, was placed on the March 2020 ballot by the Board of Education and approved by the voters.
- Imposed a special parcel tax for seven years at a rate of \$0.265 per building square foot not to exceed \$7,999 per parcel and at the rate of \$299 per vacant parcel.
- Government Code Section 50079 requires that special taxes “apply uniformly to all taxpayers or all real property within the school district, except that unimproved property may be taxed at a lower rate than improved property.”
- Court of Appeal held that the per parcel cap did not impermissibly create classifications in violation of Section 50079 because the cap “does not transform a permissible square footage tax into a tax that is not uniformly applied.”

JUDICIAL UPDATES (Continued)

Davis v. Fresno Unified School District (2023)

- School district entered into a lease-leaseback arrangement with a contractor pursuant to Education Code Section 17406 for the construction of a school site.
- Construction was funded with the proceeds of previously issued general obligation bonds.
- Taxpayer within the school district brought a reverse validation action.
- Court of Appeal held the lease-leaseback arrangement was not subject to judicial validation under Code of Civil Procedure Section 860, et. seq., because it was not a “contract” within the meaning of Government Code Section 53511.
- Given the source of financing (GO bond proceeds), the lease-leaseback arrangement was not “in the nature of, or directly related to, a public agency’s bonds, warrants or other evidences of indebtedness.”

SEC UPDATES

David Sanchez, SEC Director of the Office of Municipal Securities Closing Remarks at SEC Compliance Conference

- David Sanchez delivered closing remarks at the SEC Compliance Conference on December 7, 2023.
- In these remarks Mr. Sanchez highlighted areas of concern in the public finance market.
- Of particular interest in the remarks is the assertion by Mr. Sanchez that municipal advisors, broker-dealers and attorneys have “gatekeeping” and other responsibilities which, in the SEC’s view, are not being met in certain circumstances.

SEC UPDATES (Continued)

David Sanchez Remarks at SEC Compliance Conference, Continued

- Mentions the “emergence and reemergence of certain deal structures” that have come under scrutiny, including housing deals for essential workers and students, taxable forward refundings, and tenders.
- Mentions that “certain municipal entities have been ceding authority for issuing conduit bonds to privately-run entities that are the leading issues of defaulted bonds.”
- The SEC is also concerned with the number of municipal entities choosing to do negotiated sales as opposed to competitive sales.
- Mentions municipal advisors helping issuers determine method of sale.
- Also broker-dealers’ obligations to disclose conflicts of interest with respect to secondary market sales to affiliates.

SEC UPDATES (Continued)

David Sanchez Remarks at SEC Compliance Conference, Continued

- Discusses municipal advisor activity conducted by persons and entities who failed to register:
 - P3 advisors and other participants in P3 space.
 - Attorneys, particularly for private placements.
 - Non-bank participants in lease financings and private placements.
 - Charter school advisors.
 - Special tax consultants.
 - Vendors who embed financing in equipment sales.
 - State and local associations of governments that promote for compensation certain financing packages.

SEC UPDATES (Continued)

David Sanchez Remarks at SEC Compliance Conference, Continued

- Recent cybersecurity rules adopted by the SEC for public companies.
- Guidance from the Government Finance Officers Association on environmental disclosure best practices.
- Closed remarks by mentioning anti-fraud liability can include many members of the deal team, and stressing the importance of ensuring complete, fair and accurate disclosure.

SEC UPDATES (Continued)

SEC v. City of Rochester, New York (2024)

- SEC civil enforcement action brought against the City of Rochester, the City's former Director of Finance and the City's municipal advisors, Capital Market Advisors, LLC ("CMA").
- Municipal Advisors are required to comply with the rules of the Municipal Securities Rulemaking Board ("MSRB"), including Rule G-42 which requires disclosing all material conflicts of interest.
- SEC alleged CMA failed to comply with relevant MSRB rules and breached their fiduciary duty to the City by not disclosing that its fees arrangement, which were contingent upon the sale of bonds and dependent in whole or in part on the size of the bond issuance, presented a material conflict of interest.
- Summary Judgment granted in favor of the SEC.