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Practice Group:
Public Finance

New Financing Authority for Washington Ports, Cities, and Counties

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Second Substitute Senate Bill 6140 (SB 6140) was signed by Governor Gregoire on March 29, 2012. The new law allows certain municipalities to establish local economic development finance authorities ("authorities") with the power to issue both taxable and tax-exempt nonrecourse revenue bonds. The law takes effect on June 7, 2012.

Under prior law, municipalities had the capacity since 1981 to create public corporations with the authority to issue tax-exempt nonrecourse revenue bonds for industrial development (typically manufacturing and processing facilities). Those public corporations have not had the power to offer taxable revenue bonds.

Compared to the prior law, the new law may provide attractive benefits to borrowers, including:

- Offering borrowers "full service" financing packages with both taxable and tax-exempt bonds in the same transaction.
  - For example, in a small manufacturing facility, the main facility may be financed with tax-exempt bonds. But attached office space or warehouse space would typically not be eligible for tax-exempt financing. The new law allows the borrower to use the same credit package for taxable bonds for the office or warehouse space alongside tax-exempt bonds for the main facility.
- Borrowers may prefer to work with a local authority that can help them navigate the local political and public processes.
- Local authorities may be able to offer reduced fees compared to other financing packages.
- The local authorities may be able to participate in current and future federal taxable bonds programs.
  - Public corporations under the prior law were not permitted to participate in programs such as Build America Bonds, Recovery Zone Economic Development Bonds, or Recovery Zone Facility Bonds.
  - Under the new law, authorities would be able to issue these taxable bonds.
  - Authorities would also be able to issue bonds under current programs such as Qualified Energy Conservation Bonds.

However, a number of important limitations and considerations may impact a municipality's ability to establish an authority or provide conduit financing:

- Only those municipalities with active public corporations established under the prior law are permitted to establish authorities.
- The borrower must meet credit worthiness standards. The borrower must:
  - Have an investment grade credit rating;

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  - Obtain a letter of credit from a bank with an investment grade credit rating; or
  - Arrange for private placement with an institutional investor.
- The project must be located wholly within the boundaries of the municipality (except for energy and solid waste disposal facilities).
- Bonds issued are not public debt of the state, municipality, or the authority. This is similar to Washington Economic Development Finance Authority, Housing Finance Commission, Health Care Facilities Authority, or Higher Education Facilities Authority.
- Authorities may not issue bonds that would be issued by the Housing Finance Commission, Health Care Facilities Authority, or Higher Education Facilities Authority.

The new authority may work in parallel with the existing public corporation, or may assume the board and duties of the public corporation if the municipality wishes to consolidate.

The bill and its related documents are available here.

For those entities that already have active economic development corporations, the new law may provide new tools to offer borrowers more complete financing packages or the opportunity to participate in future federal programs.

We have forms available if you would like to create an authority under the new law.

K&L Gates has been serving as bond counsel to municipalities for over 100 years. We welcome the opportunity to continue to serve you. For more information, contact Cynthia Weed at 206-370-7801, Laura McAloon at 509-241-1532, Scott McJannet at 206-370-8190, or David Thompson at 206-370-8395.

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