

USE OF SPECIAL ASSESSMENTS BY MUNICIPAL GOVERNMENTS IN THE CHICAGO METROPOLITAN AREA: THE TAMING OF LEVIATHAN?

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Special assessments are often described as being prone to abuse, misuse, and overuse by local governments. Their “hidden nature” can foster a perception that governments use them in exploitive ways to finance unnecessary and even undesired capital improvements. As in others areas of taxation, governments using special assessment are sometimes likened to the biblical Leviathan creature that devours everything to feed itself. This study, using data on assessments in metropolitan Chicago and approximately 40 interviews with local officials, shows that municipal governments that use this financial tool do not, in fact, exemplify Leviathan behavior.

INTRODUCTION

Generally speaking, special assessments are a method of funding capital improvements and sometimes services that directly benefit particular property owners rather than all property owners or citizens within a local jurisdiction. Special assessments (SAs) exist in all states and usually take the form of property taxes that are levied in addition to the general property tax to finance benefits that are not shared with properties that are not subject to the SA. Ideally, SAs are levied according to the level of benefit that accrues to the property from capital improvements and services, and they can be apportioned on any basis that reasonably measures benefits and allocates costs. Some SAs are ad valorem and levied according to property values, but others are based on the physical characteristics of the property (e.g., frontage or square footage) and thus are not based on value. Most importantly, SAs are not constrained by state level property tax limitations on local government (Orrick & Datch, 2008).

Having freedom from tax limitations provides an opportunity for local governments to grow their revenues and spending possibly beyond what is desired by the public or necessary to fulfill their public service obligations. Studies that have examined SA use in California conclude the state’s strict property tax limits due to Proposition 13 – which dates back to the 1970s – have driven high use of Mello-Roos SAs in many parts of the state since 1978 (Do & Sirmans, 1994; Sexton, et al., 1999; Chapman, 1988; Lewis,

1998). Some attribute the high use of SAs in Florida to the state's Growth Management Act of 1985, which required all new developments to provide and account for supporting public facilities, and the state's subsequent population boom. (Scutelnicu, 2014). The perception of many observers is that because accounting for SAs is outside of government's existing budget structure, they avoid routine examination by auditors and legislators and give governments more flexibility and independence in decisions about these funds compared to other funds (Caruso & Weber, 2006). SAs have been described as a hidden method of taxation and lacking accountability (Allen & Newstreet, 2000; Brooks, 2007), and prone to misuse and abuse (Ayers, Egger, & Vonasek, 2014; Citizens Research Council of Michigan, 1983).

There are many who claim that given the opportunity and the incentive, governments will take advantage of creative and hidden methods of taxation to finance more capital improvements and services than would be possible through regular and visible methods of taxation. This characterization of government as a Leviathan that exploits opportunities to devour more revenues in order to increase spending has been attributed to James M. Buchanan and others (Buchanan, 1967; Brennan & Buchanan, 1980; Oates, 1979). (Using the Biblical term "Leviathan" to describe a government violating its social contract with the people to satisfy a relentless appetite for expansion stems from the work of Thomas Hobbes, the 17th-century English philosopher). Buchanan and other scholars argue that Leviathan tendencies of government are facilitated by taxpayer's fiscal illusion about the true cost of services. As government tax structure becomes more complex and revenue sources are more hidden from taxpayers, as with SAs, taxpayers are more likely to underestimate the cost of services, which allows government to increase revenue beyond what taxpayers are willing to pay (Buchanan & Wagner, 1977; Mueller, 1987).

Using data from the State of Illinois on SA levies by municipal governments in the Chicago metropolitan area, interviews with government officials, and information from government documents, this study describes SAs in Illinois and some of their regulations. It also identifies four primary purposes of SAs observed from the data, and presents trends and information on the level of SA use by these governments. The study also shows that these governments do not demonstrate what can be described as "Leviathan" behavior with respect to SAs. Rather, the evidence shows that governments are risk averse to using SAs widely and they are sensitive to the public's perception of SAs. In this case, the visibility of the SA tax levy and benefits to property owners seems to reduce their illusion about the true costs and benefits of public improvements, which

tames the Leviathan. Evidence also shows, however, that many officials lack enough accurate knowledge of SAs to be able to use them to their full advantage to satisfy government's Leviathan tendencies.

WHAT ARE SPECIAL ASSESSMENTS?

In Illinois, municipal governments can establish several types of special taxing districts (STD) that use SAs.¹ One common type is a special service area (SSA) in which a separate ad valorem tax is levied on the value of real property or other basis that reasonably reflects the special services that are extended within the SSA (called a "special tax role SSA"). (Special Service Area Tax Law; 35 ILCS 200/Art. 27). Special service areas can be used to deliver "all forms of services that pertain to the government and affairs of the municipality" (35 ILCS 200/27-5). Theoretically, SSAs can be used to deliver ongoing services, such as a higher level of police patrol to a particular area of the jurisdiction, but are most often used for capital improvements. Much of the burden for administering and enforcing property tax SSAs lie with the counties because they are responsible for administering and enforcing general property taxes in the state. Most important, municipal and county governments can create SSAs unless 51% of both the property owners and registered voters in the proposed district file a formal objection to the SSA. In other words, taxpayers in Illinois can only avoid SSAs if they are specifically disapproved, rather than simply not approved, by a majority. This is a relatively low bar for use of a special taxing district by local governments compared to other states where STDs must be approved by a majority (usually) of taxpayers who are affected by the special levy (Wang & Hendrick, forthcoming). Because gaining the approval of a majority of beneficiaries is more difficult than avoiding a veto, municipal and county governments in Illinois have much more freedom to establish STDs to fund services and capital improvements than those in other states.

Special assessments (SA) are a less commonly used STD in Illinois. The special taxes in these districts are not levied on an ad valorem basis and are considered to be restricted to spending on capital improvements only (Local Improvement Act; 65ILCS 5/9-2-1 *et seq.*; Special Assessment Apportionment Law: 35 ILCS 200/28). Special assessment taxes in Illinois are levied based upon some other measure of benefit than property value, such as length of frontage to the improvement, square footage of property, or number of building sites (Bayer, et al, 2012). SAs are also much costlier for the local government to establish because the circuit court must confirm the benefit and levy of the special tax, and the local government must administer and enforce the SA rather than

simply using the county ad valorem property tax collection system. In this case, the SA can only be created upon the court determining in favor of a petitioner over objections that may be raised about the legal process used for creating the SA, disputes about benefit and shares, or other reasons.

Most state enabling statutes for STDs, including Illinois, generally provide that special taxes and assessments bear the same lien priority as general property taxes (higher than private liens and mortgages), and may be enforced in the case of delinquency or nonpayment in the same manner as the collection of delinquent property taxes (Orrick & Datch, 2008, 3-4). Establishing and confirming the special benefits of SSAs on individual properties is far easier than SAs unless it is a special tax role SSA which requires that there be a “rational relationship between the amount of the tax levied against each lot, block, tract and parcel of land in the special service area and the special service benefit rendered” (35 ILCS 200/27-75). This standard is still far less rigorous than the determination of benefit standard that applies for SAs (65 ILCS 5/9-2-15).

Similar to most states, Illinois allows local governments to issue bonds for SSA and SA projects. Our investigation of suburban municipalities in the Chicago area suggests that governments typically issue “special obligation” bonds or “alternate general obligation (GO)” bonds for credit enhancement purposes. Both types of bonds are repaid with SSA or SA taxes, but unlike alternate GO bonds, special obligation bonds are not secured by the full faith and credit of the municipality in the event that the special tax revenues fall short. Thus, governments are not technically liable for special obligation debt, although they may feel a moral or strategic responsibility to repay such debt if the SA or SSA taxes are not adequate. Similar to non-payment of a mortgage or property taxes, the debt establishes a lien on the property of individual property owners who are liable for the SA/SSA debt. Compared to alternate GO bonds that must be reported as lawful debt obligation by the government, however, special obligations bonds do present certain advantages to governments in securing financing for development projects.

Another important factor that affects the ability and incentive for governments to use SSAs and SAs in Illinois, as is true of STDs in many other states, is that these taxes are not subject to the state’s property tax limitations laws. In Illinois, property taxes in non-home rule governments are bound by millage rate limits on different services and the Property Tax Extension Limitation Law, which limits property tax levy increases of non-home rule governments to the lesser

of five percent or the rate of inflation (35 ILCS 200/Art. 18 Div. 5).² But non-home rule governments have no limitation on the taxation levels of SSAs or SAs, except to the extent set forth in the ordinances establishing the SSA or SA.

DATA FOR STUDY

Two primary types of data were used to determine to what extent, how, and why both SAs and SSAs were used by municipal governments in the Chicago metropolitan area. Data on ad valorem SSA use are available from the Illinois Department of Revenue that collects property tax data from all local governments in Illinois. The data include all the separate SSA tax levies and extensions, SSA assessed values, and the jurisdiction's equalized assessed values (EAV) for all local governments in the state. This data was gathered for 264 (of 267) suburban municipalities from 1988 to 2012. Unfortunately, the State of Illinois does not collect information about non-ad valorem SA use since these are administered and implemented by the local governments, but the investigation shows that SSAs are much more common among municipal governments in the region than non-ad valorem SAs.³

The state also does not collect information on the purpose of any type of SSA, so in-depth information about the use, implementation, and attitudes about both SSAs and SAs was gathered from specifically chosen municipal governments in the region using a two-stage, discriminate sampling strategy. In stage one, jurisdictions were chosen based on a combination of seven characteristics that were believed to be factors affecting the use of these tools, such as population, population growth, percentage residential EAV, county in the region, home rule status, whether the jurisdiction is established and built out or whether its development is recent and it is not built out. Interviews were then requested from two or more governments within each classification that had been relatively high users of SSAs and relatively low users from 2006 to 2012. In stage two, more governments for interviewing were identified in each category to get a more complete picture of the primary purposes of SSAs that were identified in the sample of governments from stage one. Government representatives in each classification in stage two were interviewed until no new information was encountered from interview questioning.⁴ The interviews were conducted from January to August 2015 and included finance directors, village managers, and several directors of economic development. The interviews were open-ended and asked officials about specific and general uses of SSAs and SAs, issuance of bonds, adoption and implementation, policies about these tools, perceived costs and benefits, and other issues.

In addition to interviewing government officials, the investigation also looked at budgets, CAFRs, and Official Statements from these governments and other governments from within classifications that were under-represented in the interviews. These data were supplemented with other online information about SA/SSA use and the government or public's perception of these tools in all chosen governments. In total, the qualitative data for this study consist of interviews with 25 governments, one of which is just outside the six-county region, one interview with the executive director of the primary council of government (COG) in DuPage County, and document and online information for an additional 12 governments in the region.

HOW ARE SPECIAL ASSESSMENTS USED?

Based primarily on the qualitative data, four primary uses or purposes of SSAs and SAs can be identified, which corresponds to whether the financing methods are pay-as-you-go or borrowing. These purposes are explained in detail here. Table 1 shows examples of these uses for each primary purpose.

PRIMARY PURPOSE 1

SSAs (ad valorem) are used to maintain common areas in residential subdivisions (most often) and commercial and industrial areas, especially for stormwater maintenance and drainage, and may only become active when the residents or business owners fail to maintain the common areas. Such uses are often established prior to development and in conjunction with annexation of land as part of a planned unit development (PUD) agreement between a developer and municipality. The agreement requires the eventual property or business owners maintain the common areas after the development is complete, but when property and business owners do not fulfill this obligation, the municipality steps in to implement the SSA. Although it is much more difficult to establish SSAs after the fact, several jurisdictions encountered situations where SSAs were set up after development was completed and all properties sold to individual owners. Several other municipal governments were examined in which some property and business owners preferred to have the common areas maintained by the government rather than the home or business owners' association, and most of the land area in several municipalities were covered entirely by SSAs (mostly dormant)⁵.

TABLE 1

Examples of Special Service Areas and Special Assessments
For Each of Four Primary Purposes

PURPOSE	EXAMPLE
#1: SSA to maintain common areas	<p>Mettawa’s Woodland Falls residential subdivision (SSA #3, \$22,000 proposed budget) has an assessment to maintain and repair water transmission mains, sanitary sewer trunk lines and lift stations (including force mains), storm sewer mains, street, curb, gutter, traffic signal, street lights, stormwater management consisting of detention and/or retention basins, bicycle and equestrian trails and public sidewalks. Mettawa also has SSAs in several business parks for this purpose.</p> <p>St. Charles’ SSA #5 and SSA #7 are manufacturing districts in which assessments are established to maintain common areas and storm water detention areas including maintenance and repair of the storm sewer. Requested extension for #5 is \$10,522 and \$4,535 for #7 that has no storm sewer responsibilities. St. Charles also has residential SSAs for this purpose.</p>
#2a: SA or SSA on developed property without annexation	<p>Elmwood Park residents can request to establish an SSA to have their alleys improved. The improvements consist of the installation of a concrete alley and storm sewers (for drainage), new concrete garage aprons, with the option of using permeable pavers (green alley). The village covers the cost of initial engineering and 50 percent of construction costs. Evanston has an alley repaving program in which residents pay 50 percent of the costs but uses SAs. Riverwoods uses SSAs to install municipal water systems to provide Lake Michigan water to residents.</p>
#2b: SSA on developed property with annexation	<p>Glen Ellyn annexed the Lambert Farms subdivision in 1999 and received a loan from the Illinois EPA for \$1,508,839 to extend sanitary sewer lines to homes in the subdivision. This loan is being repaid with SSAs levied on residents until 2022.</p>
#3: Developer incentive	<p>Lincolnshire issued \$15 million in SSA bonds in 2004 to construct the infrastructure for Sedgebrook retirement and nursing home. This is an example of using SSAs for one property owner. Streamwood also lists SSAs as part of their tax incentives and development assistance programs. All public infrastructure improvements to support the Timber Trails subdivision in Western Springs were financed with bonds that are being retired through SSAs.</p>
#4: BIDs	<p>Highland Park has an SSA, in conjunction with a TIF, in the Ravinia Business District to help finance marketing and special events within the district.</p>
<p>Sources: #1: Woodland Falls FY 2014-15 Budget and Public hearing minutes, December 1, 2014; #2: Information from http://elmwoodpark.org/alley-improvement-program/; http://www.cityofevanston.org/public-works/alley-paving, http://riverwoods-il.net/Departments/water.html, and Glen Ellyn FY 2010-11 Comprehensive Annual Financial Report; #3 Lincolnshire FY 2010 CAFR (http://www.streamwood.org/Business.aspx) and Western Springs FY 2013 CAFR; #4: Highland Park CAFR.</p>	

Specific services provided by municipalities under this broad purpose and within the PUD agreement focus on maintenance, repair, and replacement of “open space, common areas, landscaped areas, and natural areas” rather than the maintenance, repair, and replacement of infrastructure such as sidewalks, streets, and lighting. It is also interesting that maintenance and management of stormwater facilities is the most common specific use among the 18 governments in the sample that use SSAs for this primary purpose. Compared to other uses of SSAs, the benefits of good stormwater management often spill over to areas outside of the SSA and possibly to the entire jurisdiction and region. In other words, the benefits of stormwater maintenance and management are not always special to the property owners who are paying the SSA.

The Chicago region has a particular geography and weather pattern that requires good stormwater management. Flooding and poor stormwater management have been a significant threat to governments and many property owners in the region (Hendrick, 2011), and these threats are increasing as a result of climate change (Chicago Metropolitan Agency for Planning, 2008). The common and shared benefits of good stormwater management were apparent from legislation passed by the Illinois General Assembly in 1988 that gave the five non-home rule counties in the region the authority to implement county-wide stormwater ordinances.⁶ The Kane County Stormwater Ordinance (1997), for instance, requires all municipalities in the county to set up dormant SSAs for new development and may partially explain the relatively high number of governments in this county with at least one active SSA. Although the region’s planning agency and other regional experts advocate the use of utility enterprises (similar to water and sewer funds) rather than SSAs for stormwater management, the trend towards using SSAs for this purpose continues (DuPage County, IL 2007; Chicago Metropolitan Agency for Planning, 2008). In this case, reliance on SSAs for this purpose may be based more on historic “English ditch law” that required farmers to pay for drainage of their land hundreds of years ago than considerations of whether this method of financing is appropriate for stormwater management.

Evidence shows that use of SSAs for this purpose is the most common among the four purposes, and is most prevalent in jurisdictions that developed after 1980 and are not serviced by municipal storm sewers. The financing of services and benefits for this use is primarily pay-as-you-go. In other words, the property taxes collected finance the maintenance of operations in the SSA rather than to pay off debt for infrastructure improvements. Several municipalities, in fact, discussed having to establish miniature budgets for each SSA that they manage

for this primary purpose. The amount taxed on most properties for this purpose, however, is not very great. In the Village of Elburn in Kane County, homes in the Prairie Valley subdivision paid \$0.06 per \$100.00 of EAV (about \$60 for a \$300,000 home) in 2013 to maintain common areas in the subdivision.⁷

PRIMARY PURPOSE 2

SSAs and SAs (non ad valorem) are used with and without annexation to finance new or significantly upgraded infrastructure. This can include water and sewer systems (to eliminate private wells and septic tanks), lighting, paving of alleys, parking facilities, stormwater facilities, and even roads in existing residential (usually) or commercial areas in which land use has been established previously. This purpose differs from the first purpose primarily in that land use within the STD was well-established prior to the creation of the STD. The improvements financed by these tools are expected to be capitalized back into the property values of properties and even profits of enterprises that are affected (Shoup, 2014, 414). This purpose would include building facilities that increase stormwater capacity and reduce flooding, which enhances the properties rather than simply maintaining them as with the first purpose. Many governments will also issue bonds for all, or a portion of the improvements if they are costly in order to spread out the payments for property owners over a long period of time. Similar to the other purposes, the liability for repayment of bonds within the STD lay with the property owner and not the municipality. This situation often creates a great deal of confusion for property owners who must contend with separate tax liabilities that can hinder and complicate the sale of property.

This primary purpose can also be divided into use with annexation and use without annexation. Of the 17 sampled governments that use SSAs or SAs for this purpose, six used it with annexation. In many cases, the annexation was driven by the desire of residents in nearby unincorporated areas to discontinue their wells and receive water provided by city wells or from Lake Michigan. When an area is annexed, all properties must be brought up to the codes and standards of the annexing government and can include improvements to streets, stormwater maintenance, and other infrastructure in addition to water and sewer systems.

Evidence showed that, without annexation, SSAs and SAs for this primary purpose have been used mostly in residential areas for installation of new water and sewer lines followed by upgrade of alleys, street lighting, and street

improvements. Many governments with SSAs or SAs for this purpose financed a portion of the improvements through general revenues. Government subsidies ranged from 25% in Beach Park, to 60% in Clarendon Hills, and the improvements can be requested and agreed upon by property owners, or they can be a government-initiated (e.g., the Park Ridge Alley Paving / Reconstruction Program and the Brookfield Alley Paving Program). Of the 37 governments sampled, only seven governments had used or were currently using SAs for this purpose, and several of them talked about replacing their SAs with SSAs. The greater cost of implementing SAs compared to SSAs, especially in the case of non-payment of the property tax levy or charge, was documented in six of the sampled governments. This raises the question of why a government would use an SA rather than SSA.

The investigation also revealed an important rule of thumb about when to use one or the other: Ad valorem SSAs should be used when the properties within the STD are similar and for ongoing goods and services; non ad valorem SAs should be used when the properties are dissimilar and there are different land uses within the STD. More generally the evidence shows that it is easier to identify the proprietary benefits that accrue to a set of properties that have clear boundaries, similar land use, and comparable property values compared to areas without clear boundaries, mixed land use, and a wide range of property values. Jurisdictions with more recent growth and development have more of the former characteristics due to the prevalence of residential subdivisions, shopping centers, and business parks. By comparison, older jurisdictions are more likely to be laid out on a grid and have residential, commercial, and industrial uses mixed within the same block.

Three governments were also observed where officials were concerned about the need to consider what level and quality of goods and services have been provided using either SAs or SSAs versus general taxes in the past in order to judge whether the use of these tools is fair in particular cases. For this reason, debates about whether tools are fair seem to occur quite often over improvements to areas that are already developed and where land use has been established. These debates seem to be particularly contentious in jurisdictions that have been developed at different times and, therefore, have varying qualities of infrastructure. In these cases, questions about what constitutes a unique benefit for properties in an STD relative to the rest of the jurisdiction and even past time periods are more difficult to resolve to everyone's satisfaction.

PRIMARY PURPOSE 3

SSAs are used to repay bonds the municipality issues to build basic infrastructure (e.g., streets, water, sewer) to support new commercial and / or residential development. These SSAs are primarily a tool for attracting development or redevelopment to an area within the jurisdiction compared to the prior purpose in which major improvements are not expected to increase the number of residents or businesses in the area. Similar to purpose two, bonds for which the government is not liable are often issued in conjunction with this purpose, but - similar to purpose one - the SSA is established with only a few liable property owners initially. As the primary property owner, the developer is responsible for paying principal and interest on the bonds initially, but that responsibility will transfer to new property owners as individual parcels are sold.

When new development or major redevelopment occurs that is privately motivated, there are three primary alternatives for financing the basic infrastructure to support the development (Ayers et. al, 2014): 1) the developer pays out of personal funds and secures borrowed money for which only the developer is obligated; 2) the municipality finances the infrastructure and assumes obligation for the borrowed money; 3) use of land-secured financing in which all property owners in the development become obligated to pay some portion of the infrastructure (Misczynski, 2012). Prior research on suburban Chicago municipalities shows that many governments have a policy that public improvements that support development and redevelopment pay for itself, which eliminates option two for these governments (Hendrick, 2011).

Option two is the riskiest for the government if the development fails because the government is obligated to repay the debt in this case. Option one is the next riskiest for the government because, although they are not liable for any debt associated with the development, they may have little control over what happens to a failed development in the future. With option three, however, the government can resort to tax the sale of the property to secure new ownership if the developers fail to pay the property taxes that secure the debt.

Developers are also attracted to these tools because they reduce upfront capital and interest costs, which improves cash flow, and reduces liability and debt on their balance sheets after the properties are sold (see Orrick & Datch, 2008; Scutelnicu, 2014, and Scutelnicu & Ganapati, 2012). Several governments observed also presented these types of SSAs as examples of public-private partnerships. For instance, there is the Metra Station Development project that

is a collaboration between Park Forest, Olympia Fields, and Matteson. Also, the Lake Villa Downtown Plan, and the Westmont Redevelopment Plan and Program all involve SSAs that are presented as public-private partnerships in the proposals that are available online. It is also not uncommon for such SSAs to be used with other economic development and development incentive tools such as tax incremental financing districts and sales tax abatements, tax credits, and business improvement districts (BIDs) in commercial areas.⁸

Evidence shows, however, that use of ad valorem SSAs for this primary purpose is sometimes unpopular with the public, realtors, governments, and even developers. Online information shows advertisements from developers that their homes are not built with SSAs, and several government officials claimed proudly that their homes are not sold with SSAs. Many municipalities also reported that the developers they dealt with were very sophisticated and probably well aware of SSAs for this purpose, but simply did not request their use from the government. Several other governments had specific policies against using SSAs for this purpose. There are several reasons for this unpopularity of SSAs, which have relevance for the Leviathan explanation of government behavior.

Although SSAs for this purpose are less risky for governments than securing debt under their own authority or contracting with the developer to build supporting infrastructure (even with letters of credit), the public's poor perception of SSAs is greatly influencing many governments. Although the cost, resale, and mortgage price of properties affected by SSAs for this purpose should be lower than properties without SSAs, property owners do not perceive the tax payment in this manner (Do & Sirmans, 1994). Rather, they clearly see an additional tax burden on their properties that can be substantial relative to the regular tax burden. According to a 2008 SSA disclosure report from the Village of Huntley, homes in the same subdivision are charged equally for the bond payments (Huntley 2009). In the Southwind subdivision, for instance, one property worth about \$225,000 in 2008 (\$72,000 EAV) paid about \$1400 in SSA property taxes, which is approximately \$2 per \$100 of EAV. The regular tax rate on this property in 2008 was about \$6.7 per \$100 EAV.

It is apparent in many cases that the public does not perceive these SSAs as a debt that will be paid off eventually but rather perceives them as permanent taxes. Several government officials reported that they were aware of subdivisions in which the SSA tax levy was greater than the municipal government's regular tax levy and felt that this was undesirable. Evidence also showed reports of

homeowners having to pay off their SSA debt in order to facilitate the sale of their home. Thus, it is the perception of property owners who are now aware of the full costs of public facilities supporting their property that are driving the behavior of government rather than government's Leviathan tendencies.

PRIMARY PURPOSE 4

SSAs are used to finance Business Improvement Districts (BID) that provide services and some infrastructure improvements to a designated commercial area. Although BIDS may be established in conjunction with purpose three, they can also be implemented independently in established commercial areas where no significant improvements are occurring. An excerpt from the 2014 Adopted Budget and Financial Plan from Elgin explains specific purposes of BIDs and how they are administered (City of Elgin, 2014).

An SSA (for a BID) is an economic development tool that provides commercial districts the financial means to create and maintain clean, attractive and competitive districts beyond basic city services. A nominal tax assessment is put on each property within a specified district which provides locally managed funding for services and programming. These typically include area maintenance landscaping, minor capital improvement financing, retail attraction and promotion programs, security planning and coordination, parking improvement strategies, façade improvement rebates and special events. The SSA is professionally managed by a service provider, such as a development group, chamber of commerce, or other economic development agency.

The Elgin BID is administered by the Elgin Downtown Neighborhood Association. The Ravinia Business District in Highland Park (administered by the Ravinia Business District Advisory Committee) and the Joliet City Center (administered by the Joliet City Center Partnership) are other examples of municipalities in the region using SSAs to finance BIDs.

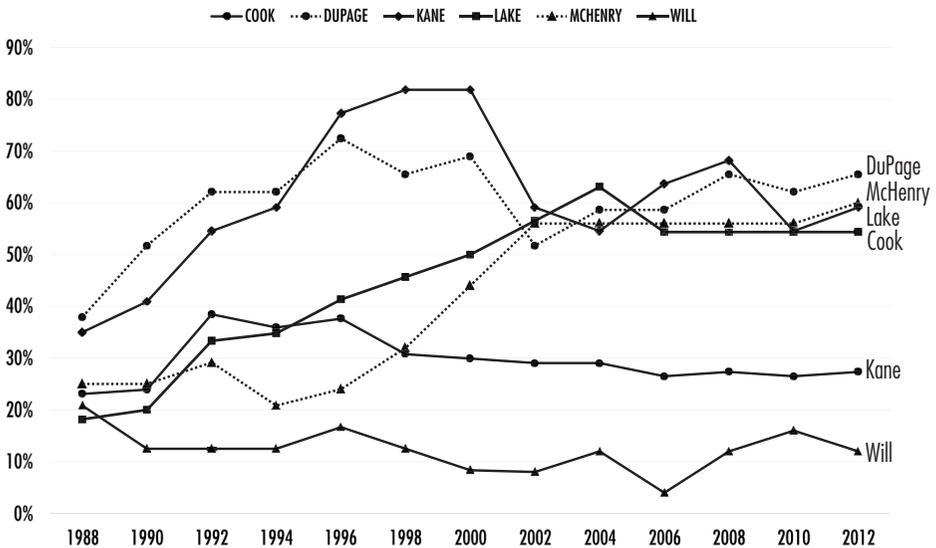
SSAs TRENDS AND LEVELS IN THE CHICAGO REGION

Using data on SSAs from IDOR, trends on the level of SSA use by 265 municipal governments in the Chicago region from 1988 to 2012 can be reported. Overall, the data show the use of these tools is not very high in terms of the number of governments that have SSAs, the number of SSAs per government, and the level of taxes collected by these governments. This finding is consistent with

other studies showing that SA spending for infrastructure improvements or collection of SA revenue is very low compared to general fund expenditures or revenue collections in the entire government (Brooks, 2007; Stumm & Mann, 2004; Hendrick & Wang, working paper). However, this behavior is not what one would expect from a Leviathan.

Figure 1 shows trends in the percentage of municipal governments with at least one SSA in the six counties in the region from 1988 to 2012. The total number of municipalities in each county is listed below the chart. The figure illustrates that implementation of SSAs is consistently lowest in Will County for the entire time period and also consistently low in Cook County compared to the other four counties. Use of SSAs is consistently highest in DuPage and Kane County, and it increases significantly from 1988 to 2012 in McHenry and Lake County.

FIGURE 1
Percent of Municipalities with at Least One SSA (1988 – 2012)
By County in Metropolitan Chicago

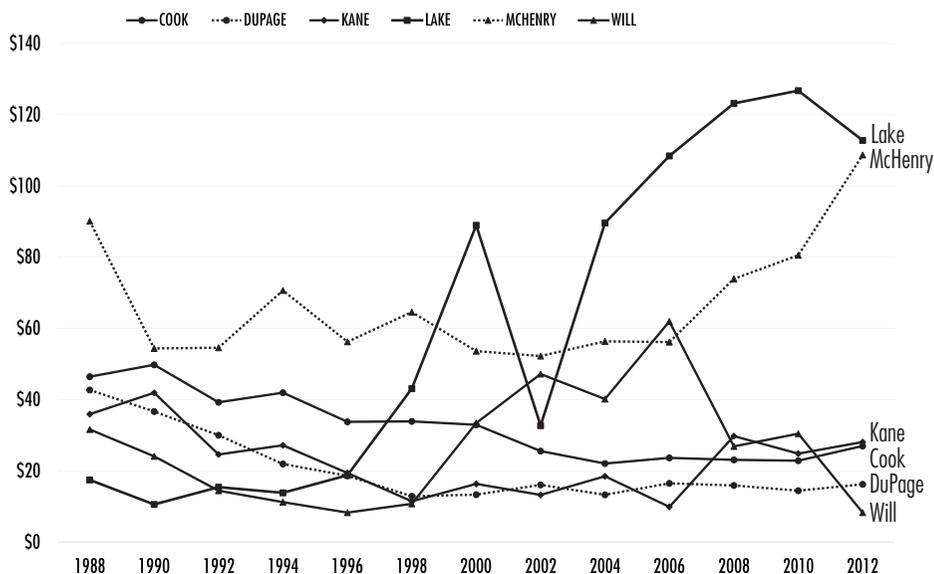


Number of municipalities by county: DuPage (29), Cook (118), Kane (22), Lake (46), McHenry (25), Will (25).

Figure 2 shows the median SSA tax effort defined as SSA extended per \$100,000 EAV in the jurisdiction for municipalities in each county that had at least one SSA from 1988 to 2012. The measure indicates how much the government extends in all SSAs relative to the value of its entire property tax base and so it reflects the government's reliance on SSAs. The figure reveals a significant increase in SSA tax effort during that time period in both Lake and McHenry, consistently low or declining SSA effort in Kane, DuPage and Cook, and mostly low SSA effort in Will County with the exception of 2000 to 2007 when the tax effort was much higher. For all municipalities in the region for all years, the median and mean SSA tax effort is about \$29 and \$104 per \$100,000 EAV respectively. This figure is very low when compared to the median and mean regular property tax extension of \$744 and \$896 respectively, and it shows how little these governments rely on SSAs for revenue. Also as a point of comparison, consider the median and mean capital spending per \$100,000 EAV is \$183 and \$867 respectively with 25% of the governments having zero capital spending at any time.⁹

FIGURE 2

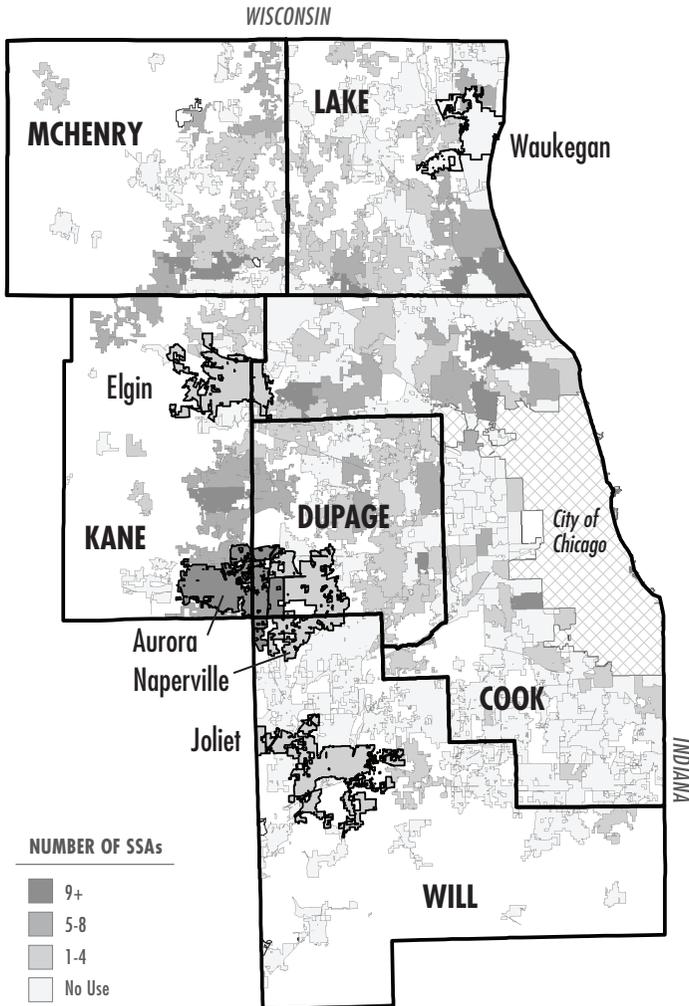
Median Tax Effort for Municipalities with at Least One SSA (1988 – 2012)
By County in Metropolitan Chicago



Finally, Figure 3 maps the average number of SSAs from 2006 to 2012 for each municipality in the region. The averages are reported in four categories with light gray indicating no SSAs and dark gray indicating governments that averaged nine or more SSAs during the time period. The percentage of governments in each category is as follows: no SSAs (37%), 1 – 4 SSAs (27%), 5 – 8 SSAs (10%), 9 or more SSAs (4.5%). This figure shows that municipalities north and west have greater SSAs than municipalities south and southwest of the City of Chicago.

FIGURE 3

Chicago Municipalities & Counties: Number of SSAs, Avg. 2006-2012



Although the rate of population growth and development in Will County from the 1970's through 2010 is similar to that of Lake, Kane, and McHenry Counties, SSA use in Will County is quite low. Unfortunately, IDOR data does not indicate how SSAs are used for the four purposes as described previously. However, given the pattern of growth in Will County, the low use of SSAs by its municipal governments suggests that few use SSAs as an incentive for development compared to municipalities in the other three counties. Low use of SSA in Will County may also indicate that its municipalities are not establishing SSAs to maintain common areas of developments to the same extent as the other three counties, or that not many of the dormant SSAs in Will County have become active.

Evidence from the investigation of individual municipalities indicates that municipalities in Will County are avoiding SSAs, especially for new development, based on shared information about the negative experiences of other municipalities in the region with using SSAs. Many government officials throughout the region who provided input to this research project noted the great difficulties that some had with SSAs with failed developments during the Great Recession. Officials from several governments in the region had very negative views of SSAs and their governments had policies against using them to finance development due, in part, to the experiences of other municipalities. One government official from Will County also confirmed that municipal governments in the county had negative view of SSAs. Another official who was familiar with SSAs from his previous position noted the government officials in the area may not have enough familiarity with SSAs to promote their use for different purposes.

The research also found that SSA use by municipal governments is greater in jurisdictions with higher income per capita, higher change in population, and lower population density. Larger governments also have more SSAs but lower SSA tax effort. It is also apparent from the data that non-home rule governments have higher use of SSAs, but this is explained by the greater concentration of SSAs in less urban areas of the region where fewer governments are home rule. Further statistical investigation shows that, all other things being equal, non-home rule governments are not more likely to use SSAs than home rule governments, which is not what you would expect from a government with Leviathan tendencies (Hendrick and Wang, working paper). Rather, you would expect Leviathan governments that are under many property tax constraints to more actively pursue alternative revenue sources than governments with few constraints.

GOVERNMENT AS LEVIATHAN

In all, the evidence of SA and SSA use by Chicago municipalities does not paint a picture of government as a Leviathan. Although there are many situations in which use of these tools is appropriate, very few municipal governments in the region levy more than a few SSAs or SAs, and the revenue from these taxes constitute a very small portion of governments' revenue and capital spending. This evidence does not show a pattern of governments exploiting these tools in order to increase spending. One explanation for the low use of SSAs and SAs may be that government officials do not understand how to utilize these tools. Many of the officials' statements and printed materials examined in this study contained inaccurate claims and demonstrated incomplete knowledge about both tools. Evidence from this study also revealed instances where government officials had good knowledge of these tools, but did not make elected officials aware of this option. Several government officials commented on the importance of governments becoming more familiar with the tools and learning how to use them in their particular situation, and the problem of "getting over the hurdle of using SAs the first time."

Clearly, an uninformed or misinformed government cannot be expected to adequately exploit these tools in a Leviathan manner, which may account for low use in some governments. However, this does not account for low use in governments where officials are knowledgeable and inform elected officials about these tools. In this case, evidence from this study indicates that low use of SSAs and SAs is also explained by government officials' keen awareness of the perception of property owners of their property tax burden and the extent to which these tools make the burden of public improvements very visible to property owners. Many government officials interviewed were well aware of the property tax burden on residents and the extent to which SAs and SSAs make their tax burden seem higher than if the cost of the basic infrastructure was aggregated into their regular property taxes. Five of the governments interviewed expressed a preference not to use SAs or SSAs for significant infrastructure improvements because of the visible property tax burden these place on property owners. Several government officials also expressed an unwillingness to use these tools in areas of the jurisdiction that are struggling with declining property values and unfinished subdivisions because of the Great Recession.

Interviews with government officials and news reports about citizens fighting the imposition of these taxes on their property and, hence, improvements to

their property demonstrated the political risks of using this approach. These officials were fully aware of the potential “political nightmare” associated with implementing these tools in existing residential areas. They were also aware of the political problems of providing disparate services to different parts of the jurisdiction and appearing to advocate favoritism for properties in an STD compared to the rest of the jurisdiction. We found the politics surrounding these tools is a significant stumbling block for using these tools in many cases. As a means of easing the political risks associated with these tools, four of the sampled governments require some level of approval for an SA to be established, rather than simply avoiding disapproval by potential beneficiaries as is required by state law.

Overall, this study concludes that municipal governments in the Chicago region are risk averse, guided strongly by precedence and the public’s perception of SAs and SSAs, and often do not have enough knowledge of or experience with these tools to take full advantage of them to increase funding for capital improvements and services. The importance of public perception to the behavior and comments of government officials in this study indicates that these tools make taxpayers more aware of the benefits and, more importantly, more aware of the costs of these benefits. This greater awareness is taming the Leviathan. On the other hand, many government officials that were interviewed expressed much interest in knowing more about these tools and their use by municipal governments in the region, which indicates that Leviathan may only be sleeping.

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¹ Special district governments, such as fire protection or library districts, are separate local governments and not established or owned by a government in the same manner as an STD. Tax incremental finance districts (TIF) and business improvement districts (BIDs) are other types of STDs that can be established by a government.

² Home rule is automatically granted to municipalities in Illinois with populations greater than 25,000, but smaller municipalities can obtain home rule and larger municipalities can rescind it through referendum. Home rule governments in Illinois may do anything except that which is prohibited by state law, but non-home rule governments may only do that which is allowed by state law.

³ The U.S. Census of Governments collects data on all local government finances, including non ad valorem SAs, every five years. We examined SA use among Chicago municipalities in 1997, 2002, 2007, and 2012 and compared this to their SSA use in the same years.

⁴ Governments that were low users of SAs and SSAs were not as likely to agree to an interview as high users, which may bias the information received about why governments use or do not use these tools. However, many officials commented at length on why other governments they worked for or in the region do not use them.

⁵ Only active SSAs with a tax levy are shown in the IDOR database.

⁶ Cook County is the only home rule county in Illinois. Its stormwater management is coordinated through the Metropolitan Water Reclamation District which is a separate government entity.

⁷ Properties are assessed at only 1/3 of the total value of the property. For more information about Elburn's policies, visit <http://www.elburn.il.us/index.aspx?NID=210>

⁸ A BID is a defined commercial area within which businesses are required to pay additional taxes or fees to fund projects and special services within the district's boundaries. BIDs are often financed using an SSA, but other public or private revenue streams such as sales taxes or TIFs can be used.

⁹ Data on capital spending comes from the Illinois Office of the Comptroller.

REFERENCES

Allen, M. T., & Newstreet, H. C. (2000). Smoothing Wrinkles in the Spread: Special Assessment Issues. *Appraisal Journal*, 68(2), 201-07.

Ayers, S., Egger, R., and van Assenderp, K. (2014). *Community Development Districts: Financial and Accountability Issues*. Florida State University: Leroy Collins. Retrieved from <http://collinsinstitute.fsu.edu/sites/collinsinstitute.fsu.edu/files/CDD%20report%20FINAL%20RevisedReformatted%207%2003%2014.pdf>.

Brennan, G., & Buchanan, J. M. (1980). *The Power to Tax: Analytical Foundations of a Fiscal Constitution*. Cambridge University Press.

Brooks, L. (2007). Unveiling Hidden Districts: Assessing the Adoption Patterns of Business Improvement Districts in California. *National Tax Journal*, 60(1), 5-24.

Buchanan, J. M. (1967). *Public Finance in Democratic Process: Fiscal Institutions and Individual Choice*. Chapel Hill, NC: UNC Press Books.

Buchanan, J. M., & Wagner, R. E. (1977). *Democracy in Deficit: The Political Legacy of Lord Keynes*. Indianapolis, IN: Liberty Fund.

Chapman, J. I. (1998). *Proposition 13: Some Unintended Consequences*. Public Policy Institute of California.

Chicago Metropolitan Agency for Planning. (2008). *Stormwater Management Strategy Paper*. Chicago Metropolitan Agency for Planning.

Citizens Research Council of Michigan. (1983). *The Misuse and Abuse of Special Assessments in Michigan*. Citizens Research Council of Michigan. Retrieved from <https://crcmich.org/PUBLICAT/1980s/1983/avsa.pdf>.

City of Elgin. (2014). *Budget and Financial Plan*. Retrieved from: <https://il-elginbudget.civicplus.com/index.aspx?nid=650>

Do, A. Q., & Sirmans, C. F. (1994). Residential Property Tax Capitalization: Discount Rate Evidence from California. *National Tax Journal*, 47(2), 341-48.

- DuPage County, IL. (2007). *Storm water Fee Feasibility Study*. DuPage County Storm water Management Division. Retrieved from https://www.dupageco.org/EDP/Stormwater_Management/Docs/Reports/18251.
- Hendrick, R. (2011). *Managing the Fiscal Metropolis: The Financial Polices, Practices and Health of Municipalities*. Georgetown University Press.
- Hendrick, R., & Wang, S. (2016). *Use of Special Assessments by Municipal Governments in the U.S. and Chicago Metropolitan Area: The Taming of Leviathan?* U.S. Public Budgeting and Finance, working paper.
- Lewis, P. G. (1998). *Deep Roots: Local Government Structure in California*. Public Policy Institute of California.
- Misczynski, D. J. (2012). Special Assessment in California: 35 Years of Expansion and Restriction. In G. K. Ingram and Y. Hong (Eds.) *Value Capture and Land Policies*. Cambridge, MA: Lincoln Institute of Land Policy.
- Mueller, D. C. (1987). *The Growth of Government: A Public Choice Perspective*. Staff papers from The International Monetary Fund, 34(1), 115-49.
- Oates, W. E. (1988). On the Nature and Measurement of Fiscal Illusion: A Survey. In G. Brennan, et al., Eds., *Taxation and Fiscal Federalism: Essays in Honor of Russell Mathews*. (pp. 65-82). Canberra: Australian National University Press..
- Orrick, J. R., & Datch, D. M. (2008). Special District Financing for Infrastructure: Sharing the Credit with Local Government. *Journal of Taxation and Regulation of Financial Institutions*, 21(6), 33-49.
- Scutelnicu, G. (2014). Special Districts as Institutional Choices for Service Delivery: Views of Public Officials on the Performance of Community Development Districts in Florida. *Florida Public Administration Quarterly*, 38(3), 284.
- Scutelnicu, G. & Ganapati, S. (2012). Community Development Districts: An Innovative Institutional Framework for Financing and Managing Infrastructure in Florida? *Florida Economic Development Quarterly*, 26(4), 361-72.
- Sexton, T. A., Sheffrin, S. M., & O'Sullivan, A. (1999). Proposition 13: Unintended Effects and Feasible Reforms. *National Tax Journal*, 52, 99-111.
- Shoup, D. C. (1980). Financing Public Investment by Deferred Special Assessment. *National Tax Journal*, 33(4), 413-29.
- Stumm, T. J., Mann, P. P. (2004). Special Assessments in Florida Cities and Counties: Dodging Amendment 10?. *Journal of Public Budgeting, Accounting & Financial Management*, 16(2), 171-87.
- Wang, S. & Hendrick, R. (2016). Financing Urban Infrastructure (and Services) Under the New Normal: A Look at Special Assessments, E. McKenzie, A. Alexander, and D. Judd, *The Transformation of the American Local State: Developmental Politics and the Eclipse of Democratic Governance*. Cornell University Press, *under review*.