FINAL BILL REPORT
E2SHB 2673

PARTIAL VETO
C 181 L 06
Synopsis as Enacted

Brief Description: Authorizing additional alternatives for local infrastructure financing.

Sponsors: By House Committee on Finance (originally sponsored by Representatives Linville, Ericksen, P. Sullivan, Buck, Ericks, Kilmer, Kessler, Grant, Walsh, B. Sullivan, Lantz, Morris, O'Brien, Conway, Morrell and Wallace).

House Committee on Economic Development, Agriculture & Trade
House Committee on Finance
Senate Committee on International Trade & Economic Development
Senate Committee on Ways & Means

Background:

Tax Increment Financing
Tax increment financing or community redevelopment financing is a method of redistributing property tax collections within designated areas to finance infrastructure improvements within these designated areas. However, attempts to authorize the use of state property tax revenue in Washington to finance such development have been struck down by the voters and the courts. The main legal impediments under the State Constitution include: the requirement that all property taxes must be uniform on the same class property within the territorial limits of the authority levying the tax; the prohibition on the lending of state credit; and the dedication of state property tax revenues to fund the common schools.

Sales and Use Tax
There is a 6.5 percent retail sales tax levied by the state on the selling price of tangible personal property and certain services purchased at retail. In general, the tax applies to goods, construction (including labor), repair of tangible personal property, lodging for less than 30 days, telephone service, and participatory recreational activities. There are some local taxes that are credited against the state sales tax, including the 2 percent hotel/motel tax upon accommodations by cities and counties. There are also some exemptions, credits, and deferrals to the state retail tax.

There is a 6.5 percent use tax on items not subject to the state retail sales tax. This includes purchases made from out-of-state sellers, purchases from sellers who are not required to collect Washington sales tax, items produced for use by the producer, and gifts and prizes. The tax is measured by the value of the item at the time of the first use within the state, excluding any delivery charges.

Counties and cities may impose several local sales and use taxes at various rates and for various purposes. The tax base is the same as under the state retail sales and use taxes. The most widely utilized local sales and use taxes are the basic tax at a rate of 0.5 percent and an optional tax at a rate of up to 0.5 percent. The funds may be used for any general purpose.

Summary:

The local infrastructure financing tool (LIFT) program is created to assist local government promote economic development. The LIFT will be available for selected public improvement projects designed to increase private development in the area and that will utilize increased property tax revenues, excess excise tax revenues and revenues generated through a sales and use tax credited against the state sales and use tax in the revenue development area (RDA) to finance the improvements. An RDA must be comprised of contiguous tracts, lots, pieces or parcels of land and have less than $1 billion in assessed value for the taxable real property within the RDA. The average assessed value per square foot of the taxable land within the RDA may not exceed $70 per square foot. In addition, an RDA may not comprise more than 25 percent of the total assessed value of the taxable real property within the boundaries of the local government creating the RDA. Boundaries of an RDA may not be drawn in such a way as to purposely exclude parcels where economic development is unlikely to occur. A county may only have one RDA within its boundaries. Once created, the boundaries of the RDA may not be changed and may not include any part of an increment area created under Community Revitalization Financing (CRF), unless the CRF increment area was created prior to January 1, 2006.

LIFT Projects

LIFT Projects are approved by the Community Economic Revitalization Board (CERB), in consultation with the Department of Revenue (DOR) and the Department of Community, Trade, and Economic Development. However, demonstration projects must be approved prior to any other application. The demonstration projects are the Bellingham redevelopment project ($1M per year), the Spokane River district project ($1M per year), and the Vancouver Riverwest project ($500K per year). The CERB will apply the following criteria to the remainder of the projects: the project's potential to enhance the sponsoring local government's regional and/or international competitiveness; the project's ability to encourage mixed use development and the redevelopment of a geographic area; achieving an overall distribution of projects statewide that reflect geographic diversity; the estimated wages and benefits for the project is greater than the average labor market area; the estimated state and local net employment change over the life of the project; the estimated state and local net property tax change over the life of the project; and the estimated state and local sales and use taxes increase over the life of the project.

Public Improvements

The LIFT must be used to finance public improvements, including: street, bridge and road construction, and maintenance; water and sewer system construction and improvements; sidewalks, traffic controls, and streetlights; parking, terminal, and dock facilities; park and ride facilities; park facilities and recreational areas; storm water and drainage management systems; and affordable housing. The LIFT may not be used to finance public stadiums

currently funded by a public facilities district. The LIFT must be used for public improvements identified within the capital facilities, utilities, housing, or transportation elements of a comprehensive plan required by the Growth Management Act (GMA), except public improvements that are considered historical preservation activities. It must be expected to encourage private investment within the RDA and to increase the fair market value of real property within the RDA. The public improvement costs may include the costs of: design, planning, acquisition, site preparation, construction, reconstruction, rehabilitation, improvement and installation of public improvements; demolishing, relocating, maintaining, and operating of property pending construction of the public improvements; the costs of financing the public improvements; assessment incurred in revaluing real property and apportioning the taxes in the RDA; and reasonably related administrative costs and feasibility studies.

Creating a Revenue Development Area

The sponsoring local government must have entered or expects to enter into an agreement with a private developer or have received a letter of intent from a private developer relating to the developer's plans for private improvements within the RDA. Such private development must be consistent with the countywide planning policy adopted by the county and the local government's comprehensive plan. The sponsoring local government must make findings that the LIFT is not expected to be used for the purpose of relocating a business from Washington, located outside the RDA, into the RDA, and it will improve the viability of existing business entities within the RDA. In addition, it must find that the RDA is in need of economic development or redevelopment. The local government must also find that the public improvements financed in whole or in part with the LIFT are reasonably likely to:

(1) increase private investment within the RDA;
(2) increase employment within the RDA;
(3) generate, over the period of time that the local sales and use tax will be imposed, state and local property and sales and use tax revenues that are equal or greater than the respective state and local contributions made under this program; and
(4) improve the viability of existing communities and increase private residential and commercial investment within the RDA.

Prior to adopting an ordinance creating an RDA, the sponsoring local government must obtain written agreement from any participating local governments and participating taxing districts to use dedicated amounts of revenues from their local public sources, local excise tax allocation revenues, and local property tax allocations for LIFT. The governing body of each participating local government and taxing district must authorize its participation. The sponsoring local government planning to create an RDA must also estimate the impact of the RDA on small business and low-income housing and develop a mitigation plan for the impacted businesses and housing. The ordinance must describe the public improvements, the boundaries of the RDA, estimate the cost of the public improvements and the portion of these costs to be financed by the LIFT, estimate the time during which regular property taxes and excess excise taxes are to be used to finance the public improvement costs, provide the date

when the apportionment of the taxes will begin, and make a finding that all conditions necessary to create an RDA are met.

If a local government has created an increment area under the CRF prior to January 1, 2006, and has not issued bonds, it may convert the increment area to an RDA so long as it amends the local government ordinance and complies with all the requirements of this act.

A public hearing must be held by the sponsoring local government at least 30 days before passage of the ordinance establishing the RDA. The public hearing may be held either by the governing body of the sponsoring local government or by a committee of that body comprising at least a majority of the whole governing body. Notice of the public hearing on the proposed ordinance creating the RDA must be sent by U.S. mail to all property owners and business enterprises located within the proposed RDA at least 30 days prior to the hearing. The local government must consult with business organizations and ethnic associations to develop methods of notice that ensure that appropriate notice is provided to the business enterprises and property owners for whom English is a second language.

Local Property Tax Allocation Revenue Value

The property tax allocation revenue value is 75 percent of any increase, over the tax allocation base value, in the assessed value of real property in an RDA that is placed on the assessment roles after the RDA is created. In calculating the regular property tax allocation revenue value, regular property taxes levied by voters for a specific purpose is not to be included. Tax allocation base value is the assessed value of real property located within an RDA for taxes levied in the year in which the RDA is created for collection in the following year, plus 100 percent of any increase in the assessed value of real property located within an RDA that is placed on the assessment rolls after the RDA is created, less the property tax allocation revenue value. In the second calendar year following the effective date of the ordinance creating the RDA, the county treasurer distributes the receipts from regular taxes on real property in the RDA as follows:

(1) Each participating taxing district and the sponsoring local government that created the RDA must receive the portion of its regular property taxes by the rate of tax levied by or for the taxing district on its tax allocation base value or upon the total assessed value of real property in the taxing district, whichever is smaller.

(2) The sponsoring local government must receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value in the RDA. If there is no property tax allocation revenue value, the local government does not receive any additional regular property taxes.

The county assessor must allocate any increase in the assessed real property value occurring in the RDA to the tax allocation base value and the accrued value as appropriate. Revaluations of real property by the assessor for property taxation not made in accordance with the assessor's revaluation plan are not authorized. The apportionment must cease when the property tax

allocation revenue value is no longer obligated or necessary to pay the last of the public improvements.

The allocation to the RDA of portions of the local regular property taxes levied by or for each participating taxing district is a public purpose of and benefit to each of those taxing districts. In addition, the allocation of local property tax allocation revenues under LIFT shall not affect or be deemed to affect the consistency of any of the taxes levied by or within the participating taxing districts with the uniformity requirement of the Washington Constitution.

Local Excess Excise Taxes
The sponsoring local government that creates an RDA or any participating local government may use annually any excess excise taxes received by it from taxable activity within the RDA to finance the public improvement costs financed in whole or in part by local infrastructure financing. When tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements, the local government may no longer retain the excess excise taxes. Any participating taxing authority may allocate excess excise taxes to the local government so long as the CERB has approved the local government's imposition of the additional local sales and use tax. The excess excise tax is the amount of excise taxes received by a local government during the measurement year within the RDA over and above the amount of excise taxes received there during the base year from taxable income within the RDA. The base year is the first calendar year following the creation of the RDA and the measurement year is a calendar year, beginning with the calendar year following the base year, that is used annually to measure the amount of excess excise taxes required to be used to finance the public improvement costs. However, if no excise taxes were received in the RDA in the 12 months prior to the creation of the area, then the excess excise taxes are the total amount of excise taxes received in each calendar year after the area is created. If an RDA is created in calendar year 2006 and had activity in the RDA prior to its creation, the amount of local excise taxes received by the sponsoring local government during the measurement year from the taxable activity within the RDA over and above the amount of local excise taxes received by the sponsoring local government during the 2007 base year will be adjusted by the DOR for any estimated impacts from retail sales and use tax sourcing changes that become effective July 1, 2007.

Sales and Use Tax
A sponsoring local government may impose a sales and use tax. The tax is in addition to other taxes authorized and will be collected from those who are taxable by the state retail sales tax and use tax for any taxable event within the jurisdiction. The rate cannot exceed 6.5 percent less the aggregate rates of any other taxes imposed on the same event that are already credited against the state sales and use taxes. The rate of the tax shall only be adjusted on the first day of a fiscal year if needed. The DOR must collect the tax on behalf of the sponsoring local government at no cost and remit it to the sponsoring government. The sales and use tax may not be imposed until after July 1, 2008, and approved by the CERB. The local sponsoring jurisdiction must first have received tax allocation revenues derived from both real property taxes or excess excise taxes during the preceding calendar year. If the local government has implemented CRF, the requirement for the receipt of property tax allocations is waived. The

proceeds may only be used for the payments of principal and interest on the bonds issued for the public improvements financed through the local infrastructure financing. This tax expires when bonds issued are retired, but not more than 25 years after being imposed. In order to enact a sales and use tax, the local jurisdiction must first enact an ordinance imposing the tax that provides that:

(1) the tax shall first be imposed on the first day of a fiscal year;
(2) the amount of the tax received by the local government in any fiscal year shall not exceed the state contribution;
(3) the tax shall cease to be imposed for the remainder of any fiscal year in which either:
  (a) the amount of tax received by the sponsoring local government equals the amount of the state contribution;
  (b) the amount of the revenue from taxes imposed under this section by all cities, towns, and counties totals the annual state contribution limit; or
  (c) the amount of the tax received by the sponsoring local government equals the amount of the project award by the CERB.
(4) the tax will be reimposed at the beginning of the next fiscal year if it ceased to be imposed;
(5) neither the local excise tax allocation revenues nor the local property tax allocation revenues may be more than 80 percent of the total local funds used to earn the state contribution;
(6) if the tax ceases to be distributed, it will be redistributed at the beginning of the next fiscal year; and
(7) any revenue generated by the tax in excess of the amount of the state contribution limit will go to the state.

The CERB, in consultation with the DOR, will approve the amount of the sales and use tax that an applicant may impose. The amount may not exceed the lesser of $1 million or the average amount of tax revenue the applicant estimates it will receive in all fiscal years through the imposition of the sales and use tax. The state contribution limit is $5 million per year. Each year, the amount of taxes approved by the CERB for distribution to a sponsoring local government in the next fiscal year shall be the lesser of the amount of the project award in the approval notice or an amount equal to the state contribution. In determining the amount of the state contribution, the CERB will consider the information from the sponsoring local government's annual reports. Local governments must notify the DOR by March 1 the amount of local infrastructure financing dedicated in the previous calendar year to finance the authorized public improvement and the tax allocation revenues derived in the previous calendar year from the regular property taxes on the accrued value and distributed to finance the public improvements. Money must be used only for the purpose of principal and interest payments on bonds issued for a project and must be matched with an amount from local public sources dedicated through December 31 of the previous calendar year to finance the authorized public improvements. Local public sources may include private monetary contributions and tax allocation revenues. The money generated from the sales and use tax must actually be expended to pay public improvement costs or are required by law or an

agreement to be used exclusively to pay public improvement costs. The new tax is available to a local jurisdiction as long as the jurisdiction has outstanding indebtedness.

Accountability

The local government utilizing the sales and use tax must provide an annual report to the DOR by March 1 of each year. If the sponsoring local government fails to comply, no tax may be imposed in subsequent fiscal years until such time as the local government complies and the DOR calculates the state contribution rate. The report must include:

(1) the amount of tax allocation revenues, sales and use tax and local public sources received by the local government during the preceding calendar year, and how these revenues were expended;
(2) the names, and previous business locations, of any business located within the RDA as a result of the public improvements undertaken by the local government and financed in whole or in part by this program;
(3) the total number of permanent jobs created as a result of the public improvements undertaken by the local government and financed in whole or in part by this program;
(4) the average wages and benefits received by the employees of all businesses locating within the RDA as a result of the public improvements; and
(5) the local government is complying with the requirement that the local infrastructure financing proceeds are being used exclusively in the area within the jurisdiction deemed in need of economic development and/or redevelopment.

The DOR shall make the report available to the public and the Legislature by June 1 of each year. The report must include a list of the public improvements undertaken by the local governments and financed in whole or in part by community revitalization financing. The report should also include a summary of the information provided by the local governments. The full report by a local government to the DOR shall be made available to the public upon request.

Bond Authorization

A local government designating an increment area and authorizing the use of community revitalization financing may incur general indebtedness, and issue general obligation bonds or revenue bonds, to finance the public improvements and retire the indebtedness in whole or in part from tax allocations it receives. Local governments may annually pay into a fund to be established for the benefit of bonds issued for this program a fixed proportion or fixed amount of any tax allocation revenues derived from property or business activity within the increment area containing the public improvements funded by the bonds. The payments continue until all bonds payable from the fund are paid in full. A local government may annually pay into a second fund a fixed proportion or fixed amount of any revenues derived from the credit of the state sales and excise tax, such payment continuing until all bonds from the fund are paid in full. A local government that issues bonds to finance public improvements may pledge for payment of such bonds all or part of any tax allocation revenues derived from the public improvements. It can also pledge the revenues of the credit of the state sales and excise tax. The bonds issued by the local government to finance the public improvements do not constitute an obligation of the state.

Joint Legislative Audit and Review Committee (JLARC) Study
Beginning September 1, 2013, and continuing every five years thereafter, the JLARC must submit a report to the Legislature evaluating the effectiveness of the LIFT program, including a project-by-project review. The report should also include an evaluation of each project's interim results based on the project selection criteria. The report should also measure employment changes, property tax changes, sales and use tax changes, property value changes, and changes in housing and existing commercial activities. The report due in 2028 must also include any recommendations regarding whether or not the LIFT program should be expanded statewide as well as an analysis of what impact, if any, the expansion would have on Washington's economic development.

Office of Financial Management (OFM) Study
The OFM will contract with a consultant to study and report on similar programs in other states, including project selection criteria and governance. The report, with recommendations tailored to Washington's unique needs, is due to the Governor and the Legislature by December 1, 2006.

Miscellaneous
Nothing in the act gives port districts the right to impose a local sales or use tax. The DOR and the CERB must evaluate and report periodically to the Governor and Legislature on the implementation of the LIFT program. The DOR may recommend such amendments, changes in, and modification of the LIFT program as seem proper. The LIFT program expires June 30, 2039.

Votes on Final Passage:

House	89	7	
Senate	41	4	(Senate amended)
House	92	6	(House concurred)

Effective: July 1, 2006

Partial Veto Summary: The Governor vetoed the section directing the Office of Financial Management to contract with a consultant to study and report on similar programs in other states.