

SENATE BILL REPORT

SB 5965

As of December 1, 2011

Title: An act relating to a plan of finance to prevent the default of bonds issued by distressed public facilities districts.

Brief Description: Creating a plan of finance to prevent the default of bonds issued by distressed public facilities districts.

Sponsors: Senators Parlette, Pridemore and Fraser; by request of State Treasurer.

Brief History:

Committee Activity: Ways & Means: 11/29/11.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

Background: State law currently authorizes 25 different types of local sales and use taxes. The most common is a two part (0.5 percent basic plus 0.5 percent optional) city and county sales and use tax of up to 1 percent. The tax is used for general local purposes. Almost all cities and counties levy the full 1 percent rate. The county sales and use tax is credited against the city tax; however, cities are required to share 15 percent of their tax with the counties.

Local sales and use taxes are deposited into the Local Sales and Use Tax Account (Account). On a monthly basis, the State Treasurer distributes taxes in the Account to the jurisdictions imposing local sales and use taxes. Because of the one-month lag between receipts and distributions of local sales and use taxes, the Account typically has a positive cash balance between \$200 to \$300 million.

Public facilities districts (PFDs) are municipal corporations with independent taxing authority and are taxing districts under the Washington Constitution. There are two enabling statutes, one for counties and another for cities or joint arrangements between a group of cities or a county and one or more cities.

A PFD may charge fees for the use of its facilities, levy an admissions tax not exceeding 5 percent, impose a vehicle parking tax not exceeding 10 percent, and impose a voter-approved 0.2 percent sales and use tax.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In addition to these revenue sources, state law also authorizes certain PFDs to impose a local sales and use tax of up to 0.033 percent to finance regional centers. Regional centers are defined to include convention and conference centers and special events facilities, such as facilities for community events, sporting events, trade shows, and artistic performances. This tax is not an additional tax for consumers, and it does not change the overall retail sales or use tax rate. Rather, the receipts are credited against the state 6.5 percent tax, and therefore the burden is shifted to the State General Fund. Authority to levy the tax is limited to districts that were created by certain dates and that commenced the construction, improvement, or rehabilitation of eligible projects prior to certain dates.

Once imposed, the local sales and use tax may remain in place until bonds that finance the construction of the facility are retired, but in no case may the tax be levied for longer than 25 years. In order to utilize the state-credited tax receipts, the statute requires that public or private matching funds must be obtained for the project. First levied in August 2000, the tax is currently utilized to fund 22 projects throughout the state.

In 2006, legislation was passed that extended the 0.033 percent local sales and use tax to the Greater Wenatchee Regional Events Center Public Facilities District (Wenatchee PFD), formed by Chelan and Douglas counties and the cities of Wenatchee, East Wenatchee, Entiat, Chelan, Waterville, Cashmere, and Rock Island. The local sales and use tax is used to finance a multi-purpose events center located in the city of Wenatchee, which has been open since 2008.

In 2008 the Wenatchee PFD issued \$41,770,000 in short-term bonds. The bonds are due on December 1, 2011. The Wenatchee PFD has been unable to refinance the short-term bonds and is at imminent risk of defaulting on its December 1 obligation. A superior court decision invalidated a contingent loan agreement where the city of Wenatchee guaranteed the repayment of the Wenatchee PFD short-term bonds. The court held that by pledging its full faith and credit to the repayment of the Wenatchee PFD debt, the city had exceeded its debt limit.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): The distressed public facilities district obligation account (PFD Account) is created in the custody of the State Treasurer. On the effective date of the bill, \$42 million will be transferred from the Local Sales and Use Tax Account to the PFD Account.

The State Treasurer is authorized to loan the \$42 million from the PFD Account to a distressed public facilities district. The loan may be made with or without the consent of the distressed public facilities district. A distressed public facilities district is any PFD that is at imminent risk of default due to its inability to pay its indebtedness on or before December 31, 2011. The Greater Wenatchee Regional Events Center PFD (Wenatchee PFD) meets this definition.

Additional sales and use tax authority is provided to the cities and counties forming the distressed PFD as well as the PFD itself. The tax rate may not exceed 0.2 percent. The tax is

in addition to any other sales and use taxes imposed within the jurisdiction(s) imposing the tax. The additional tax is not credited against the state sales and use tax. The tax may be imposed with or without voter approval under the authorization for the individual cities and counties, however the PFD may only impose the tax with voter approval. The PFD may use the additional tax only for repayment of the state loan and any other debt service associated with the events center. A city or county imposing the additional sales and use tax may also use the additional tax for capital improvements and the maintenance and operation of the public facility as long as the state loan has been paid back and revenues are sufficient to cover debt service on the facility.

The state is authorized to divert various local sales and use taxes imposed by the distressed PFD, or the counties and cities forming the PFD, or both, until the state loan is repaid in full. The amount diverted is generally based on the outstanding amount of the state loan amortized over a 10 year period. (Since repayment is not required to begin until 2013, the total period of the state loan is actually 11 years.) Interest accrues at a variable rate equal to the 20 bond general obligation bond buyer index plus one percentage point. Interest begins accruing on January 1, 2012. (As an example of a typical interest rate using the index, the November 17, 2011, interest rate was 4.09 percent.)

The manner in which local sales and use taxes may be diverted depends upon whether the distressed PFD imposes the full 0.2 percent rate for the additional sales and use tax.

If the distressed PFD imposes the full 0.2 percent rate for the additional sales and use tax, local sales and use taxes will be diverted on a monthly basis in the following priority:

- All of the 0.033 percent sales and use tax imposed by the distressed PFD beginning on January 1, 2013;
- All of the additional sales and use tax imposed by the distressed PFD beginning on the date that the tax would first be disbursed to the PFD;
- All of the additional sales and use tax imposed by the city in which the PFD facility is located, i.e. the anchor jurisdiction, beginning on the date that the tax would first be disbursed to the city;
- All of the additional sales and use taxes imposed by jurisdictions other than the anchor jurisdiction beginning on the date that the tax would first be disbursed to the jurisdiction(s); and
- The portion of the anchor jurisdiction's general sales and use tax that is necessary to cover any remaining amount required for the monthly state loan repayment beginning January 1, 2013.

If the distressed PFD does not impose the full 0.2 percent rate for the additional sales and use tax, local sales and use taxes will be diverted on a monthly basis in the following priority:

- All of the 0.033 percent sales and use tax imposed by the distressed PFD beginning January 1, 2013;
- All of the additional sales and use tax imposed by the distressed PFD beginning on the date that the tax would first be disbursed to the PFD;
- All of the additional sales and use tax imposed by any of the cities or counties forming the distressed PFD beginning on the date that the tax would first be disbursed to the jurisdiction(s);

- General sales and use taxes imposed by the cities and counties forming the distressed PFD on a pro rata basis. The combined contribution by all cities and counties is limited to 50 percent of the monthly state loan repayment; and
- The portion of the anchor jurisdiction's general sales and use tax and other revenues of the anchor jurisdiction necessary to cover any remaining amount on the monthly state loan repayment.

The provisions of the bill supersede any terms or conditions of prior agreements between the jurisdictions forming the distressed PFD to the extent that those terms or conditions are inconsistent with the provisions of the bill.

The State Treasurer and State Auditor are required to examine the financial condition of all local governments and report back to the legislature by January 10, 2012.

Appropriation: None.

Fiscal Note: Requested on 11/27/11.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: There is no better way to save money for local jurisdictions and to avoid new costs as this legislation. It is designed to stop a municipal default. Tools were taken away from the locals by the court that they had planned to use to solve this issue. The PFD is out of time and out of tools to solve this problem. We are working to solve this, not to save one municipality, but to save all of them from being effected by this default. The structure was completed in 2008 and the PFD was ready to issue bonds; however, the market crashed three days before the bond sale. The three-year bond anticipation notes were issue interest only as a bridge loan until the bond market came back. During this time, the building was able to generate enough revenue for operations and maintenance, but not enough for debt service. Also during this time, the courts ruled that the city of Wenatchee did not have enough debt capacity to cover the sale of bonds on the building. Wenatchee is very willing to make the tough decisions to pay for this building and we have shown that in other areas. This legislation is so draconian the city wants to solve this ourselves. I believe we will use the sales tax tool to accomplish this. The board of the Association of Washington cities has endorsed this legislation. The bill will buy time and keep Washington State and all other municipalities in good standing. A default will have a chilling effect on other jurisdictions ability to go to the bond market. One idea we have is to create a risk pool for other PFD's so that they may be able to protect themselves.

OTHER: I support this bill as it makes sense for the state to support municipalities to avoid a domino effect.

Persons Testifying: PRO: Jay Reich, Wolfgang OpitzJohnna Craig, Treasurers Office; Frank Kuntz, City of Wenatchee; Tony Veeder, City of Wenatchee; Dennis Johnson, Mayor of Wenatchee; Ashley Probart, Association of Washington Cities.

OTHER: Robert Whitlock, Citizen.