SENATE BILL REPORT
SB 5211

As of February 8, 2021

Title: An act relating to tax increment financing.

Brief Description: Authorizing tax increment financing for local governments.

Sponsors: Senators Frockt, Mullet, Conway, Kuderer and Rolfes.

Brief History:
Committee Activity: Business, Financial Services & Trade: 1/21/21, 1/28/21 [DPS-WM, w/oRec].
Ways & Means: 2/11/21.

Brief Summary of First Substitute Bill

- Authorizes local governments to designate tax increment financing areas to leverage increased local property tax collections to fund public improvements.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Majority Report: That Substitute Senate Bill No. 5211 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Mullet, Chair; Hasegawa, Vice Chair; Dozier, Ranking Member; Brown, Frockt and Hobbs.

Minority Report: That it be referred without recommendation.
Signed by Senator Wilson, L..

Staff: Clinton McCarthy (786-7319)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Alia Kennedy (786-7405)

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

Background: Tax Increment Financing. Traditional Tax Increment Financing (TIF) taps increased property taxes generated by private development, and applies those taxes to pay bonds issued to finance the public infrastructure supporting the development. A particular TIF district will be located within various overlapping taxing districts, and the TIF mechanism captures the increased property taxes of all overlapping taxing districts.

Traditional TIF financing is unconstitutional under Washington State law. In *Leonard v. Spokane*, the court held that a 1982 TIF statute violated the Washington State Constitution, which requires the entire revenue derived from the common school fund and the state tax for common schools to be exclusively applied to the support of the common schools. The 1982 TIF statute permitted forming TIF districts in which incremental property taxes, including the state property tax, could be applied to pay for public infrastructure. The court found the diversion of state property tax to be inconsistent.

The Legislature has since authorized TIF-lite districts capturing only increases in local property taxes. TIF-lite districts must also work within the constitutional and statutory constraints of property taxes, including Washington's statutory 101 percent limitation on annual increases in property taxes. One exception to this limitation is for increased property taxes resulting from new construction or improvements. Accordingly, taxing districts generally can capture only the full increase in property taxes from new construction and improvements, and not the full increase in property taxes resulting from appreciation in property values within the TIF-lite district.

TIF-lite programs, such as the Local Infrastructure Financing Tool Program, the hospital benefit zone statute, and the Local Revitalization Financing Program also capture excise taxes in addition to the capped local property taxes. Increased state excise taxes are contributed in the form of a state sales tax credit. The state sales tax credit is applied through imposition of an increase in the local sales tax rate. The increased local sales tax is credited against the sales tax that would otherwise go to the state, resulting in no net increase in the tax rate paid by taxpayers.

Summary of Bill (First Substitute): Local governments are authorized to finance public improvements using tax increment financing through adopting an ordinance to designate an increment area.

Prerequisites for Establishing a Local Tax Increment Financing Area. To establish an increment area through adoption of an ordinance, a local government must complete a project analysis of any public improvement project to determine the viability of the project by evaluating the potential costs and benefits of the project. A local government may be reimbursed by private developers to cover the cost of the analysis. Some of the elements that the analysis should consider include, a statement of the objectives of the local government, a description of the expected private development, project job creation, impacts on affordable and low-income housing, and estimates on the amount of tax revenue generated from the project within the proposed increment area.

The local government must make a finding that the improvements in the increment area:

- encourage private development that increases the fair market value of property within the area;
- development will be consistent with the permitting jurisdictions zoning and development standards;
- development will be expected to occur solely through private investment in the foreseeable future; and
- the assessed value of the site could not be reasonably expected to increase without the investment through tax increment financing.

The ordinance must indicate whether the local government intends to issue bonds or other obligations payable from tax allocation revenues to finance the improvements. A local government may not designate increment area boundaries so that the entirety of its territory falls within an increment area.. A local government may have a maximum of three active increment areas at any given time that do not overlap with each other. Increment areas must be retired after 25 years.

A local government must also ensure that public improvements are expected to increase the fair market value of real property within an increment area.

A local government can coordinate with other taxing districts and programs, and projects may be funded in part from revenue sources other than tax increment financing from the increment area.

If the project analysis indicates an impact for local school districts, the local government must confer with the impacted school district to negotiate the necessary mitigation.

Local governments are required to provide notice in a legal newspaper of general circulation under the jurisdiction of the local government, and deliver a certified copy of the ordinance to the county treasurer, county assessor, and the governing body of each taxing district within the increment area.

Apportioning Local Revenues for Local Governments with Increment Area Ordinances. The apportionment of revenue commences in the calendar year after the increment area ordinance passes. The county treasurer is directed to distribute receipts from taxes imposed on real property within the increment area as follows:

- each taxing district receives the portion of its regular property taxes produced by the rate of tax levied;
- a local government that created an increment area shall be entitled to receive an additional amount equal to the amount derived from the regular property taxes levied by or for each taxing district upon the increment value within the increment area;
- a local government with a increment area may agree to receive less than the full amount of its portion as long as any financing obligations are met;

- the additional funds raised due to improvements in the increment area do not apply to property taxes levied by the state for the support of common schools; and
- the apportionment of increases in assessed valuation in an increment area and its associated distribution of local government receipts must cease when tax allocation revenues are no longer necessary to pay the costs of the public improvement within the improvement area.

Incurring Debt and Issuing Bonds. Local governments are permitted to incur general indebtedness, and issue general obligation bonds to finance the public improvements and retire debt in whole or in part from its tax revenue allocation from its TIF area. Debt from the increment area may be payable from other tax revenues, the full faith and credit of local government, and other revenues. Local governments are permitted to require a private entity to provide adequate security to protect any public investment in the increment area.

Local governments may issue revenue bonds within an increment area to fund revenue-generating public improvements. Revenue bonds with a maturity in excess of 30 years cannot be issued to support projects financed by an increment area.

EFFECT OF CHANGES MADE BY BUSINESS, FINANCIAL SERVICES & TRADE COMMITTEE (First Substitute):

The definition of "increment area" is changed to further define taxes collected as regular property tax revenues. The defined term "value of taxable property" is removed.

A local government is authorized to specifically designate an increment area to pay for public improvements, rather than more broadly finance public improvements using tax increment financing. The ordinance designating an increment area is required to indicate whether the local government intends to issue bonds or other obligations from tax allocation revenues to finance the public improvement costs and must provide an estimate of the maximum amount of obligations..

The project analysis required in the consideration of designating an increment area must include more elements, including:
- a description of expected private development within the increment area, including a comparison scenario that would show what would happen with the improvements and what would happen without the improvements; and
- a description of the public improvements, estimated public improvement costs, and the estimated amount of bonds or other obligations.

If the project analysis indicates an impact for local school districts, then the local government must confer with impacted school districts to negotiate the necessary mitigation.

A local government with a designated increment area is entitled to receive an additional amount equal to the amount derived from the regular property taxes levived by or for each taxing district upon the incremental value within the increment area. The apportionment of tax allocation revenues to the increment area must cease when the taxing district certifies to the county assessor in writing that the tax allocation revenues are no longer needed to pay the obligations.

The general indebtedness incurred is payable from tax allocation revenues and any other sources available to the local government for payment.

The authority to issue revenue bonds is clarified as supplementary to any authority existing in statute. Revenue bonds issued to finance public improvements may be issued.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Business, Financial Services & Trade): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is the result of discussions during the interim on how to help the economy recover. This tax increment financing vehicle does not touch state revenues. This public infrastructure financing is designed to facilitate private growth. This is a useful to tool for local governments that meet the constitutional requirements for the state. Washington and Arizona are the only two states that do not have tax increment financing. This is new approach to TIF does not require state investment. This is an accountable program that meets the constraints of the state constitution. This is an important tool to have in the toolbox. The barrier to entry needs to be low so they are accessible by local governments.

Persons Testifying (Business, Financial Services & Trade): PRO: Senator David Frockt, Prime Sponsor; Candice Bock, Association of Washington Cities; Tommy Gantz, Association of Washington Business; Jennifer Ziegler, TIF for Jobs Coalition; Gary Ballew, Washington Economic Development Association; Dave Zabell, City Manager, City of Pasco; Stephen McFadden, Port of Pasco; Diahann Howard, Port of Benton; Briahna Murray, contract lobbyist for City of Pasco; Greg Hanon, NAIOP; Nick Federici, City of Spokane, Washington Community Land Trust Coalition.

Persons Signed In To Testify But Not Testifying (Business, Financial Services & Trade): No one.