
SUBSTITUTE SENATE BILL 5211

State of Washington

67th Legislature

2021 Regular Session

By Senate Business, Financial Services & Trade (originally sponsored by Senators Frockt, Mullet, Conway, Kuderer, and Rolfes)

READ FIRST TIME 01/29/21.

1 AN ACT Relating to tax increment financing; amending RCW
2 84.55.010; and adding a new chapter to Title 39 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires
6 otherwise.

7 (1) "Assessed value of real property" means the valuation of
8 taxable real property as placed on the last completed assessment roll
9 prepared pursuant to Title 84 RCW.

10 (2) "Increment area" means the geographic area within which
11 regular property tax revenues are to be apportioned to pay public
12 improvement costs, as authorized under this chapter.

13 (3) "Increment value" means an amount equal to 100 percent of the
14 then-current assessed value of real property in an increment area,
15 minus the tax allocation base value. If this amount is negative, the
16 increment value shall be equal to zero.

17 (4) "Local government" means any city, town, county, port
18 district, or any combination thereof.

19 (5) "Ordinance" means any appropriate method of taking
20 legislative action by a local government.

21 (6) "Public improvement costs" means the costs of:

1 (a) Design, planning, acquisition, required permitting, required
2 environmental studies and mitigation, seismic studies or surveys,
3 archaeological studies or surveys, land surveying, site preparation,
4 construction, reconstruction, rehabilitation, improvement, and
5 installation of public improvements and other directly related costs;

6 (b) Relocating, maintaining, and operating property pending
7 construction of public improvements;

8 (c) Relocating utilities as a result of public improvements;

9 (d) Financing public improvements, including capitalized interest
10 for up to six months following completion of construction, legal and
11 other professional services, taxes, insurance, principal and interest
12 costs on general indebtedness issued to finance public improvements,
13 and any necessary debt service reserves;

14 (e) Expenses incurred in revaluing real property for the purpose
15 of determining the tax allocation base value that are in excess of
16 costs incurred by the assessor in accordance with the revaluation
17 plan under chapter 84.41 RCW, and the costs of apportioning the taxes
18 and complying with this chapter and other applicable law; and

19 (f) Administrative expenses and feasibility studies reasonably
20 necessary and related to these costs, including related costs that
21 may have been incurred before adoption of the ordinance authorizing
22 the public improvements and the use of tax increment financing to
23 fund the costs of the public improvements.

24 (7) "Public improvements" means:

25 (a) Infrastructure improvements owned by a local government
26 within or outside of and serving the increment area that include:

27 (i) Street and road construction and maintenance;

28 (ii) Water and sewer system construction and improvements;

29 (iii) Sidewalks and other nonmotorized transportation
30 improvements and streetlights;

31 (iv) Parking, terminal, and dock facilities;

32 (v) Park and ride facilities supportive of transit facilities;

33 (vi) Park and community facilities and recreational areas;

34 (vii) Stormwater and drainage management systems;

35 (viii) Electric, broadband, or rail service;

36 (ix) Mitigation of brownfields; or

37 (b) Expenditures for any of the following purposes:

38 (i) Purchasing, rehabilitating, retrofitting for energy
39 efficiency, and constructing housing for the purpose of creating or
40 preserving affordable housing;

1 (ii) Purchasing, rehabilitating, retrofitting for energy
2 efficiency, and constructing child care facilities serving children
3 and youth that are low-income, homeless, or in foster care;

4 (iii) Providing maintenance and security for the public
5 improvements; or

6 (iv) Historic preservation activities authorized under RCW
7 35.21.395.

8 (8) "Regular property taxes" means regular property taxes as
9 defined in RCW 84.04.140, except: (a) Regular property taxes levied
10 by port districts or public utility districts specifically for the
11 purpose of making required payments of principal and interest on
12 general indebtedness; and (b) regular property taxes levied by the
13 state for the support of the common schools under RCW 84.52.065.
14 Regular property taxes do not include excess property tax levies that
15 are exempt from the aggregate limits for junior and senior taxing
16 districts as provided in RCW 84.52.043.

17 (9) "Tax allocation base value" means the assessed value of real
18 property located within an increment area for taxes imposed in the
19 year in which the increment area is first designated.

20 (10) "Tax allocation revenues" means those revenues derived from
21 the imposition of regular property taxes on the increment value.

22 (11) "Taxing district" means a governmental entity that levies or
23 has levied for it regular property taxes upon real property located
24 within a proposed or approved increment area.

25 NEW SECTION. **Sec. 2.** (1) A local government may designate an
26 increment area under this chapter and use the tax allocation revenues
27 to pay public improvement costs, subject to the following conditions:

28 (a) The local government must adopt an ordinance designating an
29 increment area within its boundaries and describing the public
30 improvements proposed to be paid for, or financed with, tax
31 allocation revenues;

32 (b) The local government may not designate increment area
33 boundaries such that the entirety of its territory falls within an
34 increment area;

35 (c) A local government can have no more than three active
36 increment areas at any given time and they may not physically overlap
37 by including the same land in more than one increment area at any
38 time;

1 (d) The ordinance must set a sunset date for the increment area,
2 which may be no more than 25 years after the adoption of the
3 ordinance designating the increment area;

4 (e) The ordinance must indicate whether the local government
5 intends to issue bonds or other obligations, payable in whole or in
6 part, from tax allocation revenues to finance the public improvement
7 costs, and must estimate the maximum amount of obligations
8 contemplated; and

9 (f) The local government must make a finding that:

10 (i) The public improvements proposed to be paid or financed with
11 tax allocation revenues are expected to encourage private development
12 within the increment area and to increase the assessed value of real
13 property within the increment area;

14 (ii) Private development that is anticipated to occur within the
15 increment area as a result of the proposed public improvements will
16 be permitted consistent with the permitting jurisdiction's applicable
17 zoning and development standards;

18 (iii) The private development would not reasonably be expected to
19 occur solely through private investment within the reasonably
20 foreseeable future without the proposed public improvements; and

21 (iv) The increased assessed value within the increment area that
22 could reasonably be expected to occur without the proposed public
23 improvements would be less than the increase in the assessed value
24 estimated to result from the proposed development with the proposed
25 public improvements.

26 (2) In considering whether to designate an increment area, the
27 legislative body of the local government must consider a project
28 analysis that shall include, but need not be limited to, the
29 following:

30 (a) A statement of objectives of the local government designating
31 the increment area;

32 (b) A statement as to the property within the increment area, if
33 any, that the local government may intend to acquire;

34 (c) The duration of the increment area;

35 (d) Identification of all parcels to be included in the increment
36 area;

37 (e) A description of the expected private development within the
38 increment area, including a comparison of scenarios with the proposed
39 public improvements and without the proposed public improvements;

1 (f) A description of the public improvements, estimated public
2 improvement costs, and the estimated amount of bonds or other
3 obligations expected to be issued to finance the public improvement
4 costs and repaid with tax allocation revenues;

5 (g) The most recent assessed value of real property within the
6 increment area and an estimate of the increment value and tax
7 allocation revenues expected to be generated;

8 (h) An estimate of the job creation reasonably expected to result
9 from the public improvements and the private development expected to
10 occur in the increment area; and

11 (i) An assessment of any impacts and any necessary mitigation to
12 address the impacts identified on the following:

13 (i) Affordable and low-income housing;

14 (ii) The local business community;

15 (iii) The local school districts; and

16 (iv) The local fire service.

17 (3) The local government may charge a private developer a fee
18 sufficient to cover the cost of the project analysis and establishing
19 the increment area, including staff time, professionals and
20 consultants, and other administrative costs related to establishing
21 the increment area.

22 (4) Nothing in this section prohibits a local government from
23 entering into an agreement under chapter 39.34 RCW with another local
24 government for the administration or other activities related to tax
25 increment financing authorized under this section.

26 (5) If the project analysis indicates an impact for the local
27 school district or districts, then the local government must confer
28 with the impacted school district or districts to negotiate the
29 necessary mitigation.

30 NEW SECTION. **Sec. 3.** (1) Public improvements that are financed
31 under this chapter may be undertaken and coordinated with other
32 programs or efforts undertaken by the local government and other
33 taxing districts and may be funded in part from revenue sources other
34 than tax allocation revenues.

35 (2) Public improvements that are constructed by a private
36 developer must meet all applicable state and local laws.

37 NEW SECTION. **Sec. 4.** The local government designating the
38 increment area must:

1 (1) Publish notice in a legal newspaper of general circulation
2 within the jurisdiction of the local government that describes the
3 public improvements, describes the boundaries of the increment area,
4 and identifies the location and times where the ordinance and other
5 public information concerning the public improvement may be
6 inspected; and

7 (2) Deliver a certified copy of the ordinance to the county
8 treasurer, the county assessor, and the governing body of each taxing
9 district within which the increment area is located.

10 NEW SECTION. **Sec. 5.** Apportionment of taxes shall be as
11 follows:

12 (1) Commencing in the calendar year following the passage of the
13 ordinance, the county treasurer shall distribute receipts from
14 regular property taxes imposed on real property located in the
15 increment area as follows:

16 (a) Each taxing district shall receive that portion of its
17 regular property taxes produced by the rate of tax levied by or for
18 the taxing district on the tax allocation base value for that
19 increment area;

20 (b) The local government that designated the increment area shall
21 be entitled to receive an additional amount equal to the amount
22 derived from the regular property taxes levied by or for each taxing
23 district upon the increment value within the increment area. The
24 local government that designated the increment area may agree to
25 receive less than the full amount of this portion, as long as bond
26 debt service, reserve, and other bond covenant requirements are
27 satisfied, in which case the balance of these tax receipts shall be
28 allocated to the taxing districts that imposed regular property
29 taxes, or have regular property taxes imposed for them, in the
30 increment area for collection that year in proportion to their
31 regular tax levy rates for collection that year. The local government
32 may request that the treasurer transfer this additional portion of
33 the property taxes to its designated agent. The portion of the tax
34 receipts distributed to the local government or its agent under this
35 subsection (1)(b) may only be expended to finance public improvement
36 costs associated with the public improvements financed in whole or in
37 part by tax increment financing; and

1 (c) This section shall not apply to any receipts from the regular
2 property taxes levied by the state for the support of the common
3 schools under RCW 84.52.065.

4 (2) The apportionment of tax allocation revenues must cease when
5 the taxing district certifies to the county assessor in writing that
6 tax allocation revenues are no longer necessary or obligated to pay
7 public improvement costs, but in no event shall the apportionment of
8 tax allocation revenues continue beyond the sunset date established
9 pursuant to section 2(1)(d) of this act. Any excess tax allocation
10 revenues and earnings on the tax allocation revenues remaining at the
11 time the apportionment of tax receipts terminates must be returned to
12 the county treasurer and distributed to the taxing districts that
13 imposed regular property taxes, or had regular property taxes imposed
14 for it, in the increment area for collection that year, in proportion
15 to the rates of their regular property tax levies for collection that
16 year.

17 (3) The apportionment and distribution of portions of the regular
18 property taxes levied by or for each taxing district upon the
19 increment value within the increment area pursuant to and subject to
20 the requirements of this chapter is declared to be a public purpose
21 of and benefit each such taxing district.

22 (4) The apportionment and distribution of portions of the regular
23 property taxes levied by or for each taxing district upon the
24 increment value within the increment area pursuant to this section
25 shall not affect or be deemed to affect the rate of taxes levied by
26 or within any such taxing district or the consistency of any such
27 levies with the uniformity requirement of Article VII, section 1 of
28 the state Constitution.

29 NEW SECTION. **Sec. 6.** (1) A local government designating an
30 increment area may incur general indebtedness, and issue general
31 obligation bonds or notes to finance the public improvements and
32 retire the indebtedness, in whole or in part, from tax allocation
33 revenues it receives.

34 (2) The general indebtedness incurred under subsection (1) of
35 this section may be payable from tax allocation revenues and any
36 other sources available to the local government for payment of the
37 public improvement costs, including without limitation: Other tax
38 revenues; the full faith and credit of the local government; nontax

1 income, revenues, fees, and rents from the public improvements; and
2 contributions, grants, and nontax resources.

3 (3) In addition to the requirements in subsection (1) of this
4 section, a local government designating an increment area and
5 authorizing the use of tax increment financing may require the
6 nonpublic participant to provide adequate security to protect the
7 public investment in the public improvement within the increment
8 area.

9 NEW SECTION. **Sec. 7.** A direct or collateral attack on the
10 designation of the increment area or the allocation of regular
11 property tax revenues in conformance with applicable legal
12 requirements, including this chapter, may not be commenced more than
13 30 days after publication of notice as required by section 4 of this
14 act.

15 NEW SECTION. **Sec. 8.** (1) A local government may issue revenue
16 bonds to fund revenue-generating public improvements, or portions of
17 public improvements, that are located within an increment area and
18 that it is authorized to provide or operate. Whenever revenue bonds
19 are to be issued, the legislative authority of the local government
20 shall create or have created a special fund or funds from which,
21 along with any reserves created pursuant to RCW 39.44.140, the
22 principal and interest on these revenue bonds shall exclusively be
23 payable. The legislative authority of the local government may
24 obligate the local government to set aside and pay into the special
25 fund or funds a fixed proportion or a fixed amount of the revenues
26 from the public improvements that are funded by the revenue bonds.
27 This amount or proportion is a lien and charge against these
28 revenues, subject only to operating and maintenance expenses. The
29 local government shall have due regard for the cost of operation and
30 maintenance of the public improvements that are funded by the revenue
31 bonds, and shall not set aside into the special fund or funds a
32 greater amount or proportion of the revenues that in its judgment
33 will be available over and above the cost of maintenance and
34 operation and the amount or proportion, if any, of the revenue
35 previously pledged. The local government may also provide that
36 revenue bonds payable out of the same source or sources of revenue
37 may later be issued on a parity with any revenue bonds being issued
38 and sold.

1 (2) Revenue bonds issued under this section are not an
2 indebtedness of the local government issuing the bonds, and the
3 interest and principal on the bonds shall only be payable from the
4 revenues lawfully pledged to meet the principal and interest
5 requirements and any reserves created pursuant to RCW 39.44.140. The
6 owner or bearer of a revenue bond or any interest coupon issued under
7 this section shall not have any claim against the local government
8 arising from the bond or coupon except for payment from the revenues
9 lawfully pledged to meet the principal and interest requirements and
10 any reserves created pursuant to RCW 39.44.140. The substance of the
11 limitations included in this subsection shall be plainly printed,
12 written, or engraved on each bond issued under this section.

13 (3) Revenue bonds with a maturity in excess of 25 years shall not
14 be issued under this section.

15 (4) The legislative authority of the local government shall by
16 resolution determine for each revenue bond issue the amount, date,
17 form, terms, conditions, denominations, maximum fixed or variable
18 interest rate or rates, maturity or maturities, redemption rights,
19 registration privileges, manner of execution, manner of sale,
20 callable provisions, if any, and covenants including the refunding of
21 existing revenue bonds. Facsimile signatures may be used on the bonds
22 and any coupons. Refunding revenue bonds may be issued in the same
23 manner as revenue bonds are issued.

24 (5) The authority to issue revenue bonds under this section is
25 supplementary and in addition to any authority otherwise existing.
26 Nothing in this section limits a local government in the issuance of
27 revenue bonds that are otherwise authorized by law for the
28 construction of additions, betterments, or extensions of utilities
29 within the increment area.

30 (6) Notwithstanding anything to the contrary in this section,
31 revenue bonds issued to finance public improvements may be issued in
32 accordance with chapter 39.46 RCW.

33 NEW SECTION. **Sec. 9.** This chapter supplements and neither
34 restricts nor limits any powers that the state or any local
35 government might otherwise have under any laws of this state.

36 **Sec. 10.** RCW 84.55.010 and 2017 3rd sp.s. c 13 s 302 are each
37 amended to read as follows:

1 (1) Except as provided in this chapter, the levy for a taxing
2 district in any year must be set so that the regular property taxes
3 payable in the following year do not exceed the limit factor
4 multiplied by the amount of regular property taxes lawfully levied
5 for such district in the highest of the three most recent years in
6 which such taxes were levied for such district plus an additional
7 dollar amount calculated by multiplying the regular property tax levy
8 rate of that district for the preceding year by the increase in
9 assessed value in that district resulting from:

10 (a) New construction;

11 (b) Increases in assessed value due to construction of wind
12 turbine, solar, biomass, and geothermal facilities, if such
13 facilities generate electricity and the property is not included
14 elsewhere under this section for purposes of providing an additional
15 dollar amount. The property may be classified as real or personal
16 property;

17 (c) Improvements to property; ~~((and))~~

18 (d) Any increase in the assessed value of state-assessed
19 property; and

20 (e) Any increase in the assessed value of real property, as that
21 term is defined in section 1 of this act, within an increment area as
22 designated by any local government in section 2 of this act, provided
23 that such increase is not included elsewhere under this section.

24 (2) The requirements of this section do not apply to:

25 (a) State property taxes levied under RCW 84.52.065(1) for
26 collection in calendar years 2019 through 2021; and

27 (b) State property taxes levied under RCW 84.52.065(2) for
28 collection in calendar years 2018 through 2021.

29 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act
30 constitute a new chapter in Title 39 RCW.

31 NEW SECTION. **Sec. 12.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

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