

# HOUSE BILL REPORT

## E2SHB 2354

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### As Passed Legislature

**Title:** An act relating to creating an option for impacted taxing districts to provide a portion of their new revenue to support any tax increment area proposed within their jurisdiction and clarifying that a tax increment area must be dissolved when all bond obligations are paid.

**Brief Description:** Creating an option for impacted taxing districts to provide a portion of their new revenue to support any tax increment area proposed within their jurisdiction and clarifying that a tax increment area must be dissolved when all bond obligations are paid.

**Sponsors:** House Committee on Finance (originally sponsored by Representatives Street, Orcutt, Bronoske, Robertson, Chambers, Callan, Bateman, Doglio and Reed).

### Brief History:

#### Committee Activity:

Local Government: 1/24/24, 1/31/24 [DPS];  
Finance: 2/2/24, 2/5/24 [DP2S(w/o sub LG)].

#### Floor Activity:

Passed House: 2/12/24, 96-1.  
Senate Amended.  
Passed Senate: 3/1/24, 48-0.  
House Concurred.  
Passed House: 3/5/24, 96-0.  
Passed Legislature.

### Brief Summary of Engrossed Second Substitute Bill

- Requires the project analysis conducted by a local government prior to establishing a tax increment area to assess impacts on all junior taxing districts as well as local emergency medical services and public hospital services.
- Requires mitigation agreements between local governments and affected public hospital districts.

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*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.*

- Requires arbitration if mitigation agreements cannot be agreed upon.

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## HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Berg, Griffey and Riccelli.

**Staff:** Elizabeth Allison (786-7129).

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government. Signed by 12 members: Representatives Berg, Chair; Street, Vice Chair; Orcutt, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Barnard, Chopp, Ramel, Santos, Springer, Thai, Wilcox and Wylie.

**Staff:** Tracey Taylor (786-7152).

### **Background:**

#### Property Tax.

All real and personal property is subject to a tax each year based on the highest and best use, unless a specific exemption is provided by law. The annual growth of all regular property tax levy revenue is limited by the levy growth limit as follows:

- For jurisdictions with a population of less than 10,000, revenue growth is limited to 1 percent.
- For jurisdictions with a population of 10,000 or more, revenue growth is limited to the lesser of inflation or 1 percent.

In addition to the revenue growth limit, levy capacity may increase by additional amounts equal to the increase in assessed value in a taxing district resulting from:

- new construction;
- construction of wind turbine, solar, biomass, and geothermal facilities;
- improvement to property;
- increased value of state-assessed property; and
- increased value within a local tax increment financing area.

#### Tax Increment Financing.

Tax increment financing is a financing tool that local governments can use to fund public

infrastructure in targeted areas. A local government may designate an increment area within the local government, provided that the following requirements are met:

- The local government must adopt an ordinance designating an increment area within its boundaries and describe the proposed public improvements.
- The increment area may not cover the entirety of the local government's boundaries.
- The increment area may not have an assessed valuation of more than \$200 million or more than 20 percent of the sponsoring jurisdiction's total assessed value, whichever is less.
- The local government may only create two increment areas at a time and the areas cannot overlap.
- The increment area must sunset 25 years after the first-year tax allocation revenues are collected from the increment area.
- The local government must indicate whether it intends to issue bonds or obligations from tax allocation revenues and must estimate the maximum amount of obligations contemplated.
- The increment area must take effect on June 1 following the adoption of the ordinance establishing the increment area.
- The sponsoring jurisdiction may not add additional public improvements or change the boundaries of the increment area.
- The ordinance must impose a deadline by which construction of the public improvements must begin.
- The local government must make a finding that:
  - the proposed public improvements are expected to encourage private development and increase the assessed value of real property within the increment area;
  - the private development that is anticipated to occur within the increment area will be consistent with zoning and development standards;
  - the private development would not reasonably be expected to occur solely through private investment within the foreseeable future without the proposed public improvements; and
  - the increased assessed value within the increment area that would be expected to occur without the public improvements would be less than the increase in assessed value estimated to result from the proposed development with the proposed public improvements.

In considering whether to designate an increment area, the local government must prepare a project analysis that includes specified requirements. Examples include a statement of the local government's objectives; the duration of the increment area; an estimate of the job creation reasonably expected to result from the public improvements and private developments; and an assessment of impacts on affordable and low income housing, the local business community, the local school districts, and the local fire service.

The local government must negotiate a mitigation plan with a fire protection district or regional fire protection service authority if a project analysis indicates that an increment

area will impact at least 20 percent of the assessed value in a fire protection district or regional fire protection service authority, or the fire service agency's annual report demonstrates an increase in the level of service in an increment area.

Prior to establishing a tax increment area, a local government must hold at least two public briefings on the tax increment project for the community. Briefings must be announced at least two weeks before they are held.

Tax allocation revenues within the increment area must cease when the taxing district certifies to the county assessor in writing that tax allocation revenues are no longer necessary or obligated to pay public improvement costs.

**Summary of Engrossed Second Substitute Bill:**

Funding for mitigation to impacted taxing districts is added as a public improvement cost permitted within tax increment areas.

The project analysis must include an assessment of impacts on all junior taxing districts including local emergency medical services, public hospital services, and local fire services. Public briefings on the tax increment project must occur 90 days or later after the project analysis is submitted. The project analysis must be submitted to all local governments and taxing districts affected by the increment area at least 90 days before an ordinance establishing the increment area is adopted. Local governments must provide written notice to each taxing district within a proposed tax increment area at least 90 days before submitting a project analysis.

Local governments must enter into negotiations for mitigation agreements with affected public hospital districts. If the local government and public hospital district or fire district cannot agree to a mitigation agreement, the parties must proceed with arbitration. The board of arbitrators must consist of three members. The local government and affected taxing district may each select one arbitrator within 60 days. The third arbitrator must be selected by the first two arbitrators within 90 days. If the third arbitrator is not agreed to by both arbitrators, then the superior court judge from the county with the largest portion within the proposed tax increment area must designate the arbitrator. Arbitration is binding on both parties.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Local Government):**

(In support) Local Tax Increment Financing (LTIF) is a good idea. The goal is not to remove this financing tool, but to make some changes to avoid unintended consequences. Tax increment financing allows a city to take out a bond for infrastructure improvements which will then spur growth and increase property values. This reduces sprawl. The cost is charged to constituents within the LTIF area. The increased tax from the improvements then goes to pay off the bond. Once property taxes are frozen in an LTIF, other districts are affected because tax districts overlap. There could be three to four LTIFs overlapping one fire district, and each one of those LTIFs could freeze the taxing authority of the fire district. The amount of money that an impacted district has remains static. There is a bigger problem when some LTIFs are used to expand growth. The fire district has a stable or flat income to serve a larger population, essentially asking the fire district to do more with less money. This bill agrees that tax increment financing is a great tool, but requires the implementing local government to go to each affected district to allow them to opt out. It also requires local governments to work with other districts to make sure that harm is mitigated. The current LTIF process has created a perfect storm for fire districts. In its current form, LTIF is bad public policy. It allows a local government to encumber a district without allowing that district to have a say, and then requires that district to take on the sole responsibility for providing services. The process for fire districts should be the same as for school districts. Fire districts' funds come from the property tax and the districts rely on this revenue to provide services. These property taxes are the sole source of funding for fire districts. Local Tax Increment Financing does work for some districts, particularly those who have their own municipal fire services, but is tough on small communities. The current mitigation requirements have no teeth. Some districts suggest minor mitigation recommendations which are then denied. The LTIFs in place have no mitigation. The current process unnecessarily strains partnerships with various populations. This will impact how fire districts budget in the future. The LTIF policy that was recommended in the 1980s had a complete exemption for fire districts because fire safety and emergency medical services are critically important. There is concern when elected officials can decide how to spend future fire district tax dollars, which can result in a decrease in fire services to the taxpayers. This is unfair to those taxpayers because they are then required to pay more for services for which they have already paid. Fire and emergency services are too vital to safety to have them removed by LTIFs. Mergers and consolidation of services can be affected by LTIFs. There are opponents to the bill saying a study should be done, but in the meantime, more and more LTIFs will be approved. This is a step in the wrong direction. If districts are allowed to opt in, then they can do their daily work and not be hindered.

The crux of this bill is simple: current law does not provide enough protection for fire authorities. There is nothing a district can do but watch its funds be reduced while service requirements increase. The opt-in proposal does not preclude other districts from participating, it just puts the onus on the local government advocating for the LTIF. Fire districts have voluntarily participated in LTIFs. If the local government can convince the junior taxing districts to opt in, then that is indicative that the economic development proposal there is not a good proposal.

Local Tax Increment Financing captures incremental growth with property, but also inflationary growth that would normally add up. The statute supposes that economic development in LTIFs is better than economic development elsewhere. Some junior taxing districts use their tax levies as local match dollars for partnerships with the federal government. The local match can be in jeopardy because of a decision made by someone else.

The bill provides a reasonable opt-in solution. The consequences of LTIFs are dire for hospitals and fire districts. The LTIF model takes critical funding from rural hospitals when they need it the most. In 2023 only three hospitals operated in a positive margin. The opt-in solution protects the districts before the fact, where the existing mitigation language protects after the fact. Public hospitals need to support the core mission of hospitals, which is to provide services to residents. Junior districts have tried and failed to pass levies for funding.

(Opposed) Local Tax Increment Financing allows cities to fund public infrastructure. Without LTIF, the development would not happen. This policy was thoughtfully created in 2021 to address concerns, including mitigation. Fourteen projects are undergoing review, and the initial review shows that they would lose 60 to 90 percent of the revenue depending on the jurisdiction's makeup.

Washington has joined 49 other states doing LTIF programs. Local Tax Increment Financing helps finance infrastructure that is legally required to be provided under the Growth Management Act and other statutes. It also lays the foundation for jobs that would not have happened otherwise. This bill will effectively gut LTIF as a financing tool and render it useless. There should be a data-driven study before proceeding with this policy. The original policy for LTIF that was developed in 2021 authorizes LTIF areas only if the local government can prove that, without the investments, economic development would not occur. Mitigation language allows junior taxing districts to provide services they offer. Allowing districts to opt out undermines the original purpose of LTIF.

**Staff Summary of Public Testimony (Finance):**

(In support) The creation of an LTIF has impacts on other taxing districts in the area and this bill will provide guardrails to help mitigate those impacts. This bill is responsive to the concerns raised by various taxing districts. The ability to use LTIF moneys for mitigation for the other taxing districts is important. Moreover, the codification of consultation and notification is important. Finally, the study by the OST will help address some of the outstanding issues by taking a deeper look at LTIF.

(Opposed) None.

(Other) Current law is an unbalanced approach to the creation and interaction with fire districts and other junior taxing districts. As a result, these taxing districts will see a

significant revenue decrease over the life of an LTIF without true consultation. The original bill provided that each taxing district must opt in; however, the substitute recommended by the Local Government Committee removed the opt-in provisions and requires consultation as part of the LTIF formation.

**Persons Testifying (Local Government):** (In support) Representative Chipalo Street, prime sponsor; Matthew Ellsworth, Association of Washington Public Hospital Districts; Aaron Edwards and Jordana LaPorte, Lake Chelan Health; Steve Brooks, Lacey Fire and Washington Fire Chiefs Association; John Nohr and Larry Bartel, Clark-Cowlitz Fire and Rescue; Brandon Asher, Chelan Fire and Rescue; Ryan Spiller, Washington Fire Commissioners; Robert Homan, Graham Fire and Rescue; Dylan Doty, Washington Fire Chiefs Association; John Flanagan, Port of Seattle; and Sean Eagan, Port of Tacoma.

(Opposed) Scott Goodrich, Port of Vancouver USA; Candice Bock, Association of Washington Cities; Steve Stuart, City of Ridgefield; Darcy Buckley, City of Pasco; and Michael Olson, City of Kirkland.

**Persons Testifying (Finance):** (In support) Representative Chipalo Street, prime sponsor; Dylan Doty, Washington Fire Chiefs Association; Matthew Ellsworth, Association of Washington Public Hospital Districts; Candice Bock, Association of Washington Cities; and Amber Carter, Port of Vancouver USA.

(Other) Sean Eagan, Port of Tacoma.

**Persons Signed In To Testify But Not Testifying (Local Government):** None.

**Persons Signed In To Testify But Not Testifying (Finance):** None.