
ENGROSSED SUBSTITUTE HOUSE BILL 1189

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

State of Washington **67th Legislature** **2021 Regular Session**

By House Finance (originally sponsored by Representatives Duerr, Boehnke, Bateman, Sullivan, Fitzgibbon, Walen, Ramel, Springer, Wicks, Slatter, Pollet, Callan, and Harris-Talley)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to tax increment financing; amending RCW
2 84.55.010 and 84.55.120; 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 100 percent of any increase in the
14 true and fair value of real property in an increment area that is
15 placed on the tax rolls after the increment area is created. The
16 increment value shall not be less than 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, including a resolution
21 adopted by a port district organized under Title 53 RCW.

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

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

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

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

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

15 (e) Expenses incurred in revaluing real property for the purpose
16 of determining the tax allocation base value by a county assessor
17 under chapter 84.41 RCW and expenses incurred by a county treasurer
18 under chapter 84.56 RCW in apportioning the taxes and complying with
19 this chapter and other applicable law. For purposes of this
20 subsection (6)(e), "expenses incurred" means actual staff and
21 software costs directly related to the implementation and ongoing
22 administration of increment areas under this chapter; and

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

28 (7) "Public improvements" means:

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

31 (i) Street and road construction;

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

33 (iii) Sidewalks and other nonmotorized transportation
34 improvements and streetlights;

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

36 (v) Park and ride facilities or other transit facilities;

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

38 (vii) Stormwater and drainage management systems;

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

40 (ix) Mitigation of brownfields; or

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

2 (i) Purchasing, rehabilitating, retrofitting for energy
3 efficiency, and constructing housing for the purpose of creating or
4 preserving long-term affordable housing;

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

8 (iii) Providing maintenance and security for the public
9 improvements; or

10 (iv) Historic preservation activities authorized under RCW
11 35.21.395.

12 (8) "Regular property taxes" means regular property taxes as
13 defined in RCW 84.04.140, except: (a) Regular property taxes levied
14 by port districts or public utility districts to the extent necessary
15 for the payments of principal and interest on general obligation
16 debt; and (b) regular property taxes levied by the state for the
17 support of the common schools under RCW 84.52.065. Regular property
18 taxes do not include excess property tax levies that are exempt from
19 the aggregate limits for junior and senior taxing districts as
20 provided in RCW 84.52.043. "Regular property taxes" does not include
21 excess property taxes levied by local school districts.

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

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

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

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

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

37 (b) The local government may not designate increment area
38 boundaries such that the entirety of its territory falls within an
39 increment area;

1 (c) The increment area may not have an assessed valuation of more
2 than \$200,000,000 or more than 20 percent of the sponsoring
3 jurisdiction's total assessed valuation, whichever is less, when the
4 ordinance is passed. If a sponsoring jurisdiction creates two
5 increment areas, the total combined assessed valuation in both of the
6 two increment areas may not equal more than \$200,000,000 or more than
7 20 percent of the sponsoring jurisdiction's total assessed valuation,
8 whichever is less, when the ordinances are passed creating the
9 increment areas;

10 (d) A local government can create no more than two active
11 increment areas at any given time and they may not physically overlap
12 by including the same land in more than one increment area at any
13 time;

14 (e) The ordinance must set a sunset date for the increment area,
15 which may be no more than 25 years after the first year in which tax
16 allocation revenues are collected from the increment area;

17 (f) The ordinance must identify the public improvements to be
18 financed and indicate whether the local government intends to issue
19 bonds or other obligations, payable in whole or in part, from tax
20 allocation revenues to finance the public improvement costs, and must
21 estimate the maximum amount of obligations contemplated;

22 (g) The ordinance must provide that the increment takes effect on
23 June 1st following the adoption of the ordinance in (a) of this
24 subsection;

25 (h) The sponsoring jurisdiction may not add additional public
26 improvements to the project after adoption of the ordinance creating
27 the increment area or change the boundaries of the increment area.
28 The sponsoring jurisdiction may expand, alter, or add to the original
29 public improvements when doing so is necessary to assure the
30 originally approved improvements can be constructed or operated;

31 (i) The ordinance must impose a deadline by which commencement of
32 construction of the public improvements shall begin, which deadline
33 must be at least five years into the future and for which extensions
34 shall be made available for good cause; and

35 (j) The local government must make a finding that:

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

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

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

8 (iv) The increased assessed value within the increment area that
9 could reasonably be expected to occur without the proposed public
10 improvements would be less than the increase in the assessed value
11 estimated to result from the proposed development with the proposed
12 public improvements.

13 (2) In considering whether to designate an increment area, the
14 legislative body of the local government must prepare a project
15 analysis that shall include, but need not be limited to, the
16 following:

17 (a) A statement of objectives of the local government for the
18 designated increment area;

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

21 (c) The duration of the increment area;

22 (d) Identification of all parcels to be included in the area;

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

26 (f) A description of the public improvements, estimated public
27 improvement costs, and the estimated amount of bonds or other
28 obligations expected to be issued to finance the public improvement
29 costs and repaid with tax allocation revenues;

30 (g) The assessed value of real property listed on the tax roll as
31 certified by the county assessor under RCW 84.52.080 from within the
32 increment area and an estimate of the increment value and tax
33 allocation revenues expected to be generated;

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

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

39 (i) Affordable and low-income housing;

40 (ii) The local business community;

1 (iii) The local school districts; and

2 (iv) The local fire service.

3 (3) The local government may charge a private developer, who
4 agrees to participate in creating the increment area, a fee
5 sufficient to cover the cost of the project analysis and establishing
6 the increment area, including staff time, professionals and
7 consultants, and other administrative costs related to establishing
8 the increment area.

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

13 (5) If the project analysis indicates that an increment area will
14 impact at least 20 percent of the assessed value in a fire protection
15 district or regional fire protection service authority, or the fire
16 service agency's annual report demonstrates an increase in the level
17 of service directly related to the increment area, the local
18 government must negotiate a mitigation plan with the fire protection
19 district or regional fire protection service authority to address
20 level of service issues in the increment area.

21 (6) The local government may reimburse the assessor and treasurer
22 for their costs as provided in section 1(6)(e) of this act.

23 (7) Prior to the adoption of an ordinance authorizing creation of
24 an increment area, the local government must:

25 (a) Hold at least two public briefings for the community solely
26 on the tax increment project that include the description of the
27 increment area, the public improvements proposed to be financed with
28 the tax allocation revenues, and a detailed estimate of tax revenues
29 for the participating local governments and taxing districts,
30 including the amounts allocated to the increment public improvements.
31 The briefings must be announced at least two weeks prior to the date
32 being held, including publishing in a legal newspaper of general
33 circulation and posting information on the local government website
34 and all local government social media sites; and

35 (b) Submit the project analysis to the office of the treasurer
36 for review and consider any comments that the treasurer may provide
37 upon completion of their review of the project analysis as provided
38 under this subsection. The treasurer must complete the review within
39 90 days of receipt of the project analysis and may consult with other
40 agencies and outside experts as necessary. Upon completing their

1 review, the treasurer must promptly provide to the local government
2 any comments regarding suggested revisions or enhancements to the
3 project analysis that the treasurer deems appropriate based on the
4 requirements in subsection (2) of this section.

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

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

12 NEW SECTION. **Sec. 4.** The local government designating the
13 increment area must:

14 (1) Publish notice in a legal newspaper of general circulation
15 within the jurisdiction of the local government that describes the
16 public improvements, describes the boundaries of the increment area,
17 and identifies the location and times where the ordinance and other
18 public information concerning the public improvement may be
19 inspected; and

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

23 NEW SECTION. **Sec. 5.** Apportionment of taxes shall be as
24 follows:

25 (1) Commencing in the calendar year following the passage of the
26 ordinance, the county treasurer shall distribute receipts from
27 regular property taxes imposed on real property located in the
28 increment area as follows:

29 (a) Each taxing district shall receive that portion of its
30 regular property taxes produced by the rate of tax levied by or for
31 the taxing district on the tax allocation base value for that
32 increment area;

33 (b) The local government that designated the increment area shall
34 be entitled to receive an additional amount equal to the amount
35 derived from the regular property taxes levied by or for each taxing
36 district upon the increment value within the increment area. The
37 local government that designated the increment area shall receive no

1 more than is needed to pay or repay costs directly associated with
2 the public improvements identified in the approved ordinance and may
3 agree to receive less than the full amount of this portion, as long
4 as bond debt service, reserve, and other bond covenant requirements
5 are satisfied, in which case the balance of these tax receipts shall
6 be allocated to the taxing districts that imposed regular property
7 taxes, or have regular property taxes imposed for them, in the
8 increment area for collection that year in proportion to their
9 regular tax levy rates for collection that year. The local government
10 may request that the treasurer transfer this additional portion of
11 the property taxes to its designated agent. The portion of the tax
12 receipts distributed to the local government or its agent under this
13 subsection (1)(b) may only be expended to finance public improvement
14 costs associated with the public improvements financed in whole or in
15 part by tax increment financing; and

16 (c) This section shall not apply to any receipts from the regular
17 property taxes levied by:

18 (i) The state for the support of the common schools under RCW
19 84.52.065;

20 (ii) Local school district excess levies; and

21 (iii) Port districts or public utility districts specifically for
22 the purpose of making required payments of principal and interest or
23 general indebtedness.

24 (2) The apportionment of tax allocation revenues must cease when
25 the taxing district certifies to the county assessor in writing that
26 tax allocation revenues are no longer necessary or obligated to pay
27 public improvement costs, but in no event shall the apportionment of
28 tax allocation revenues continue beyond the sunset date established
29 pursuant to section 2(1)(e) of this act. Any excess tax allocation
30 revenues and earnings on the tax allocation revenues remaining at the
31 time the apportionment of tax receipts terminates must be returned to
32 the county treasurer and distributed to the taxing districts that
33 imposed regular property taxes, or had regular property taxes imposed
34 for it, in the increment area for collection that year, in proportion
35 to the rates of their regular property tax levies for collection that
36 year.

37 (3) The apportionment and distribution of portions of the regular
38 property taxes levied by or for each taxing district upon the
39 increment value within the increment area pursuant to and subject to

1 the requirements of this chapter is declared to be a public purpose
2 of and benefit each such taxing district.

3 (4) The apportionment and distribution of portions of the regular
4 property taxes levied by or for each taxing district upon the
5 increment value within the increment area pursuant to this section
6 shall not affect or be deemed to affect the rate of taxes levied by
7 or within any such taxing district or the consistency of any such
8 levies with the uniformity requirement of Article VII, section 1 of
9 the state Constitution.

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

15 (2) The general indebtedness incurred under subsection (1) of
16 this section may be payable from tax allocation revenues and any
17 other sources available to the local government for payment of the
18 public improvement costs, including without limitation: Other tax
19 revenues; the full faith and credit of the local government; nontax
20 income, revenues, fees, and rents from the public improvements; and
21 contributions, grants, and nontax resources.

22 (3) In addition to the requirements in subsection (1) of this
23 section, a local government designating an increment area and
24 authorizing the use of tax increment financing may require the
25 nonpublic participant to provide adequate security to protect the
26 public investment in the public improvement within the increment
27 area.

28 NEW SECTION. **Sec. 7.** A direct or collateral attack on the
29 designation of the increment area or the allocation of regular
30 property tax revenues in conformance with applicable legal
31 requirements, including this chapter, may not be commenced more than
32 30 days after adoption of the ordinance as required by section 2 of
33 this act.

34 NEW SECTION. **Sec. 8.** (1) A local government may issue revenue
35 bonds to fund revenue-generating public improvements, or portions of
36 public improvements, that are located within an increment area and
37 that it is authorized to provide or operate. Whenever revenue bonds

1 are to be issued, the legislative authority of the local government
2 shall create or have created a special fund or funds from which,
3 along with any reserves created pursuant to RCW 39.44.140, the
4 principal and interest on these revenue bonds shall exclusively be
5 payable. The legislative authority of the local government may
6 obligate the local government to set aside and pay into the special
7 fund or funds a fixed proportion or a fixed amount of the revenues
8 from the public improvements that are funded by the revenue bonds.
9 This amount or proportion is a lien and charge against these
10 revenues, subject only to operating and maintenance expenses. The
11 local government shall have due regard for the cost of operation and
12 maintenance of the public improvements that are funded by the revenue
13 bonds, and shall not set aside into the special fund or funds a
14 greater amount or proportion of the revenues that in its judgment
15 will be available over and above the cost of maintenance and
16 operation and the amount or proportion, if any, of the revenue
17 previously pledged. The local government may also provide that
18 revenue bonds payable out of the same source or sources of revenue
19 may later be issued on a parity with any revenue bonds being issued
20 and sold.

21 (2) Revenue bonds issued under this section are not an
22 indebtedness of the local government issuing the bonds, and the
23 interest and principal on the bonds shall only be payable from the
24 revenues lawfully pledged to meet the principal and interest
25 requirements and any reserves created pursuant to RCW 39.44.140. The
26 owner or bearer of a revenue bond or any interest coupon issued under
27 this section shall not have any claim against the local government
28 arising from the bond or coupon except for payment from the revenues
29 lawfully pledged to meet the principal and interest requirements and
30 any reserves created pursuant to RCW 39.44.140. The substance of the
31 limitations included in this subsection shall be plainly printed,
32 written, or engraved on each bond issued under this section.

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

35 (4) The legislative authority of the local government shall by
36 resolution determine for each revenue bond issue the amount, date,
37 form, terms, conditions, denominations, maximum fixed or variable
38 interest rate or rates, maturity or maturities, redemption rights,
39 registration privileges, manner of execution, manner of sale,
40 callable provisions, if any, and covenants including the refunding of

1 existing revenue bonds. Facsimile signatures may be used on the bonds
2 and any coupons. Refunding revenue bonds may be issued in the same
3 manner as revenue bonds are issued.

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

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

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

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

18 (1) Except as provided in this chapter, the levy for a taxing
19 district in any year must be set so that the regular property taxes
20 payable in the following year do not exceed the limit factor
21 multiplied by the amount of regular property taxes lawfully levied
22 for such district in the highest of the three most recent years in
23 which such taxes were levied for such district, excluding any
24 increase due to (e) of this subsection, unless the highest levy was
25 the statutory maximum rate amount, plus an additional dollar amount
26 calculated by multiplying the regular property tax levy rate of that
27 district for the preceding year by the increase in assessed value in
28 that district resulting from:

29 (a) New construction;

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

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

37 (d) Any increase in the assessed value of state-assessed
38 property; and

1 (e) Any increase in the assessed value of real property, as that
2 term is defined in section 1 of this act, within an increment area as
3 designated by any local government in section 2 of this act provided
4 that such increase is not included elsewhere under this section. This
5 subsection (1)(e) does not apply to levies by the state or by port
6 districts and public utility districts for the purpose of making
7 required payments of principal and interest on general indebtedness.

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

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

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

13 **Sec. 11.** RCW 84.55.120 and 2014 c 4 s 5 are each amended to read
14 as follows:

15 (1) A taxing district, other than the state, that collects
16 regular levies must hold a public hearing on revenue sources for the
17 district's following year's current expense budget. The hearing must
18 include consideration of possible increases in property tax revenues
19 and must be held prior to the time the taxing district levies the
20 taxes or makes the request to have the taxes levied. The county
21 legislative authority, or the taxing district's governing body if the
22 district is a city, town, or other type of district, must hold the
23 hearing. For purposes of this section, "current expense budget" means
24 that budget which is primarily funded by taxes and charges and
25 reflects the provision of ongoing services. It does not mean the
26 capital, enterprise, or special assessment budgets of cities, towns,
27 counties, or special purpose districts.

28 (2) If the taxing district is otherwise required to hold a public
29 hearing on its proposed regular tax levy, a single public hearing may
30 be held on this matter.

31 (3)(a) Except as provided in (b) of this subsection (3), no
32 increase in property tax revenue may be authorized by a taxing
33 district, other than the state, except by adoption of a separate
34 ordinance or resolution, pursuant to notice, specifically authorizing
35 the increase in terms of both dollars and percentage. The ordinance
36 or resolution may cover a period of up to two years, but the
37 ordinance must specifically state for each year the dollar increase
38 and percentage change in the levy from the previous year.

1 (b) Exempt from the requirements of (a) of this subsection are
2 increases in revenue resulting from the addition of:

3 (i) New construction;

4 (ii) Increases in assessed value due to construction of wind
5 turbine, solar, biomass, and geothermal facilities, if such
6 facilities generate electricity and the property is not included
7 elsewhere under this section for purposes of providing an additional
8 dollar amount. The property may be classified as real or personal
9 property;

10 (iii) Improvements to property; (~~and~~)

11 (iv) Any increase in the value of state-assessed property; and

12 (v) Any increase in the assessed value of real property, as that
13 term is defined in section 1 of this act, within an increment area as
14 designated by any local government in section 2 of this act provided
15 that such increase is not included elsewhere under this section. This
16 subsection (3)(b)(v) does not apply to levies by the state or by port
17 districts and public utility districts for the purpose of making
18 required payments of principal and interest on general indebtedness.

19 NEW SECTION. Sec. 12. Sections 1 through 9 of this act
20 constitute a new chapter in Title 39 RCW.

21 NEW SECTION. Sec. 13. If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

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