
SECOND SUBSTITUTE SENATE BILL 5211

State of Washington

67th Legislature

2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Frockt, Mullet, Conway, Kuderer, and Rolfes)

READ FIRST TIME 02/19/21.

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.

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

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

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

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

27 (7) "Public improvements" means:

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

30 (i) Street and road construction and maintenance;

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

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

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

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

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

37 (vii) Stormwater and drainage management systems;

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

39 (ix) Mitigation of brownfields; or

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

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

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

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

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

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

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

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

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

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

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

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

38 (c) A local government can create no more than three active
39 increment areas at any given time and they may not physically overlap

1 by including the same land in more than one increment area at any
2 time;

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

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

11 (f) The ordinance must provide that the increment area takes
12 effect on June 1st following the adoption of the ordinance in (a) of
13 this subsection; and

14 (g) The local government must make a finding that:

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

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

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

26 (iv) The increased assessed value within the increment area that
27 could reasonably be expected to occur without the proposed public
28 improvements would be less than the increase in the assessed value
29 estimated to result from the proposed development with the proposed
30 public improvements.

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

35 (a) A statement of objectives of the local government designating
36 the increment area;

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

39 (c) The duration of the increment area;

1 (d) Identification of all parcels to be included in the increment
2 area;

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

6 (f) A description of the public improvements, estimated public
7 improvement costs, and the estimated amount of bonds or other
8 obligations expected to be issued to finance the public improvement
9 costs and repaid with tax allocation revenues;

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

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

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

19 (i) Affordable and low-income housing;

20 (ii) The local business community;

21 (iii) The local school districts; and

22 (iv) The local fire service.

23 (3) The local government may charge a private developer a fee
24 sufficient to cover the cost of the project analysis and establishing
25 the increment area, including staff time, professionals and
26 consultants, and other administrative costs related to establishing
27 the increment area.

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

32 (5) If the project analysis indicates that an increment area will
33 impact at least 20 percent of the assessed value in a fire district,
34 the local government must negotiate a mitigation plan with the fire
35 district prior to implementing the increment area.

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

38 (7) Prior to the adoption of an ordinance authorizing creation of
39 an increment area, the local government must submit the project
40 analysis to the office of the state treasurer for review. The office

1 of the state treasurer shall conduct the review in no more than 90
2 days and may consult with other agencies as necessary.

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

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

10 NEW SECTION. **Sec. 4.** The local government designating the
11 increment area must:

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

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

21 NEW SECTION. **Sec. 5.** Apportionment of taxes shall be as
22 follows:

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

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

31 (b) The local government that designated the increment area shall
32 be entitled to receive an additional amount equal to the amount
33 derived from the regular property taxes levied by or for each taxing
34 district upon the increment value within the increment area. The
35 local government that designated the increment area may agree to
36 receive less than the full amount of this portion, as long as bond
37 debt service, reserve, and other bond covenant requirements are

1 satisfied, in which case the balance of these tax receipts shall be
2 allocated to the taxing districts that imposed regular property
3 taxes, or have regular property taxes imposed for them, in the
4 increment area for collection that year in proportion to their
5 regular tax levy rates for collection that year. The local government
6 may request that the treasurer transfer this additional portion of
7 the property taxes to its designated agent. The portion of the tax
8 receipts distributed to the local government or its agent under this
9 subsection (1)(b) may only be expended to finance public improvement
10 costs associated with the public improvements financed in whole or in
11 part by tax increment financing;

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

14 (i) The state for the support of the common schools under RCW
15 84.52.065; or

16 (ii) Port districts or public utility districts specifically for
17 the purpose of making required payments of principal and interest on
18 general indebtedness; and

19 (d) This section shall not apply to excess levies for school
20 districts.

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

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

39 (4) The apportionment and distribution of portions of the regular
40 property taxes levied by or for each taxing district upon the

1 increment value within the increment area pursuant to this section
2 shall not affect or be deemed to affect the rate of taxes levied by
3 or within any such taxing district or the consistency of any such
4 levies with the uniformity requirement of Article VII, section 1 of
5 the state Constitution.

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

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

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

24 NEW SECTION. **Sec. 7.** A direct or collateral attack on the
25 designation of the increment area or the allocation of regular
26 property tax revenues in conformance with applicable legal
27 requirements, including this chapter, may not be commenced more than
28 30 days after publication of notice as required by section 4 of this
29 act.

30 NEW SECTION. **Sec. 8.** (1) A local government may issue revenue
31 bonds to fund revenue-generating public improvements, or portions of
32 public improvements, that are located within an increment area and
33 that it is authorized to provide or operate. Whenever revenue bonds
34 are to be issued, the legislative authority of the local government
35 shall create or have created a special fund or funds from which,
36 along with any reserves created pursuant to RCW 39.44.140, the
37 principal and interest on these revenue bonds shall exclusively be

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

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

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

31 (4) The legislative authority of the local government shall by
32 resolution determine for each revenue bond issue the amount, date,
33 form, terms, conditions, denominations, maximum fixed or variable
34 interest rate or rates, maturity or maturities, redemption rights,
35 registration privileges, manner of execution, manner of sale,
36 callable provisions, if any, and covenants including the refunding of
37 existing revenue bonds. Facsimile signatures may be used on the bonds
38 and any coupons. Refunding revenue bonds may be issued in the same
39 manner as revenue bonds are issued.

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

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

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

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

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

26 (a) New construction;

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

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

34 (d) Any increase in the assessed value of state-assessed
35 property; and

36 (e) Any increase in the assessed value of real property, as that
37 term is defined in section 1 of this act, within an increment area as
38 designated by any local government in section 2 of this act provided

1 that such increase is not included elsewhere under this section. This
2 subsection (1)(e) does not apply to levies by the state or by port
3 districts and public utility districts for the purpose of making
4 required payments of principal and interest on general indebtedness.

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

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

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

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

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

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

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

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

38 (i) New construction;

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

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

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

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

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

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

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