Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Local Government & Housing Committee

HB 2850

Brief Description: Concerning local conservation area financing.

Sponsors: Representatives White, Hunter, Sullivan, Simpson, Dunshee, Nelson, Upthegrove, Carlyle, Springer, Eddy, Kenney, Cody, Kagi, Miloscia, Liias, Orwall, Roberts, Chase, Wallace and Morrell.

Brief Summary of Bill

- Authorizes qualifying cities to designate local conservation finance areas within their boundaries and finance public improvements through a local conservation area financing process.
- Authorizes qualifying cities to issue bonds and use certain tax revenues that increase within the local conservation finance areas to finance the public improvements.
- Prescribes a process for a qualifying city to apply to the Department of Revenue for a state contribution in the form of a sales and use tax credit for financing the public improvements.
- Sets a state contribution limit of $5 million per year statewide and a limit of $500,000 per project.
- Establishes requirements pertaining to transfer of development rights programs for jurisdictions that elect to participate in a local conservation area financing process.
- Establishes numerous administrative, procedural, and reporting requirements.

Hearing Date: 2/10/10

Staff: Ethan Moreno (786-7386).

Background:

Tax Increment Financing.

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

Traditional tax increment financing is a method of allocating a portion of property taxes to finance economic development in urban areas. Local governments that utilize tax increment financing typically issues bonds to finance public improvements. To repay its bondholders, the local government is permitted to draw upon regular property tax revenue collected from property owners inside a special district surrounding the site of the public improvements. Construction of public improvements tends to increase the market values of nearby properties. Increases in value can result in increased property taxes for each taxing district that includes property near the public improvement. Under tax increment financing, the local government making the improvement receives all of the resulting tax revenue increase. For example, if a city makes an improvement that raises nearby property values, the city receives all of the resulting increase in property taxes, rather than sharing that increase with state, county, and other local districts as would occur under normal property tax allocation practices.

<u>2009 Local Revitalization Financing</u>.

Legislation adopted in 2009 (i.e., Second Substitute Senate Bill (2SSB) 5045, enacted as ch. 270, Laws of 2009) authorized participating local governments to create revitalization areas. These same local governments are permitted to use certain tax revenues that increase within the area to finance local public improvements. Under the 2009 legislation, the following sources of revenues were authorized to pay for bonds that may be issued to finance improvements:

- increased local sales and use tax revenues and property tax revenues generated from within the revitalization area, as well as additional funds from other local public sources; and
- a local sales and use tax that credited against the state tax.

Funds from local public sources may pay for public improvement costs on a pay-as-you-go basis.

Public improvements or projects that may be financed through the tax increment program established in 2SSB 5045 include:

- street, road, bridge, and rail construction and maintenance;
- water and sewer system construction and improvements;
- park and ride facilities of a transit authority;
- park facilities, recreational areas, and environmental remediation;
- electric, gas, fiber, and other utility infrastructures.

The following are also authorized public improvement expenditures:

- providing environmental analysis, professional management, planning, and promotion within the revitalization area, including the management and promotion of retail trade activities in the revitalization area;
- providing maintenance and security for common or public areas in the revitalization area; or
- historic preservation activities.

Certain environmental analyses and maintenance and security actions may also be financed through the tax increment program established in the 2009 legislation.

Transfer of Development Rights and Recent Legislative Activity.

A transfer of development rights (TDR) occurs when a qualifying land owner, through a permanent deed restriction, severs potential development rights from a property and transfers them to a recipient for use on a different property. In TDR transactions, transferred rights are generally shifted from sending areas with lower population densities to receiving areas with higher population densities. The monetary values associated with transferred rights constitute compensation to a land owner for development that may have otherwise occurred on the transferring property.

Programs for transferring development rights may be used to preserve natural and historic spaces, encourage infill, and for other purposes.

Legislation establishing TDR provisions has been adopted in recent sessions. In 2007 the Legislature directed the Department of Community, Trade, and Economic Development (now the Department of Commerce) to fund a process to develop a regional TDR program that comports with the Growth Management Act (GMA). The legislation specified that the TDR program must encourage King, Kitsap, Pierce, and Snohomish counties, and the cities within, to participate in the development and implementation of regional frameworks and mechanisms for TDR programs. Building upon the 2007 legislation, in 2009 the Legislature directed the Department of Commerce, subject to funding limitations, to establish a regional TDR program in central Puget Sound counties and cities. The regional program is intended to foster voluntary local government participation that will result in the transfer of development rights between jurisdictions.

Puget Sound Regional Council.

The Puget Sound Regional Council (PSRC) is an association of cities, towns, counties, ports, and state agencies that serves as a forum for developing policies and making decisions about regional growth and transportation issues in the four-county central Puget Sound region. Membership of the PSRC includes King, Kitsap, Pierce, and Snohomish counties, 72 cities and towns, four port districts, and transit agencies and tribes within the region. Two state agencies, the Department of Transportation and the Transportation Commission, are also members of the PSRC.

Growth Management Act.

The GMA is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the GMA (planning jurisdictions) and a reduced number of directives for all other counties and cities. The Department of Commerce provides technical and financial assistance to jurisdictions that must satisfy obligations of the GMA.

The GMA directs planning jurisdictions to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, each of which is a subset of a comprehensive plan. Comprehensive plans may also include optional elements, items, or studies, pertaining to conservation, solar energy, recreation, or other topics selected by the jurisdiction. The implementation of comprehensive plans occurs through locally adopted development regulations.

Summary of Bill:

Eligibility, Financing, and Authorized Expenditures.

Eligible cities may designate local conservation finance areas (LCFAs) within their boundaries and finance public improvements through an LCFA financing process. Cities that designate LCFAs are permitted to use certain tax revenues that increase (i.e., increments) within the LCFAs to finance public improvements.

Eligible cities, in addition to satisfying numerous procedural requirements, must be from a county that borders Puget Sound and has 600,000 or more residents and an established TDR program. Eligible cities must also have a population plus employment of at least 22,500 persons.

The public improvements proposed to be financed through the LCFA financing process are expected to encourage private development and increase the fair market value of real property within the area. Examples of improvements that may be financed in an LCFA through the LCFA financing process include:

- street, road, bridge, and rail construction and maintenance;
- water and sewer system construction and improvements;
- park and ride facilities of a transit authority;
- park facilities, recreational areas, and environmental remediation;
- electric, gas, fiber, and other utility infrastructures; and
- expenditures for facilities and improvements that support affordable housing.

Maintenance and security for common or public areas in the LCFA are authorized public improvement expenditures, as are historic preservation activities.

Local Legislative Requirements.

Prior to using the LCFA financing process for qualifying public improvements, the city must adopt an ordinance designating one or more LCFA within its boundaries. The LCFA ordinance must describe the public improvements proposed to be financed in whole or part using the LCFA financing process. The city proposing to use the LCFA financing process must also adopt findings meeting specified requirements, including that the LCFA financing process and associated improvements:

- will improve the viability of existing business entities within the local conservation finance area;
- are reasonably likely to increase private investment and employment in the LCFA; and
- are reasonably likely to generate, over a specified period of time, increases in state and local property, sales, and use tax revenues that are equal to or greater than authorized government contributions.

Before adopting an ordinance creating one or more LCFA, a city must adopt a plan for the development of adequate infrastructure, within all or part of one or more receiving area within an LCFA, to accommodate transferred development rights. The city also must:

- adopt TDR policies or development regulations that comply with the GMA, designate one or more receiving areas, and satisfy numerous other provisions;
- adopt permitting or environmental review incentives for developers that encourage their participation in the LCFA financing process;
- provide notice to all taxing districts and local governments within the proposed LCFA of the city's intent to create one or more LCFA; and
- satisfy public hearing requirements.

The city ordinance creating the LCFA must comply with content requirements, including ensuring that TDR receiving areas are in each LCFA, and describing the public improvements proposed to be made in each LCFA. The ordinance also must include an estimation of the cost of the proposed public improvements and the portion of these costs to be financed by the LCFA financing process, and the anticipated rate of sales and use tax the city will impose if specific requirements of the bill are met.

<u>Financing Mechanisms</u>.

Cities that designate LCFAs are authorized to issue general obligation or revenue bonds to finance the improvements. Revenues to repay the principal and interest obligations of the bonds are derived from increased local sales and use tax revenues generated from within the LCFA, a local sales and use tax that is credited against the state tax, and other authorized sources. Counties, cities, and port districts must, unless they exercise the authority to opt out, allow the use of their property tax revenue increases associated with the improvements in the LCFA for financing eligible public improvements.

The awarding of a local sales and use tax that is credited against the state tax may only be made through an application process that is conducted by the Department of Revenue (DOR). The aggregate local sales and use tax credit may not exceed $5 million per year. The maximum amount of this state contribution that may be used for a single project is $500,000.

<u>Administrative and Reporting Requirements</u>.

Numerous administrative requirements are specified. The Department of Commerce, provided specific funding is appropriated by the Legislature, must provide technical assistance to implement delineated TDR provisions. The Department of Commerce must also develop and electronically post quantitative and qualitative performance measures for monitoring the TDR provisions. Cities that use a local sales and use tax that is credited against the state tax must provide an annual report to the DOR that summarizes fiscal, employment, and other aspects of LCFA authorities of cities. The DOR must annually summarize the city data in a report for the public and the Legislature. Additionally, the DOR is authorized to adopt administrative rules to implement LCFA provisions.

<u>Transfer of Development Rights, Allocation of Rights</u>.

In addition to the TDR provisions specified above for cities that elect to designate LCFAs and finance public improvements within these areas, TDR requirements are established for counties. Counties meeting geographic, population and other eligibility requirements must designate all agricultural and forest land of long-term commercial significance within their jurisdiction as sending areas for conservation in a TDR program. All development rights from these natural resource lands must be available for transfer under an LCFA program, but the number of rights a sending area may send to a receiving area must be determined by the applicable county.

On or before September 1, 2010, each eligible county must report to the Puget Sound Regional Council (PSRC) the number of development rights from agricultural and forest land of long-term commercial significance that are available for transfer to receiving cities. Additional reports to the PSRC must be made in 2017 and 2024.

The Department of Commerce must work with the PSRC to allocate among receiving cities the total number of development rights that are reported by counties. A receiving city's allocated share of rights must be determined by the PSRC, in consultation with eligible counties and cities, but reported by the Department of Commerce. A receiving city becomes eligible to finance public improvements through the LCFA financing process if it meets delineated requirements, including accepting all or a portion of its allocated share of development rights.

Only development rights from agricultural and forest land of long-term commercial significance that are designated in accordance with the GMA may be available for transfer to an eligible city that designates one or more LCFA and uses the LGFA financing process to fund public improvements.

<u>Growth Management Act</u>.

The list of optional comprehensive plan elements that may be adopted under the GMA is expanded to permit eligible cities to adopt a comprehensive plan element and associated development regulations that apply within a receiving area that has been or will be designated as a LCFA.

Appropriation: None.

Fiscal Note: Requested February 5, 2010.

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