HOUSE BILL REPORT
2SSB 5045

As Reported by House Committee On:
Community & Economic Development & Trade
Finance

Title: An act relating to community revitalization financing.

Brief Description: Regarding community revitalization financing.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kilmer, Zarelli, Brown, Kauffman, Shin, Marr, King, Regala, Rockefeller, Haugen, Berkey, Eide, Kastama, Jarrett, Pridemore, McAuliffe and Ranker).

Brief History:
Committee Activity:
Community & Economic Development & Trade: 3/16/09, 3/23/09 [DPA];
Finance: 4/2/09, 4/3/09 [DPA(FIN w/o CEDT)].

Brief Summary of Second Substitute Bill
(As Amended by House)

- Authorizes a city, town, or county that follows a specified process and meets certain conditions to create a local revitalization area that will be targeted for public improvements.
- Prescribes a process for a sponsoring local government to apply to the Department of Revenue for a state contribution in the form of a sales and use tax credit that can be used for debt service on bonds used to finance public improvements in a revitalization area.
- Sets a state contribution limit of $2.5 million per year statewide and a limit of $500,000 per project.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT & TRADE

Majority Report: Do pass as amended. Signed by 8 members: Representatives Kenney, Chair; Maxwell, Vice Chair; Smith, Ranking Minority Member; Liias, Orcutt, Parker, Probst and Sullivan.

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.

Minority Report: Do not pass. Signed by 1 member: Representative Chase.

Staff: Meg Van Schoorl (786-7105)

Background:

Traditional Tax Increment Financing.

Traditional "tax increment financing" is a method of allocating a portion of property taxes to finance economic development in urban areas. Typically, under tax increment financing, a local government 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 gets all of the resulting tax revenue increase. For example, if a city makes an improvement that raises nearby property values, the city gets all of the resulting increase in property taxes, rather than sharing that increase with the state, county, and other local districts under the normal property tax allocation system.

1982 Tax Increment Financing Act.

Washington's original tax increment financing legislation was adopted by the Legislature in 1982. The 1982 Tax Increment Financing Act (Act) followed the general contours of traditional tax increment financing, as described above.

At the same time the Act was adopted, the Legislature also adopted Senate Joint Resolution (SJR) 143, a proposed constitutional amendment that expressly authorized the financing methods described in the Act. The voters rejected SJR 143 in the November 1982 state general election. However, the legislation authorizing tax increment financing was not contingent on the proposed constitutional amendment, and remained on the books. In 1985 the Legislature passed House Joint Resolution 23, another proposed constitutional amendment authorizing tax increment financing, and placed it on the ballot. It was also defeated at the polls.

Legislative history for the Act shows that the Legislature thought tax increment financing might violate the uniformity requirement for property taxes under article VII, section 1 of the state Constitution.

The City of Spokane attempted to use the Act to finance redevelopment of the area surrounding Bernard Street in downtown Spokane. A lawsuit challenging the use of tax increment financing to fund these improvements was filed by a property owner in the apportionment district. In 1995 the Washington Supreme Court (Supreme Court) invalidated Spokane's use of the Act, ruling that the Act violated article IX, section 2, of the state Constitution, in that it allowed diversion of property tax revenues away from the common schools. That section of the state Constitution requires that the state tax for common schools be applied exclusively to the support of the common schools. By ruling under the school funding clause of the state Constitution, the Supreme Court did not reach other property tax uniformity issues. Therefore, the Constitutionality of tax increment financing under the uniformity clause is still an open question.

The Community Revitalization Financing Act of 2001.

In 2001 the Legislature authorized a type of tax increment financing similar to the 1982 Act. Cities, counties, and towns may create a tax increment area and finance public improvements within the area by allocating property taxes derived from 75 percent of any property value increase generated within the area after the area is created.

Eligible public improvements. Infrastructure improvements within the increment area including: street and road construction and maintenance; water and sewer system construction and improvements; sidewalks and streetlights; parking, terminal, and dock facilities; park and ride facilities of a transit authority; park facilities and recreational areas; and storm water and drainage management systems.

Public improvement costs. Costs associated with eligible public infrastructure improvements include: cost of design, planning, acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, and installation; relocating, maintaining, and operating property pending construction of public improvements; relocating utilities as a result of public improvements; financing public improvements; assessments incurred in revaluing real property; and related administrative expenses and feasibility studies.

The process.

- An eligible local government adopts an ordinance setting up a tax increment area and specifying the proposed public improvements. The public improvements are expected to encourage private development and increase the fair market value of real property within the area. The private development must be consistent with countywide planning policy under the Growth Management Act (GMA).
- An increment area cannot be created without approval of the local governments imposing at least 75 percent of the regular property taxes within the area. This is considered concurrence by all taxing districts within the area.
- Any fire protection district included within an increment area must agree to participate for the project to proceed.
- A public hearing must be held on the proposed ordinance, preceded by publication, and posting of legal notices.

Allocation of property tax revenues. The increment area is apportioned property taxes on 75 percent of any value increase in the area after the area is created. The local governments imposing regular property taxes within the area are apportioned the remaining property taxes from 25 percent of any value increase in the area.

State property tax. No portion of the state property tax is diverted to the tax increment area, eliminating the state Constitutional issue addressed in the 1995 Supreme Court decision.

Bond repayment. Bonds may be repaid from the tax allocation revenues, other tax revenues, full faith and credit of the local government, and other sources of non-tax money available to the local government.

Five areas in Spokane County currently use this authority: West Plains; Liberty Lake; Iron Bridge; Medical Lake; and Kendall.

2006 Local Infrastructure Financing Tool.

Under the Local Infrastructure Financing Tool (LIFT) program, state sales taxes collected within a sponsoring jurisdiction are diverted to the jurisdiction for the purpose of funding public improvements within a designated "revenue development area." A sponsoring jurisdiction can be a city, town, county, or federally recognized Indian tribe. The maximum state contribution that a sponsoring local government can receive each year is limited to the lesser of:

- $1 million;
- the state excise tax allocation revenues and state property tax allocation revenues received by the state during the preceding calendar year;
- the amount of local matching funds dedicated to payment for the public improvements in the preceding calendar year; or
- the amount the LIFT award approved by the Community Economic Revitalization Board (CERB).

State sales taxes cannot be diverted for more than 25 years. Sponsoring local governments must issue bonds by the end of the fifth fiscal year that the taxes have been diverted.

The maximum statewide contribution for all of the LIFT projects is capped at $7.5 million per year ($2.5 million for demonstration projects, $5 million for competitive projects). Nine projects have been awarded under the LIFT program. Three of them are demonstration projects designated by the Legislature: Bellingham; Vancouver; and Spokane County. Six of them were approved through two competitive application processes administered by the CERB: in 2007 Bothell, Everett, and Federal Way; and in 2008 Yakima, Mt. Vernon, and Puyallup. The CERB may not approve use of the LIFT within more than one revenue development area per county, with two exceptions: cities located in more than one county; and counties that include demonstration projects. The window for the application process is currently closed. Approval of additional projects requires future legislative action. The expiration date for the LIFT program is June 30, 2039.

During the first calendar year following the CERB's approval of a LIFT project, a "base year" measurement is taken by the Department of Revenue (DOR) and the sponsoring local government of the amount of state and local sales and use taxes derived from the designated revenue development area. Beginning with the calendar year following the "base year," and each calendar year thereafter, a "measurement year" calculation is made and compared to the base year measurement to identify the increases in state and local sales and use tax revenues from taxable activity within the revenue development area.

Sponsoring local governments must report annually by March 1 to the DOR on revenues received and expended during the preceding calendar year, names of businesses locating within the revenue development area as a result of the public improvements undertaken, the number of permanent jobs created, and the average wages and benefits received by all employees of these businesses.

Summary of Amended Bill:

Creating A Revitalization Area.
(Sections 101-107)

Findings. The Legislature recognizes that investment in public infrastructure promotes community and economic development by stimulating business activity, helping create jobs, redeveloping brown-fields and blighted areas, lowering housing costs, promoting efficient land use, and generating state revenue.

Authority. A city, town, county, or combination of these, may sponsor a "revitalization area" in need of economic development or redevelopment and may use certain tax revenues and other non-tax resources to finance eligible public improvements within the area.

Eligible public improvements. Infrastructure improvements within the increment area including: street and road construction and maintenance; water and sewer system construction and improvements; sidewalks and streetlights; parking, terminal, and dock facilities; park and ride facilities of a transit authority; park facilities and recreational areas; storm water and drainage management systems; bridge and rail construction and maintenance; landscaping and streetscaping; environmental remediation; and electric, gas, fiber, and other utility infrastructure. Eligible costs include: design, planning, acquisition (including land), site preparation (including land clearing), construction, reconstruction, rehabilitation, improvement, and installation of public improvements; relocating, maintaining, operating, and demolishing property pending construction of public improvements; relocating utilities as a result of public improvements; financing public improvements; assessments incurred in revaluing real property; and reasonable and related administrative expenses and feasibility studies. Also eligible are expenditures for: environmental analysis, professional management, planning and promotion, certain historic preservation activities, and maintenance and security for common or public areas.

Creation process. The sponsoring local government must: (1) send a notice of intent to create a revitalization area, with specified information, to all taxing districts and local governments with boundaries within the proposed revitalization area at least 30 days in advance of a required public hearing; (2) provide notice of the public hearing within certain timelines, using certain communication means, and containing specified information; (3) hold a public hearing; (4) adopt an ordinance that describes the revitalization area boundaries, the public improvements, the costs of the public improvements, and the portion to be financed using local revitalization financing, the time-frames for allocating local revenues, the taxing districts that have not opted out, the anticipated tax rate for the local credit against the state sales and use tax, and the expected start date for imposing the tax; and (5) deliver a certified copy of the adopted ordinance to certain government agencies.

Conditions. A local government is authorized to finance public improvements using local revitalization financing if: (1) it has adopted an ordinance; (2) the public improvements are expected to encourage private development and increase the fair market value of real property; (3) there is a contract or letter of intent with a private developer for private improvements, and the private development will be consistent with local GMA-related plans and regulations; and (4) the financing will not be used for costs associated with public facilities districts and regional centers. The local governing body must find that the local revitalization financing: (1) will not be used to relocate an in-state business from another area (unless there is convincing evidence the firm would otherwise leave the state); (2) will improve viability of existing businesses; (3) will be used only in areas in need of economic development or redevelopment, which would more than likely not occur without this financing; and (4) is reasonably likely to increase private investment, employment and generate taxes in excess of the state and local contributions.

Limitations. A revitalization area: (1) may not have within its boundaries a hospital benefit zone, a community revitalization financing increment area, a LIFT revenue development area, or another revitalization area; (2) must involve contiguous land (no "islands" of property); (3) must not purposely exclude parcels where economic growth is unlikely; (4) must include the public improvements to be financed; (5) may not contain more than 25 percent of the total assessed value of the taxable real property within the sponsoring local government's boundaries; (6) may not change boundaries during the bond repayment period; and (7) is restricted to the location of the public improvements and adjacent locations like a neighborhood or block that will have a high likelihood of direct positive business and economic impacts from the public improvements.

Opting in and out. A taxing district that does not want to participate must adopt an ordinance to remove itself, and submit it to the sponsoring local government before the revitalization area creation ordinance is adopted. This same process must be used by a local government that imposes a sales and use tax and does not want to participate. For a local government to participate, it must enter into an inter-local agreement with the sponsoring local government.

<u>Financing the Public Improvements</u>.
(Sections 201, 301, 401, 601, 602, 701-703)

General obligation bonds. A sponsoring local government may issue general obligation bonds to finance the public improvements within the revitalization area. The process for authorizing, issuing, and retiring the bonds is provided. The indebtedness may be retired in whole or in part through local revitalization financing, defined as revenues from local public sources and from a sales and use tax credit to local governments ("state contribution"). The indebtedness may also be payable from other tax revenues, from the full faith and credit of the sponsoring local government, and from non-tax moneys available to the local government such as income, revenue, fees, and rent from the public improvements, grants, and contributions. Bonds issued by the local government will not constitute an obligation of the state.

Local revitalization financing. One hundred percent of the estimated increase in local sales and use taxes and 75 percent of the increase in the assessed value of real property that results from construction or improvements initiated after the area is approved are authorized to be used to retire the general obligation bonds.

State contribution. The Legislature finds it is in the public interest for the state to invest in these improvements by providing a sales and use tax credit to local governments that can demonstrate returns to the state. The maximum state contribution for all revitalization areas statewide is $2.5 million per fiscal year. The maximum state contribution per project is $500,000 per fiscal year.

A sponsoring local government that has adopted a revitalization area and is seeking a "state contribution" must apply for a project award amount from the DOR. The application must contain specified information and documents. The DOR must begin accepting applications on September 1, 2009. The DOR will determine project awards on a first-come basis contingent on availability of a state contribution and on the ability of the sponsoring local government to generate sufficient tax revenues to match the project award. Notification of approval or denial must be made within 60 days of application. Once project awards reach the annual state contribution limit, no more applications will be accepted. Local revitalization financing applications not approved for a project award due to lack of available state contribution must be retained on file by the DOR in the order received. If the annual contribution limit is increased, applications will be accepted again 60 days after the effective date. However, before considering new applications, the DOR must provide an opportunity for sponsoring local governments to withdraw or update the applications the DOR retained on file. An updated application must be for substantially the same project as that contained in the original application.

A sponsoring local government approved for a project award may impose the local sales and use tax at a rate which is the lesser of: (1) the state tax rate (6.5 percent) less the aggregate rates of all other local taxes credited against the state sales and use tax, or authorized to be imposed within its jurisdiction; or (2) the rate reasonably necessary to receive the project award over 10 months. Once the tax rate is approved, it cannot be increased. No tax can be imposed before: (1) July 1, 2011; (2) approval by the DOR; (3) bonds have been issued; and (4) the state sales tax increment for the preceding calendar year is at least equal to the amount of annual state contribution approved by the DOR.

Moneys collected from this tax may be used only for paying debt service on bonds issued for the public improvements in the revitalization area. The tax will expire when the bonds are retired, or 25 years after the tax is first imposed, whichever is first.

<u>Accountability</u>.
(Section 501)

A sponsoring local government receiving a project award must report annually to the DOR by March 1 with specified data from the previous calendar year. The DOR must make a report available to the public and the Legislature by June 1 summarizing the information received.

<u>Local Infrastructure Financing Tool</u>.
(Sections 801-806)

The "annual state contribution" for the LIFT program is increased by $2.5 million per year. A LIFT competitive application process for calendar year 2009 is authorized. At least one award in 2009 must be made for a downtown redevelopment project in a city that meets certain population, planning, and funding criteria. No award may be made in 2009 for a project in a city exceeding 300,000 population. The general restriction on approval of the LIFT for use in more than one revenue development area per county is removed. An urban planner and representative of organized labor are added to the CERB.

Other.
(Sections 903 and 904)

Nothing in this Act may be construed as giving port districts authority to impose a sales or use tax.

The DOR may adopt rules under the Administrative Procedures Act to administer this chapter.

Amended Bill Compared to Original Bill:

The DOR is required to retain in date order (rather than return to the applicant) those local revitalization finance applications that are not approved due to lack of available state contribution, and if the state contribution is increased, to reconsider these applications before new ones are considered. A LIFT competitive process is authorized for calendar year 2009, the LIFT state contribution is increased by $2.5 million per year, two positions are added to the CERB, and the general restriction on approval of the LIFT use in more than one revenue development area per county is removed.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) A broad array of interests support this bill. It is estimated that the United States will lose 70,000 businesses this year. Timing is critical to get construction going. This bill will help expand the local tax base and encourage investment in targeted areas. There are good reasons that 48 other states have options similar to the local revitalization financing portion of this bill. Roundtables with chambers of commerce statewide confirmed the business community's desire for a broader infrastructure financing tool. The local revitalization financing approach in this bill fits with the philosophy that growth should pay for growth. This is not a grant program. It is a tool exercised as an option of the local governments. The Legislature is the rule-maker, but local governments can make the decision to proceed with or without state financial participation. Cities in southwest Washington have to compete for private investment against a very robust form of tax increment financing in Oregon that can be applied to retail, housing, commercial, and transit oriented, high density development. Private companies considering a move to the state want to know what the Washington public sector provides as incentives. Community revitalization financing should remain under Chapter 39.89 RCW so that the five Spokane area communities that currently use it can continue. The LIFT has been a good tool. However, the CERB has concluded that each of the proposed projects from the 2008 competitive round would have been value-creating and of net benefit to the state. Unfortunately, there were a limited number of awards that could be made. In addition, the LIFT's competitive rounds are artificial timeframes that do not necessarily correspond with real business needs. State and local businesses appreciate the first come, first served nature of the process in this bill.

(Opposed) None.

Persons Testifying: Senator Kilmer, prime sponsor; Mark Brown, Cities of Vancouver, Lacey, Longview, Battleground, and Ridgefield; Rick Wickman, Identity Clark County; Matt Matayoshi, Washington Economic Development Association; Amber Carter, Association of Washington Business; Jim Hedrick, Greater Spokane Incorporated; Ashley Probart, Association of Washington Cities; and Terri Jeffreys, Washington Realtors.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended by Committee on Finance and without amendment by Committee on Community & Economic Development & Trade. Signed by 7 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Conway, Ericks and Springer.

Minority Report: Without recommendation. Signed by 2 members: Representatives Condotta and Santos.

Staff: Jeffrey Mitchell (786-7139)

Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Community & Economic Development & Trade:

The Finance Committee striking amendment eliminates the provisions expanding the LIFT program. The amendment also eliminates the section adding two members to CERB.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The state needs to make an investment in developing public infrastructure, such as roads and water systems. Currently, our public infrastructure is in poor condition and must be funded through either large impact fees or spreading a tax increase across the entire city. This bill is a better idea. Improvement is needed in order to attract new business and spur private growth, which will revitalize local communities, provide for economic development, and increase revenue to the state. This bill creates short-term jobs, while laying the foundation for long-term growth. If this bill is not passed, these projects would not be able to get started. This is not a grant program, but a tool for local governments to use to create jobs and promote businesses. This bill will give the state a solid rate of return on its investment. Under a similar mechanism, LIFT, these projects have been very successful in stimulating the local economy and increasing tax receipts. This bill also provides for a process to vet the potential projects and ensure accountability.

The committee should consider amending the bill to allow local governments to make non-bonded contributions and allow their contributions to be rolled over each year beyond the $500,000.

(Opposed) None.

(Information only) Under this bill, local governments will estimate the impact of their projects and then do follow-up reporting a year later. If the estimate is wrong, local governments will still receive money as long as they make their local contribution. This bill stabilizes the revenue stream for tax increment financing.

Persons Testifying: (In support) Senator Kilmer, prime sponsor; Mark Brown, Cities of Vancouver, Lacey, Battle Ground, Ridgefield, and Longview; Bart Phillips; Columbia River Economic Development Council; Rick Wickman, Identity Clark County; Jim Hedrick, Spokane Chamber and Economic Development Council; Mike Lonergan, City of Tacoma; Terry Byington, Tech America; Josh Brown, Kitsap County; Ashley Probart, Association of Washington Cities; Lynn Norman, City of Auburn; and Bruce Kendall, Tacoma-Pierce County Economic Development Board.

(Information only) Miki Gearhart, Department of Revenue.

Persons Signed In To Testify But Not Testifying: (In support) Ryan Petty, City of Tacoma.