

# HOUSE BILL REPORT

## HB 2126

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### As Reported by House Committee On: Ways & Means

**Title:** An act relating to a plan of finance to prevent the default of bonds issued by distressed public facilities districts.

**Brief Description:** Creating a plan of finance to prevent the default of bonds issued by distressed public facilities districts.

**Sponsors:** Representatives Armstrong, Condotta and Hunter; by request of State Treasurer.

#### **Brief History:**

##### **Committee Activity:**

Ways & Means: 11/28/11 [DPS].

#### **Brief Summary of Substitute Bill**

- Authorizes the state to make an immediate \$42 million loan to a public facilities district (PFD) that is in imminent risk of default on its debt obligations.
- Authorizes a PFD receiving a state loan, as well as any cities and counties forming the public facilities district, to impose an additional 0.2 percent sales and use tax.
- Allows the state to divert various local sales and use taxes imposed by a PFD receiving a state loan, as well as any cities or counties forming the PFD, until the state loan is repaid in full.

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### HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Chandler, Cody, Haigh, Hinkle, Hudgins, Kagi, Kenney, Pettigrew, Seaquist, Springer and Sullivan.

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

**Minority Report:** Do not pass. Signed by 7 members: Representatives Bailey, Assistant Ranking Minority Member; Dickerson, Haler, Hunt, Ormsby, Schmick and Wilcox.

**Staff:** Rick Peterson (786-7150).

**Background:**

State law currently authorizes 25 different types of local sales and use taxes. The most common is a two-part (0.5 percent basic plus 0.5 percent optional) city and county sales and use tax of up to 1 percent. The tax is used for general local purposes. Almost all cities and counties levy the full 1 percent rate. The county sales and use tax is credited against the city tax; however, cities are required to share 15 percent of their tax with the counties.

Local sales and use taxes are deposited into the Local Sales and Use Tax Account (Account). On a monthly basis, the State Treasurer distributes taxes in the Account to the jurisdictions imposing local sales and use taxes. Because of the one-month lag between receipts and distributions of local sales and use taxes, the Account typically has a positive cash balance between \$200 to \$300 million.

Public facilities districts (PFDs) are municipal corporations with independent taxing authority and are taxing districts under the Washington Constitution. There are two enabling statutes, one for counties and another for cities or joint arrangements between a group of cities or a county and one or more cities.

A PFD may charge fees for the use of its facilities, levy an admissions tax not exceeding 5 percent, impose a vehicle parking tax not exceeding 10 percent, and impose a voter-approved 0.2 percent sales and use tax.

In addition to these revenue sources, state law also authorizes certain PFDs to impose a local sales and use tax of up to 0.033 percent to finance regional centers. Regional centers are defined to include convention and conference centers and special events facilities, such as facilities for community events, sporting events, trade shows, and artistic performances. This tax is not an additional tax for consumers, and it does not change the overall retail sales or use tax rate. Rather, the receipts are credited against the state 6.5 percent tax, and therefore the burden is shifted to the State General Fund. Authority to levy the tax is limited to districts that were created by certain dates and that commenced the construction, improvement, or rehabilitation of eligible projects prior to certain dates.

Once imposed, the local sales and use tax may remain in place until bonds that finance the construction of the facility are retired, but in no case may the tax be levied for longer than 25 years. In order to utilize the state-credited tax receipts, the statute requires that public or private matching funds must be obtained for the project. First levied in August 2000, the tax is currently utilized to fund 22 projects throughout the state.

In 2006 legislation was passed that extended the 0.033 percent local sales and use tax to the Greater Wenatchee Regional Events Center Public Facilities District (Wenatchee PFD), formed by Chelan and Douglas counties and the cities of Wenatchee, East Wenatchee, Entiat, Chelan, Waterville, Cashmere, and Rock Island. The local sales and use tax is used to

finance a multi-purpose events center located in the city of Wenatchee, which has been open since 2008.

In 2008 the Wenatchee PFD issued \$41,770,000 in short-term bonds. The bonds are due on December 1, 2011. The Wenatchee PFD has been unable to refinance the short-term bonds and is at imminent risk of defaulting on its December 1 obligation. Several factors have contributed to the PFD's inability to secure long-term financing on the facility. First, operating revenues were substantially overestimated. Second, a superior court decision invalidated a contingent loan agreement where the city of Wenatchee guaranteed the repayment of the Wenatchee PFD short-term bonds. The court held that by pledging its full faith and credit to the repayment of the Wenatchee PFD debt, the city had exceeded its debt limit.

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### **Summary of Substitute Bill:**

The Distressed Public Facilities District Obligation Account (PFD Account) is created in the custody of the State Treasurer. On the effective date of the bill, \$42 million will be transferred from the Local Sales and Use Tax Account to the PFD Account.

The State Treasurer is authorized to loan the \$42 million from the PFD Account to a distressed public facilities district (PFD). The loan can be made with or without the consent of the distressed PFD. A "distressed public facilities district" is any PFD that is at imminent risk of default due to its inability to pay its indebtedness on or before December 31, 2011. The Greater Wenatchee Regional Events Center Public Facilities District meets this definition.

Additional sales and use tax authority is provided to the cities and counties forming the distressed PFD as well as the PFD itself. The tax rate may not exceed 0.2 percent. The tax is in addition to any other sales and use taxes imposed within the jurisdiction(s) imposing the tax. The additional tax is not credited against the state sales and use tax. The tax may be imposed by the distressed PFD only with voter approval. The PFD may use the additional tax only for repayment of the state loan and any other debt service associated with the events center. A city or county may impose the additional sales and use tax with a majority vote of the governing body or by referral to the voters. The city or county may also use the additional tax for capital improvements and the maintenance and operation of the public facility as long as the state loan has been paid back and revenues are sufficient to cover debt service on the facility. A city or county is required to lower its tax rate for the new sales and use tax by an amount necessary to keep the total new tax rate by the public facilities district (PFD) and any city or county imposing the new sales and use tax, at or below 0.2 percent. Authority for these taxes ends on December 31 of the year in which the original amount of the debt that was at risk of default is repaid or defeased.

The state is authorized to divert various local sales and use taxes imposed by the distressed PFD, or the counties and cities forming the PFD, or both, until the state loan is repaid in full. The amount diverted is generally based on the outstanding amount of the state loan amortized over a 10-year period. (Since repayment is not required to begin until 2013, the total period

of the state loan is actually 11 years.) Interest accrues at a variable rate equal to the 20 bond general obligation bond buyer index plus one percentage point. Interest begins accruing on January 1, 2012. (As an example of a typical interest rate using the index, the November 17, 2011, interest rate was 4.09 percent.)

The manner in which local sales and use taxes may be diverted depends upon whether the distressed PFD imposes the full 0.2 percent rate for the additional sales and use tax.

If the distressed PFD imposes the full 0.2 percent rate for the additional sales and use tax, local sales and use taxes will be diverted on a monthly basis in the following priority:

1. All of the 0.033 percent sales and use tax imposed by the distressed PFD beginning on January 1, 2013;
2. All of the additional sales and use tax imposed by the distressed PFD beginning on the date that the tax would first be disbursed to the PFD;
3. All of the additional sales and use tax imposed by the city in which the PFD facility is located; i.e., the anchor jurisdiction, beginning on the date that the tax would first be disbursed to the city;
4. All of the additional sales and use taxes imposed by jurisdictions other than the anchor jurisdiction beginning on the date that the tax would first be disbursed to the jurisdiction(s); and
5. The portion of the anchor jurisdiction's general sales and use tax that is necessary to cover any remaining amount required for the monthly state loan repayment beginning January 1, 2013.

If the distressed PFD does not impose the full 0.2 percent rate for the additional sales and use tax, local sales and use taxes will be diverted on a monthly basis in the following priority:

1. All of the 0.033 percent sales and use tax imposed by the distressed PFD beginning January 1, 2013;
2. All of the additional sales and use tax imposed by the distressed PFD beginning on the date that the tax would first be disbursed to the PFD;
3. All of the additional sales and use tax imposed by any of the cities or counties forming the distressed PFD beginning on the date that the tax would first be disbursed to the jurisdiction(s);
4. General sales and use taxes imposed by the cities and counties forming the distressed PFD on a pro rata basis. The combined contribution by all cities and counties is limited to 50 percent of the monthly state loan repayment; and
5. The portion of the anchor jurisdiction's general sales and use tax and other revenues of the anchor jurisdiction necessary to cover any remaining amount on the monthly state loan repayment.

The provisions of the bill supersede any terms or conditions of prior agreements between the jurisdictions forming the distressed PFD to the extent that those terms or conditions are inconsistent with the provisions of the bill.

The State Treasurer and State Auditor are required to examine the financial condition of all local governments and report back to the Legislature by January 10, 2012.

**Substitute Bill Compared to Original Bill:**

The substitute bill prohibits a distressed public facilities district (PFD) from imposing the new sales and use tax without voter approval. The State Treasurer is authorized to make the \$42 million loan with or without the consent of the distressed PFD. A city or county is required to lower its tax rate for the new sales and use tax by an amount necessary to keep the total new tax rate by the PFD and any city or county imposing the new sales and use tax, at or below 0.2 percent. The State Treasurer and State Auditor are required to examine the financial condition of all local governments and report back to the Legislature by January 10, 2012.

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**Appropriation:** None.

**Fiscal Note:** Requested on November 27, 2011.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) This is a bridge loan to allow the participants in the Greater Wenatchee Regional Events Center Public Facilities District to come together on a solution. We are in this position because of some misunderstanding about who has the bonding capacity to pay the debt. In September the court ruled that Wenatchee did not have the capacity. We just need more time to secure refinancing. We hope that the loan will be paid back within the initial 13-month period.

The loan comes from the Local Sales and Use Tax Account (Account) and does not affect the State General Fund, capital budget, or transportation budget. Interest will be paid on the loan at about 5.5 percent which is higher than interest currently earned on the Account.

The community is able to pay for the arena. The public facilities district (PFD) participants will get together and pay off the loan. No one wants to get to the point where the state is taking general sales tax money from the city and county participants to pay off the loan.

Municipal debt defaults are extremely rare and each event is unique. The issue for the state is the impact on all the other municipal bond issuers in Washington. We do not want Washington to be added to the list of states in which municipal bond defaults have occurred.

The Chelan County Superior Court ruled that the Wenatchee contingent loan agreement was invalid. The agreements created during the formation of the PFD required all nine participants to agree on the imposition of a sales tax. The bill is needed to restore the tool set necessary for the local jurisdictions to solve this problem.

I support the bill but do not look forward to paying increased taxes. There should have been more oversight on this project. The arena would not have happened if voter approval had been sought. It is time to pay our bills – we have to be responsible.

This is the best option available – the bond holders are repaid, local funds are used for local purposes, and the PFD and its participants still must pay the debt.

(Opposed) None.

**Persons Testifying:** Representative Armstrong, prime sponsor; Representative Condotta; Wolfgang Optiz, Office of the State Treasurer; Ashley Probart, Association of Washington Cities; and Rick Stilwater.

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