

HOUSE BILL REPORT

ESSB 5253

As Passed House - Amended:
April 9, 2011

Title: An act relating to tax increment financing for landscape conservation and local infrastructure.

Brief Description: Concerning tax increment financing for landscape conservation and local infrastructure.

Sponsors: Senate Committee on Government Operations, Tribal Relations & Elections (originally sponsored by Senators White, Swecker, Nelson, Litzow and Harper).

Brief History:

Committee Activity:

Local Government: 3/9/11, 3/15/11 [DPA];
Ways & Means: 3/30/11, 3/31/11 [DPA(LG)].

Floor Activity:

Passed House - Amended: 4/9/11, 62-35.

**Brief Summary of Engrossed Substitute Bill
(As Amended by House)**

- Authorizes qualifying cities to create Local Infrastructure Project Areas (LIPAs) within their boundaries and to finance public improvements in LIPAs through property taxes imposed by the city and the county within which the LIPA is located.
- Specifies that a qualifying city must reside within a county that borders Puget Sound, has 600,000 or more residents, and has an established transfer of development rights program.
- Establishes numerous administrative, procedural, and reporting requirements related to LIPA creation and financing.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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.

Majority Report: Do pass as amended. Signed by 6 members: Representatives Takko, Chair; Tharinger, Vice Chair; Asay, Assistant Ranking Minority Member; Fitzgibbon, Springer and Upthegrove.

Minority Report: Do not pass. Signed by 3 members: Representatives Angel, Ranking Minority Member; Rodne and Smith.

Staff: Ethan Moreno (786-7386).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Local Government. Signed by 21 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Dammeier, Assistant Ranking Minority Member; Carlyle, Chandler, Cody, Dickerson, Haigh, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Ross, Seaquist, Springer, Sullivan and Wilcox.

Minority Report: Do not pass. Signed by 6 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Haler, Parker and Schmick.

Staff: Jeffrey Mitchell (786-7139).

Background:

Tax Increment Financing.

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 issue 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.

2009 Local Revitalization Financing.

Legislation adopted in 2009 (*i.e.*, Second Substitute Senate Bill 5045 (2SSB 5045), enacted as Chapter 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 revenue 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 is 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; and
- 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, 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 landowner, 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 landowner 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 or COM) 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 COM, 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 Washington State Department of Transportation and the Washington State 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 COM 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.

The GMA requires all counties and cities to designate, where appropriate, agricultural and forest lands of long-term commercial significance. Planning jurisdictions must also adopt regulations to conserve these lands.

Summary of Amended Bill:

A process for establishing Local Infrastructure Project Areas (LIPAs) within qualifying cities and funding public improvements within these areas is established.

Preliminary Actions by Eligible Counties – Designation, Calculation, and Reporting of Development Rights.

Prior to the establishment of a LIPA, an eligible county, a term defined to mean any county that borders Puget Sound, has 600,000 or more residents, and has an established transfer of development rights (TDR) program, must designate all agricultural and forest land of long-term commercial significance within its jurisdiction as sending areas for conservation under its TDR program. An eligible county may also designate a portion of its rural zoned lands as sending areas for conservation under its TDR program if at least 50 percent of the total acreage of land classified as agricultural and forest land of long-term commercial significance within the county has been protected from development through permanent conservation easements or other conservation provisions. An eligible county must also,

subject to specified requirements, calculate the number of development rights from these lands of long-term commercial significance that are eligible for transfer to receiving areas.

On or before September 1, 2011, each eligible county must report to the Puget Sound Regional Council (PSRC) the total number of transferable development rights from agricultural and forest land of long-term commercial significance and designated rural lands that may be available for allocation to receiving cities. For purposes of LIPA provisions, a "receiving city" is a city within an eligible county that has a population plus employment of 22,500 or more.

Preliminary Actions by the Puget Sound Regional Council.

Following the receipt of development rights information from eligible counties, the PSRC must allocate these development rights among receiving cities. This process of distributing allocated shares of transferred rights must be determined in consultation with eligible counties and receiving cities, must be based on growth targets, and must comply with other requirements.

A city that accepts all or a portion of its allocated share of rights is eligible to become a "sponsoring city." A "sponsoring city" is a city that meets specified allocation requirements, adopts a plan for the development of infrastructure within one or more LIPAs, and creates one or more LIPAs.

Preliminary Actions by a Sponsoring City.

The creation of a LIPA must be accomplished through an ordinance or resolution of the sponsoring city that describes the area boundaries and the proposed public improvements to be financed in the LIPA, specifies the date when LIPA-related property tax distributions will begin, and delineates participating taxing districts. "Public improvements" are defined to include specified infrastructure improvements, expenditures for facilities and improvements that support affordable housing, expenditures for maintenance and security for common areas, and expenditures on historic preservation activities. "Taxing district" is defined as a city or county that levies, or has levied on its behalf, regular property taxes upon real property located within a LIPA.

Before adopting an ordinance or resolution creating a LIPA, a sponsoring city must comply with numerous provisions, including adopting a plan for the development of public infrastructure within one or more LIPAs that meets enumerated requirements and is developed in consultation with the Washington State Department of Transportation and the county where the LIPA to be created is located. The sponsoring city also must:

- satisfy notice and public hearing requirements; and
- adopt TDR policies or implement development regulations meeting specified requirements, or make a finding that the city will either receive its portion of rights within one or more LIPAs or purchase its portion if it is unable to receive them.

Adopted TDR policies or implemented development regulations must meet specified requirements, including:

- complying with the Growth Management Act (GMA);
- designating a receiving area or areas for transferred rights;

- adopting incentives, including streamlined permitting and environmental review strategies, for developers purchasing transferable development rights;
- establishing an exchange rate, also in accordance with suggested provisions, for transferred rights; and
- requiring that the sale of a transferable development right from agricultural or forest land of long-term commercial significance or designated rural zoned land be evidenced by its permanent removal from the sending site.

A sponsoring city must designate all agricultural and forest land of long-term commercial significance and qualifying rural zoned lands within the eligible counties as available sending areas.

Financing LIPAs.

Provisions for the financing of LIPAs through property taxes are established.

Beginning in the second calendar year following the creation of a LIPA, the county treasurer must distribute receipts from regular taxes imposed on real property within the LIPA to the sponsoring city and participating taxing districts. Under the distribution provisions, each participating taxing district and the sponsoring city must receive a portion of their regular property taxes for the LIPA as determined by specified requirements, while the sponsoring city must receive an additional portion of the regular property taxes levied by it and by participating taxing districts upon property within the LIPA. The sponsoring city may agree to receive less than the full amount of the additional portion if certain conditions are met.

The distributions of property tax receipts under LIPA provisions must cease on the earlier of:

- the date when LIPA-related revenues are no longer used or obligated to pay the costs of public improvements; or
- a final termination date that is determined according to a formula that considers issued building permits and acquired transferable development rights for a LIPA.

A distribution of property tax receipts under LIPA provisions may not exceed a term of 25 years. Any excess LIPA-related receipts and associated earnings remaining at the time the distribution of funds for a LIPA terminates must be returned to the county treasurer and distributed to the appropriate taxing districts.

Limitations on LIPAs.

Geographic and other limitations for LIPAs are specified. For example, the territory within a LIPA must be contiguous tracts, lots, pieces, or parcels, and the LIPAs, at their time of creation, may not comprise an area containing more than 25 percent of the total assessed value of taxable property within the sponsoring city. Additionally, public improvements to be financed with LIPA financing must be located in the LIPA.

Transferred Rights – Eligibility Provisions.

Only development rights from agricultural and forest land of long-term commercial significance within the eligible counties, and qualifying rural-zoned lands within the eligible counties, may be transferred to a city for use in a LIPA.

Reports and Rule-Making – PSRC, Participating Jurisdictions, and the Department of Commerce.

Eligible counties, in collaboration with sponsoring cities, must provide a report to the Department of Commerce (COM) by March 1 of every other year. The report must satisfy numerous and specific content requirements, examples of which are listed below:

- the number of sponsoring cities that have adopted TDR policies and regulations incorporating TDR under LIPA provisions;
- the number of acres under conservation easement under LIPA provisions using different TDR mechanisms;
- the number of transferable development rights transferred from a county into a sponsoring city under LIPA provisions, including the total number of new residential units, the amount of additional commercial floor area, and the amount of additional impervious surface allowed;
- a listing of public improvements paid or financed with local infrastructure project financing;
- the names of any businesses locating within a LIPA as a result of public improvements undertaken by the sponsoring city and paid or financed, wholly or partially, with LIPA financing; and
- the average wages and benefits received by all employees of businesses locating within a LIPA as a result of the public improvements undertaken by the sponsoring city and paid or financed, wholly or partially, with LIPA financing.

The COM is authorized to adopt any rules it considers necessary for the administration of the LIPA provisions.

Growth Management Act.

The list of optional comprehensive plan elements that may be adopted under the GMA is expanded to expressly authorize a receiving city (a city within an eligible county that has a population plus employment of 22,500 or more) to adopt a comprehensive plan element and associated development regulations that apply within a LIPA in which transferable development rights from a sending area may be used.

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 (Local Government):

(In support) This bill is a reprise of legislation that the Local Government Committee considered in 2010. The bill, which is permissive and applies only to King, Snohomish, and Pierce counties, will provide the cities within these counties with a unique tax increment financing process to help pay for infrastructure and create jobs. The bill is supported by a broad coalition of interests.

The bill, through its regional-based solutions, will benefit farmers, cities electing to utilize the financing mechanism, and residents near the newly constructed infrastructure. The House companion bill required consultation with the Washington State Department of Transportation and permitted expenditures for transportation efficient development; the committee should consider adding these provisions to the bill. The Legislature has recognized the benefits that working forests provide, and the transfer of development rights (TDR) provisions of the bill will help preserve working forests. King County is working to promote TDR transactions and has preserved 141,500 acres through its efforts.

Protecting farmland is essential. Transferring development rights through "in perpetuity" TDR transfers have been utilized and are working. The need for food and farming will still exist in 50, 100, or more years. The results of TDR transfers can include habitat protection and additional income to farmers.

(In support with amendment) A provision in the House companion that references mitigation and habitat restoration actions should be added to the bill.

(In support with concerns) This bill creates a good tool for local governments and a great market-based tool for preserving rural lands and saving working farms and forests. The bill should be improved by clarifying affordable housing terms used within its provisions.

(Opposed) None.

Staff Summary of Public Testimony (Ways & Means):

(In support) This bill is about jobs, our environment, and our community. This bill ensures that our farmland areas are preserved as our urban areas grow. This bill meets the requirements of the Growth Management Act in a way that people can support. This bill is voluntary for all parties. This bill protects resource jobs as well as jobs in our cities. This is another way to maintain working forests. This bill is a pilot project in three counties. The forest products industry is the second largest manufacturing sector in the state.

(Opposed) Pierce County has been practicing transfer of development rights for a while. We are concerned about the impact on property owners. We are also concerned about the property tax impact. Certain cities may be excluded because of the population plus employment criteria. All forest land is included within the program, which could impact property owners with multiple parcels. The Growth Management Act has not been favorable for many property owners. Property owners pay substantial property taxes but often have significant restrictions on their property. This bill will destroy the inalienable property rights of property owners in this state. The environmentally friendly language in this bill is a synonym for a united nations program known as Agenda 21—an action plan for sustainable development. Through this bill, Washington will be enforcing international policy and laws.

Persons Testifying (Local Government): (In support) Senator White, prime sponsor; Leda Chahim, Cascade Land Conservancy; Elizabeth Robbins, Washington State Department of Transportation; Ashley Probart, Association of Washington Cities; Debora Munguia, Washington Forest Protection Association; Genesee Adkins, King County; and Jay Gordon.

(In support with amendment) Jim Hedrick, Port of Everett.

(In support with concerns) Jeanette McKague, Washington Realtors.

Persons Testifying (Ways & Means): (In support) Leda Chahim, Cascade Land Conservancy; Patti Case, Green Diamond Resource Company; Ashley Probart, Association of Washington Cities; and Jay Gordon.

(Opposed) Zenna Dunning; Wendy Birnbaum; and Robert Schilt.

Persons Signed In To Testify But Not Testifying (Local Government): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.