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**SENATE BILL 5211**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Frockt, Mullet, Conway, Kuderer, and Rolfes

AN ACT Relating to tax increment financing; amending RCW 84.55.010; and adding a new chapter to Title 39 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessed value of real property" means the valuation of real property as placed on the last completed assessment roll.

(2) "Increment area" means the geographic area from which taxes are to be appropriated to finance public improvements authorized under this chapter.

(3) "Increment value" means 100 percent of any increase in the true and fair value of real property in an increment area that is placed on the tax rolls after the increment area is created.

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

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

(6) "Public improvement costs" means the costs of: (a) Design, planning, acquisition, required permitting, required environmental studies and mitigation, seismic studies or surveys, archaeological studies or surveys, land surveying, site preparation, construction, reconstruction, rehabilitation, improvement, and installation of public improvements and other directly related costs; (b) purchasing, rehabilitating, retrofitting for energy efficiency, and constructing housing for the purpose of creating or preserving permanently affordable housing; (c) purchasing, rehabilitating, retrofitting for energy efficiency, and constructing child care facilities serving children and youth that are low-income, homeless, or in foster care; (d) relocating, maintaining, and operating property pending construction of public improvements; (e) relocating utilities as a result of public improvements; (f) financing public improvements, including capitalized interest for up to six months following completion of construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (g) assessments incurred in revaluing real property for the purpose of determining the tax allocation base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; and (h) administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of tax increment financing to fund the costs of the public improvements.

(7) "Public improvements" means:

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

(i) Street and road construction and maintenance;

(ii) Water and sewer system construction and improvements;

(iii) Sidewalks and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park and community facilities and recreational areas;

(vii) Stormwater and drainage management systems;

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

(ix) Mitigation of brownfields.

(b) Expenditures for any of the following purposes:

(i) Providing environmental analysis and mitigation, professional management, planning, and promotion within the increment area, including the management and promotion of retail trade activities in the increment area;

(ii) Providing maintenance and security for common or public areas in the increment area;

(iii) Relocation and construction of a government-owned facility, with written permission from the agency owning the facility and the office of financial management; or

(iv) Historic preservation activities authorized under RCW 35.21.395.

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

(9) "Tax allocation base value" means the true and fair value of real property located within an increment area for taxes imposed in the year in which the increment area is created.

(10) "Tax allocation revenues" means those tax revenues derived from the imposition of regular property taxes on the increment value and distributed to finance public improvements.

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

(12) "Value of taxable property" means the value of the taxable property as defined in RCW 39.36.015.

NEW SECTION. **Sec.**  (1) A local government may finance public improvements using tax increment financing subject to the following conditions:

(a) The local government must adopt an ordinance designating an increment area within its boundaries and specifying the public improvements proposed to be financed in whole or in part with the use of tax increment financing;

(b) The increment area or combined increment areas cannot include the area of the entire jurisdiction of the local government;

(c) A local government can have no more than three active increment areas at any given time and they may not physically overlap by including the same land in more than one increment area at any time;

(d) An increment area under this section must be retired no more than 25 years after the adoption of the ordinance designating the increment area; and

(e) The local government must make a finding that:

(i) The public improvements proposed to be financed in whole or in part using tax increment financing are expected to encourage private development within the increment area and to increase the fair market value of real property within the increment area;

(ii) Private development that is anticipated to occur within the increment area as a result of the public improvements financed in whole or in part using tax increment financing will be processed consistent with the permitting jurisdiction's applicable zoning and development standards;

(iii) The proposed development would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future; and

(iv) The increased assessed value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the assessed value estimated to result from the proposed development.

(2) Prior to establishing an increment area the local government must complete a project analysis that shall include, but need not be limited to, the following:

(a) A statement of objectives of the local government for the public improvement project;

(b) A statement as to the property within the project, if any, that the local government intends to acquire, identified by parcel number, identifiable property name, block, or other appropriate means indicating the area in which the local government intends to acquire properties;

(c) The duration of the tax increment financing area;

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

(e) A description of the private development and estimated value of the project, and expected taxes generated;

(f) A description of the public infrastructure needs, estimated costs, and anticipated type and terms of the obligations to be issued;

(g) The most recent assessed valuation of the property and an estimate of the value of the property after development;

(h) An assessment of whether or not the private development would occur without tax increment financing;

(i) An assessment of the project job creation from the development;

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

(i) Affordable and low-income housing;

(ii) The local business community;

(iii) The local school districts; and

(iv) The local fire service.

(3) The local government may charge a private developer an application fee sufficient to reimburse the staff time spent preparing the project analysis and other administrative costs related to establishing the tax increment financing increment area.

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

NEW SECTION. **Sec.**  (1) Public improvements that are financed with tax increment financing may be undertaken and coordinated with other programs or efforts undertaken by the local government and other taxing districts and may be funded in part from revenue sources other than tax increment financing.

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

NEW SECTION. **Sec.**  The local government shall:

(1) Publish notice in a legal newspaper of general circulation within the increment area that describes the public improvement, describes the boundaries of the increment area, and identifies the location and times where the ordinance and other public information concerning the public improvement may be inspected; and

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

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

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

(a) Each taxing district shall receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the tax allocation base value for that tax increment financing project in the taxing district;

(b) The local government that created the increment area shall receive an additional portion of the regular property taxes levied by or for each taxing district upon the increment value within the increment area. The local government that created the increment area may agree to receive less than the full amount of this portion as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the taxing districts that imposed regular property taxes, or have regular property taxes imposed for them, in the increment area for collection that year in proportion to their regular tax levy rates for collection that year. The local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by tax increment financing; and

(c) This section shall not apply to any portion of the property tax levied by the state for the support of the common schools under RCW 84.52.065.

(2) The apportionment of increases in assessed valuation in an increment area, and the associated distribution to the local government of receipts from regular property taxes that are imposed on the increment value, must cease when tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Any excess tax allocation revenues and earnings on the tax allocation revenues remaining at the time the apportionment of tax receipts terminates must be returned to the county treasurer and distributed to the taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the increment area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

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

(4) The apportionment and distribution of portions of the regular property taxes levied by or for each taxing district upon the increment value within the increment area pursuant to this section shall not affect or be deemed to affect the rate of taxes levied by or within any such taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution.

NEW SECTION. **Sec.**  (1) A local government designating a tax increment financing area may incur general indebtedness, and issue general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from tax allocation revenues it receives, subject to the following requirements: The ordinance adopted by the local government creating the increment area and authorizing the use of tax increment financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated.

(2) The general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

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

NEW SECTION. **Sec.**  A direct or collateral attack on a public improvement, public improvement ordinance, or increment area purported to be authorized or created in conformance with applicable legal requirements, including this chapter, may not be commenced more than 30 days after publication of notice as required by section 4 of this act.

NEW SECTION. **Sec.**  (1) A local government may issue revenue bonds to fund revenue-generating public improvements, or portions of public improvements, that are located within an increment area and that it is authorized to provide or operate. Whenever revenue bonds are to be issued, the legislative authority of the local government shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on these revenue bonds shall exclusively be payable. The legislative authority of the local government may obligate the local government to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements that are funded by the revenue bonds. This amount or proportion is a lien and charge against these revenues, subject only to operating and maintenance expenses. The local government shall have due regard for the cost of operation and maintenance of the public improvements that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue previously pledged. The local government may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

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

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

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

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

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

(1) Except as provided in this chapter, the levy for a taxing district in any year must be set so that the regular property taxes payable in the following year do not exceed the limit factor multiplied by the amount of regular property taxes lawfully levied for such district in the highest of the three most recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year by the increase in assessed value in that district resulting from:

(a) New construction;

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

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

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

(e) Any increase in the assessed value within a tax increment area as established by any local government in section 2 of this act provided that such increase is not included elsewhere under this section. The property may be classified as real or personal property.

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

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

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

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

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

**--- END ---**