
SENATE BILL 5539

State of Washington

68th Legislature

2023 Regular Session

By Senators Cleveland, L. Wilson, Mullet, Boehnke, King, Lias, Frame, and Wellman; by request of State Treasurer

Read first time 01/23/23. Referred to Committee on Business, Financial Services, Gaming & Trade.

1 AN ACT Relating to making technical corrections to the local tax
2 increment financing program under chapter 39.114 RCW by applying the
3 definition of real property to ensure private investments made on
4 state and local government-owned land are included in the increment
5 value, ensuring that the relocation and construction of a government-
6 owned facility is included as an eligible project, ensuring that
7 acquisition costs include appurtenant rights, providing clarification
8 to definitions of increment value and tax allocation base value for
9 consistency with current law, clarifying notice requirements for the
10 creation of a tax increment area, and creating consistency with
11 current law for add-on levies codified in RCW 84.55.010; amending RCW
12 39.114.010, 39.114.020, 39.114.040, 39.114.050, 84.55.015, 84.55.020,
13 and 84.55.030; and declaring an emergency.

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

15 **Sec. 1.** RCW 39.114.010 and 2021 c 207 s 1 are each amended to
16 read as follows:

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

19 (1) "Assessed value of real property" means the valuation of
20 taxable real property as placed on the last completed assessment roll
21 prepared pursuant to Title 84 RCW.

1 (2) "Increment area" means the geographic area within which
2 regular property tax revenues are to be apportioned to pay public
3 improvement costs, as authorized under this chapter.

4 (3) "Increment value" means 100 percent of any increase in the
5 true and fair value of real property in an increment area that is
6 placed on the tax rolls after the increment area (~~is created~~) takes
7 effect. The increment value shall not be less than zero.

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

10 (5) "Ordinance" means any appropriate method of taking
11 legislative action by a local government, including a resolution
12 adopted by a port district organized under Title 53 RCW.

13 (6) "Public improvement costs" means the costs of:

14 (a) Design, planning, acquisition, required permitting, required
15 environmental studies and mitigation, seismic studies or surveys,
16 archaeological studies or surveys, land surveying, site acquisition,
17 including appurtenant rights and site preparation, construction,
18 reconstruction, rehabilitation, improvement, expansion, and
19 installation of public improvements, and other directly related
20 costs;

21 (b) Relocating, maintaining, and operating property pending
22 construction of public improvements;

23 (c) Relocating utilities as a result of public improvements;

24 (d) Financing public improvements, including capitalized interest
25 for up to six months following completion of construction, legal and
26 other professional services, taxes, insurance, principal and interest
27 costs on general indebtedness issued to finance public improvements,
28 and any necessary debt service reserves;

29 (e) Expenses incurred in revaluing real property for the purpose
30 of determining the tax allocation base value by a county assessor
31 under chapter 84.41 RCW and expenses incurred by a county treasurer
32 under chapter 84.56 RCW in apportioning the taxes and complying with
33 this chapter and other applicable law. For purposes of this
34 subsection (6)(e), "expenses incurred" means actual staff and
35 software costs directly related to the implementation and ongoing
36 administration of increment areas under this chapter; and

37 (f) Administrative expenses and feasibility studies reasonably
38 necessary and related to these costs, including related costs that
39 may have been incurred before adoption of the ordinance authorizing

1 the public improvements and the use of tax increment financing to
2 fund the costs of the public improvements.

3 (7) "Public improvements" means:

4 (a) Infrastructure improvements owned by a state or local
5 government within or outside of and serving the increment area (~~that~~
6 ~~include~~) and real property owned or acquired by a local government
7 within the increment area including:

8 (i) Street and road construction;

9 (ii) Water and sewer system construction, expansion, and
10 improvements;

11 (iii) Sidewalks and other nonmotorized transportation
12 improvements and streetlights;

13 (iv) Parking, terminal, and dock facilities;

14 (v) Park and ride facilities or other transit facilities;

15 (vi) Park and community facilities and recreational areas;

16 (vii) Stormwater and drainage management systems;

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

18 (ix) Mitigation of brownfields; or

19 (b) Expenditures for any of the following purposes:

20 (i) Purchasing, rehabilitating, retrofitting for energy
21 efficiency, and constructing housing for the purpose of creating or
22 preserving long-term affordable housing;

23 (ii) Purchasing, rehabilitating, retrofitting for energy
24 efficiency, and constructing child care facilities serving children
25 and youth that are low-income, homeless, or in foster care;

26 (iii) Providing maintenance and security for the public
27 improvements; (~~or~~)

28 (iv) Historic preservation activities authorized under RCW
29 35.21.395; or

30 (v) Relocation and construction of a government-owned facility,
31 with written permission from the agency owning the facility and the
32 office of financial management.

33 (8) "Real property" means:

34 (a) Real property as defined in RCW 84.04.090; and

35 (b) Privately owned or used improvements located on publicly
36 owned land that are subject to property taxation or leasehold excise
37 tax.

38 (9) "Regular property taxes" means regular property taxes as
39 defined in RCW 84.04.140, except: (a) Regular property taxes levied
40 by port districts or public utility districts to the extent necessary

1 for the payments of principal and interest on general obligation
2 debt; and (b) regular property taxes levied by the state for the
3 support of the common schools under RCW 84.52.065. Regular property
4 taxes do not include excess property tax levies that are exempt from
5 the aggregate limits for junior and senior taxing districts as
6 provided in RCW 84.52.043. "Regular property taxes" does not include
7 excess property taxes levied by local school districts.

8 ~~((9))~~ (10) "Tax allocation base value" means the assessed value
9 of real property located within an increment area for taxes imposed
10 in the year in which the increment area (~~(is first designated)~~) takes
11 effect.

12 ~~((10))~~ (11) "Tax allocation revenues" means those revenues
13 derived from the imposition of regular property taxes on the
14 increment value.

15 ~~((11))~~ (12) "Taxing district" means a governmental entity that
16 levies or has levied for it regular property taxes upon real property
17 located within a proposed or approved increment area.

18 **Sec. 2.** RCW 39.114.020 and 2021 c 207 s 2 are each amended to
19 read as follows:

20 (1) A local government may designate an increment area under this
21 chapter and use the tax allocation revenues to pay public improvement
22 costs, subject to the following conditions:

23 (a) The local government must adopt an ordinance designating an
24 increment area within its boundaries and describing the public
25 improvements proposed to be paid for, or financed with, tax
26 allocation revenues;

27 (b) The local government may not designate increment area
28 boundaries such that the entirety of its territory falls within an
29 increment area;

30 (c) The increment area may not have an assessed valuation of more
31 than \$200,000,000 or more than 20 percent of the sponsoring
32 jurisdiction's total assessed valuation, whichever is less, when the
33 ordinance is passed. If a sponsoring jurisdiction creates two
34 increment areas, the total combined assessed valuation in both of the
35 two increment areas may not equal more than \$200,000,000 or more than
36 20 percent of the sponsoring jurisdiction's total assessed valuation,
37 whichever is less, when the ordinances are passed creating the
38 increment areas;

1 (d) A local government can create no more than two active
2 increment areas at any given time and they may not physically overlap
3 by including the same land in more than one increment area at any
4 time;

5 (e) The ordinance must set a sunset date for the increment area,
6 which may be no more than 25 years after the first year in which tax
7 allocation revenues are collected from the increment area;

8 (f) The ordinance must identify the public improvements to be
9 financed and indicate whether the local government intends to issue
10 bonds or other obligations, payable in whole or in part, from tax
11 allocation revenues to finance the public improvement costs, and must
12 estimate the maximum amount of obligations contemplated;

13 (g) The ordinance must provide that the increment area takes
14 effect on June 1st following the adoption of the ordinance in (a) of
15 this subsection;

16 (h) The sponsoring jurisdiction may not add additional public
17 improvements to the project after adoption of the ordinance creating
18 the increment area or change the boundaries of the increment area.
19 The sponsoring jurisdiction may expand, alter, or add to the original
20 public improvements when doing so is necessary to assure the
21 originally approved improvements can be constructed or operated;

22 (i) The ordinance must impose a deadline by which commencement of
23 construction of the public improvements shall begin, which deadline
24 must be at least five years into the future and for which extensions
25 shall be made available for good cause; and

26 (j) The local government must make a finding that:

27 (i) The public improvements proposed to be paid or financed with
28 tax allocation revenues are expected to encourage private development
29 within the increment area and to increase the assessed value of real
30 property within the increment area;

31 (ii) Private development that is anticipated to occur within the
32 increment area as a result of the proposed public improvements will
33 be permitted consistent with the permitting jurisdiction's applicable
34 zoning and development standards;

35 (iii) The private development would not reasonably be expected to
36 occur solely through private investment within the reasonably
37 foreseeable future without the proposed public improvements; and

38 (iv) The increased assessed value within the increment area that
39 could reasonably be expected to occur without the proposed public
40 improvements would be less than the increase in the assessed value

1 estimated to result from the proposed development with the proposed
2 public improvements.

3 (2) In considering whether to designate an increment area, the
4 legislative body of the local government must prepare a project
5 analysis that shall include, but need not be limited to, the
6 following:

7 (a) A statement of objectives of the local government for the
8 designated increment area;

9 (b) A statement as to the property within the increment area, if
10 any, that the local government may intend to acquire;

11 (c) The duration of the increment area;

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

13 (e) A description of the expected private development within the
14 increment area, including a comparison of scenarios with the proposed
15 public improvements and without the proposed public improvements;

16 (f) A description of the public improvements, estimated public
17 improvement costs, and the estimated amount of bonds or other
18 obligations expected to be issued to finance the public improvement
19 costs and repaid with tax allocation revenues;

20 (g) The assessed value of real property listed on the tax roll as
21 certified by the county assessor under RCW 84.52.080 from within the
22 increment area and an estimate of the increment value and tax
23 allocation revenues expected to be generated;

24 (h) An estimate of the job creation reasonably expected to result
25 from the public improvements and the private development expected to
26 occur in the increment area; and

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

29 (i) Affordable and low-income housing;

30 (ii) The local business community;

31 (iii) The local school districts; and

32 (iv) The local fire service.

33 (3) The local government may charge a private developer, who
34 agrees to participate in creating the increment area, a fee
35 sufficient to cover the cost of the project analysis and establishing
36 the increment area, including staff time, professionals and
37 consultants, and other administrative costs related to establishing
38 the increment area.

39 (4) Nothing in this section prohibits a local government from
40 entering into an agreement under chapter 39.34 RCW with another local

1 government for the administration or other activities related to tax
2 increment financing authorized under this section.

3 (5) If the project analysis indicates that an increment area will
4 impact at least 20 percent of the assessed value in a fire protection
5 district or regional fire protection service authority, or the fire
6 service agency's annual report demonstrates an increase in the level
7 of service directly related to the increment area, the local
8 government must negotiate a mitigation plan with the fire protection
9 district or regional fire protection service authority to address
10 level of service issues in the increment area.

11 (6) The local government may reimburse the assessor and treasurer
12 for their costs as provided in RCW 39.114.010(6)(e).

13 (7) Prior to the adoption of an ordinance authorizing creation of
14 an increment area, the local government must:

15 (a) Hold at least two public briefings for the community solely
16 on the tax increment project that include the description of the
17 increment area, the public improvements proposed to be financed with
18 the tax allocation revenues, and a detailed estimate of tax revenues
19 for the participating local governments and taxing districts,
20 including the amounts allocated to the increment public improvements.
21 The briefings must be announced at least two weeks prior to the date
22 being held, including publishing in a legal newspaper of general
23 circulation and posting information on the local government website
24 and all local government social media sites; and

25 (b) Submit the project analysis to the office of the treasurer
26 for review and consider any comments that the treasurer may provide
27 upon completion of their review of the project analysis as provided
28 under this subsection. The treasurer must complete the review within
29 90 days of receipt of the project analysis and may consult with other
30 agencies and outside experts as necessary. Upon completing their
31 review, the treasurer must promptly provide to the local government
32 any comments regarding suggested revisions or enhancements to the
33 project analysis that the treasurer deems appropriate based on the
34 requirements in subsection (2) of this section.

35 **Sec. 3.** RCW 39.114.040 and 2021 c 207 s 4 are each amended to
36 read as follows:

37 The local government designating the increment area must:

38 (1) Publish notice in a legal newspaper of general circulation
39 within the jurisdiction of the local government at least two weeks

1 before the date on which the ordinance authorizing creation of an
2 increment area is adopted that describes the public improvements,
3 describes the boundaries of the increment area, and identifies the
4 location and times where the ordinance and other public information
5 concerning the public improvement may be inspected; and

6 (2) Deliver a certified copy of the adopted ordinance to the
7 county treasurer, the county assessor, and the governing body of each
8 taxing district within which the increment area is located at the
9 respective addresses specified pursuant to RCW 42.56.040 within 10
10 days of the date on which the ordinance was adopted.

11 **Sec. 4.** RCW 39.114.050 and 2021 c 207 s 5 are each amended to
12 read as follows:

13 Apportionment of taxes shall be as follows:

14 (1) Commencing in the calendar year immediately following the
15 (~~passage of the ordinance~~) calendar year in which the increment
16 area takes effect in accordance with RCW 39.114.020, the county
17 treasurer shall distribute receipts from regular property taxes
18 imposed on real property located in the increment area as follows:

19 (a) Each taxing district shall receive that portion of its
20 regular property taxes produced by the rate of tax levied by or for
21 the taxing district on the tax allocation base value for that
22 increment area;

23 (b) The local government that designated the increment area shall
24 be entitled to receive an additional amount equal to the amount
25 derived from the regular property taxes levied by or for each taxing
26 district upon the increment value within the increment area. The
27 local government that designated the increment area shall receive no
28 more than is needed to pay or repay costs directly associated with
29 the public improvements identified in the approved ordinance and may
30 agree to receive less than the full amount of this portion, as long
31 as bond debt service, reserve, and other bond covenant requirements
32 are satisfied, in which case the balance of these tax receipts shall
33 be allocated to the taxing districts that imposed regular property
34 taxes, or have regular property taxes imposed for them, in the
35 increment area for collection that year in proportion to their
36 regular tax levy rates for collection that year. The local government
37 may request that the treasurer transfer this additional portion of
38 the property taxes to its designated agent. The portion of the tax
39 receipts distributed to the local government or its agent under this

1 subsection (1)(b) may only be expended to finance public improvement
2 costs associated with the public improvements financed in whole or in
3 part by tax increment financing; and

4 (c) This section shall not apply to any receipts from the regular
5 property taxes levied by:

6 (i) The state for the support of the common schools under RCW
7 84.52.065;

8 (ii) Local school district excess levies; and

9 (iii) Port districts or public utility districts specifically for
10 the purpose of making required payments of principal and interest or
11 general indebtedness.

12 (2) The apportionment of tax allocation revenues must cease when
13 the taxing district certifies to the county assessor in writing that
14 tax allocation revenues are no longer necessary or obligated to pay
15 public improvement costs, but in no event shall the apportionment of
16 tax allocation revenues continue beyond the sunset date established
17 pursuant to RCW 39.114.020(1)(e). Any excess tax allocation revenues
18 and earnings on the tax allocation revenues remaining at the time the
19 apportionment of tax receipts terminates must be returned to the
20 county treasurer and distributed to the taxing districts that imposed
21 regular property taxes, or had regular property taxes imposed for it,
22 in the increment area for collection that year, in proportion to the
23 rates of their regular property tax levies for collection that year.

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

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

36 (5)(a) For a local government having a designated increment area
37 under this chapter as of the effective date of this section, the
38 county assessor must adjust the tax allocation base value for that
39 increment area to include the assessed value of any privately owned
40 improvements located on publicly owned land for taxes imposed in the

1 year in which the increment area was first designated. However, no
2 adjustment is required if the increment area does not include any
3 privately owned improvements located on publicly owned land subject
4 to property taxation as of the date the increment area became
5 effective.

6 (b) The adjusted tax allocation base value under this subsection
7 (5) does not impact any apportionment and distribution under this
8 section occurring in calendar years before calendar year 2024.

9 **Sec. 5.** RCW 84.55.015 and 2014 c 4 s 2 are each amended to read
10 as follows:

11 If a taxing district has not levied since 1985 and elects to
12 restore a regular property tax levy subject to applicable statutory
13 limitations then such first restored levy must be set so that the
14 regular property tax payable does not exceed the amount which was
15 last levied, plus an additional dollar amount calculated by
16 multiplying the property tax rate which is proposed to be restored,
17 or the maximum amount which could be lawfully levied in the year such
18 a restored levy is proposed, by the increase in assessed value in the
19 district since the last levy resulting from:

20 (1) New construction;

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

27 (3) Improvements to property; ~~((and))~~

28 (4) Any increase in the assessed value of state-assessed
29 property; and

30 (5) Any increase in the assessed value of real property, as
31 defined in RCW 39.114.010, within an increment area as designated by
32 any local government in RCW 39.114.020 if the increase is not
33 included elsewhere under this section. This subsection does not apply
34 to levies by the state or by port districts or public utility
35 districts for the purpose of making required payments of principal
36 and interest on general indebtedness.

37 **Sec. 6.** RCW 84.55.020 and 2014 c 4 s 3 are each amended to read
38 as follows:

1 Notwithstanding the limitation set forth in RCW 84.55.010, the
2 first levy for a taxing district created from consolidation of
3 similar taxing districts must be set so that the regular property
4 taxes payable in the following year do not exceed the limit factor
5 multiplied by the sum of the amount of regular property taxes
6 lawfully levied for each component taxing district in the highest of
7 the three most recent years in which such taxes were levied for such
8 district plus the additional dollar amount calculated by multiplying
9 the regular property tax rate of each component district for the
10 preceding year by the increase in assessed value in each component
11 district resulting from:

12 (1) New construction;

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

19 (3) Improvements to property; ~~((and))~~

20 (4) Any increase in the assessed value of state-assessed
21 property; and

22 (5) Any increase in the assessed value of real property, as
23 defined in RCW 39.114.010, within an increment area as designated by
24 any local government in RCW 39.114.020 if the increase is not
25 included elsewhere under this section. This subsection does not apply
26 to levies by the state or by port districts or public utility
27 districts for the purpose of making required payments of principal
28 and interest on general indebtedness.

29 **Sec. 7.** RCW 84.55.030 and 2014 c 4 s 4 are each amended to read
30 as follows:

31 For the first levy for a taxing district following annexation of
32 additional property, the limitation set forth in RCW 84.55.010 must
33 be increased by an amount equal to the aggregate assessed valuation
34 of the newly annexed property as shown by the current completed and
35 balanced tax rolls of the county or counties within which such
36 property lies, multiplied by the dollar rate that would have been
37 used by the annexing unit in the absence of such annexation, plus the
38 additional dollar amount calculated by multiplying the regular
39 property tax levy rate of that annexing taxing district for the

1 preceding year by the increase in assessed value in the annexing
2 district resulting from:

3 (1) New construction;

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

10 (3) Improvements to property; ~~((and))~~

11 (4) Any increase in the assessed value of state-assessed
12 property; and

13 (5) Any increase in the assessed value of real property, as
14 defined in RCW 39.114.010, within an increment area as designated by
15 any local government in RCW 39.114.020 if the increase is not
16 included elsewhere under this section. This subsection does not apply
17 to levies by the state or by port districts or public utility
18 districts for the purpose of making required payments of principal
19 and interest on general indebtedness.

20 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of
22 the state government and its existing public institutions, and takes
23 effect immediately.

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