

Financing Public Infrastructure under the LIFT Statute

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The Local Infrastructure Financing Tool (“LIFT”) program provides a form of tax increment financing for public infrastructure projects within revenue development areas (“RDAs”) created by a local government. Chapter 39.102 RCW. The key feature of the LIFT program is a state sales and use tax credit available to local governments that are successful in applying for and meeting the relatively complex ongoing requirements associated with this state support. The 2007 legislature recently passed amendments to the LIFT statute. 2007 Wash. Laws ch. 229. Most notably, the 2007 amendments increase the amount of the state contribution available through the state sales and use tax credit mechanism. The maximum aggregate state contribution is increased from \$5 million to \$7.5 million per state fiscal year. The 2007 amendments also include technical changes designed to facilitate financing through the LIFT program as well as changes to the process and timing of applications for state support.

The LIFT statute authorizes certain “local governments,” including cities, towns, counties, port districts and federally recognized Indian Tribes, to participate in a “revenue development area” for the purpose of financing local infrastructure projects. RDAs are initiated by a city, town, county or tribe (or any combination), as sponsoring or co-sponsoring local government(s), and may involve other local governments as participating local governments and participating taxing districts by interlocal agreement. The local infrastructure projects are intended to encourage private development to generate increased tax revenues within the RDA; the increased state and local tax revenues are, in turn, necessary preconditions to receipt of the state sales and use tax credit. In this manner, the LIFT program is a form of tax increment financing, using the increased tax revenues generated by private development to finance the public infrastructure to attract such private development.

Establishing a Revenue Development Area

The LIFT statute includes a number of threshold requirements for formation of an RDA:

- As amended, the LIFT statute generally limits the creation of RDAs to one per county (except in counties with a demonstration project, including Whatcom, Spokane and Clark counties, and except for RDAs created by sponsoring local governments located in more than one county).
- The 2007 legislation does not permit an RDA to overlap with a hospital benefit zone (e.g., in the Gig Harbor area) or with another RDA.
- The statute requires that: (a) the assessed value of taxable property included within the RDA not exceed \$1 billion, (b) the average assessed value of taxable property within the RDA, as of January 1 of the year the application is submitted, not exceed \$70 per square foot, (c) the property within the RDA be contiguous, (d) the RDA not include more than 25% of the assessed value of taxable property within the sponsoring local government (including any co-sponsor), and (e) RDA boundaries not be drawn purposely to exclude areas where economic development is unlikely (i.e. no gerrymandering).
- The following procedural requirements must be satisfied, among others:
 - Certain planning, studies and findings are required by the statute.

- Any participating local jurisdictions and taxing districts must agree to allocate incremental sales and use taxes or property taxes or other local funds to public infrastructure within the RDA.
- The statute requires that notice be published, posted and sent to certain property owners, businesses and organizations.
- A public hearing must be held prior to the final adoption of the ordinance authorizing the RDA. The 2007 amendments remove the requirement that the hearing be held at least 30 days prior to the adoption of the ordinance.
- The sponsoring (and any co-sponsoring) local government must adopt an ordinance or other legislative action approving the RDA.
- The sponsoring local government or any local participants enter into (or expect to enter into) a contract with the private developer or receive a letter of intent from a private developer regarding development of private improvements with the RDA.

Sources of Funding

The LIFT statute authorizes the dedication of three main sources of tax revenue to project financing: local property taxes, local sales and use excise taxes and a state sales and use tax credit. Participating taxing districts and the sponsoring local government are authorized to dedicate incremental increases in local property tax revenues to the infrastructure project. Participating local governments are also authorized to dedicate incremental increases in local sales and use tax revenues to finance the improvements. The sponsoring local government may impose a new sales and use tax within the redevelopment area to be credited against the state sales and use tax. Neither the local sales and use tax revenues nor the local property tax revenues may constitute more than 80% of the total local funds dedicated to the project (under the 2007 amendments, this requirement applies beginning in the fifth calendar year after the calendar year in which the sponsoring local government begins allocating local excise tax allocation revenues). These funding sources interact and are subject to limitations under the LIFT statute, as illustrated on the attached chart.

Local Property Tax Contribution

The statute includes defined terms that govern the distribution of local regular property taxes within the RDA. First, “property tax allocation revenue value” (the “increment value”) basically includes 75% of increased assessed value in the RDA from new construction. Second, “property tax allocation base value” (the “base value”) includes the assessed value in the RDA when formed, the other 25% of increased assessed value from new construction, plus other increases in assessed value. Local governments within the RDA that have entered into a written agreement with a sponsoring local government to contribute some or all local property tax allocation revenues or other local revenues for local infrastructure financing are referred to as “participating taxing districts” in the statute.

After creation of the RDA the county treasurer allocates local regular property taxes within the RDA to participating tax districts and the sponsoring local government based on the base value, and allocates additional local regular property taxes within the RDA to the sponsoring local government based on the increment value. These property tax allocations do not include excess levies, state levies for the support of common schools, public utility district levies for debt service or levy lid lift funds for specific purposes.

Local Excise (Sales and Use) Tax Contribution

Each participating jurisdiction may allocate increased sales and use taxes within the RDA to finance public infrastructure costs. Local governments within the RDA that have entered into a written agreement with a sponsoring local government to contribute increased sales and use taxes or other local revenues for local

infrastructure financing are referred to as “participating local governments” in the statute. The increase in local sales and use taxes is determined by comparing the amount of these taxes generated by taxable activity in the RDA in the “measurement year” compared to the “base year”.

For purposes of this equation, the “base year” is the first calendar year following the calendar year in which the RDA is approved for a project award, provided that the approval is granted before October 15th. If approval is received on or after October 15th but on or before December 31st, the “base year” is the second calendar year following the calendar year in which such approval is received. “Measurement year” means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure state and local excise tax allocation revenues.

State Contribution

The annual state contribution limit is increased in the 2007 legislation from \$5 million dollars to \$7.5 million. Up to \$2.5 million of the state contribution may be allocated to the three named demonstration projects (the Bellingham Waterfront Redevelopment Project, the Spokane River District Project, and the Vancouver Riverwest Project). For these three demonstration projects, the award for the Bellingham Waterfront Redevelopment Project and the Spokane River District Project is limited to \$1 million each per year and the award for the Vancouver Riverwest Project is limited to \$500,000 per year. The remaining state contribution is available through a competitive application process. Before imposing the state sales and use tax credit, a sponsoring local government and any co-sponsoring local government must apply to the Community Economic Revitalization Board (“CERB”) and be approved for a project award amount. The state approval will set forth an award amount that is equivalent to the maximum amount that the state will invest in the project. The 2007 legislation created two “rounds” for submitting an application for a project award amount.

- 2007 Round. The 2007 round authorized no more than \$2.5 million in competitive funding for applications received by the July 1, 2007 deadline.
- 2008 Round. Applications for the 2008 round are due July 1, 2008. No more than \$5 million (including 2007 awards) in competitive funding is available.
- The statute includes the criteria for CERB review of applications.

Once a sponsoring local government has received a project award, it may impose a sales and use tax to be credited against the state sales and use tax. The amount of state sales tax credit received each year by the sponsoring local government is limited to the lesser of:

- \$1 million.
- The amount of the project award.
- The amount of local matching funds (consisting of local sales and use tax allocation revenues, local property tax allocation revenues and other revenues from local public sources dedicated in the prior calendar year to financing the LIFT public infrastructure) reported to the state.
- The amount of increased revenue received by the state in the RDA (including state sales and use tax allocation revenues and state property tax allocation revenues) in the prior calendar year.

A worksheet illustrating the methodology for determining the amount of the annual state contribution to a project is available from CERB at

<http://www.cted.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=3833&MIId=877&wversion=Staging>. As noted above, the timing of the receipt of the state sales tax credit is affected by the local match requirements for the state credit. Because the state sales tax credit is based on local matching funds dedicated in the prior calendar year, it is important for planning purposes to recognize that the state sales tax credit lags behind by one year. A dip in local revenues will, therefore, affect the year in which the local revenue dip occurs as well as the state sales taxes in the following year.

Eligible Public Infrastructure

The funding sources identified above must be used for “local infrastructure financing”. The 2007 amendments revised the local infrastructure financing permitted under the statute to include pay-as-you-go expenditures (prior to the date that debt service payments on bonds commence) as well as debt service on bonds issued to finance public improvements. The public infrastructure improvements must be located within the RDA. Eligible public improvements include:

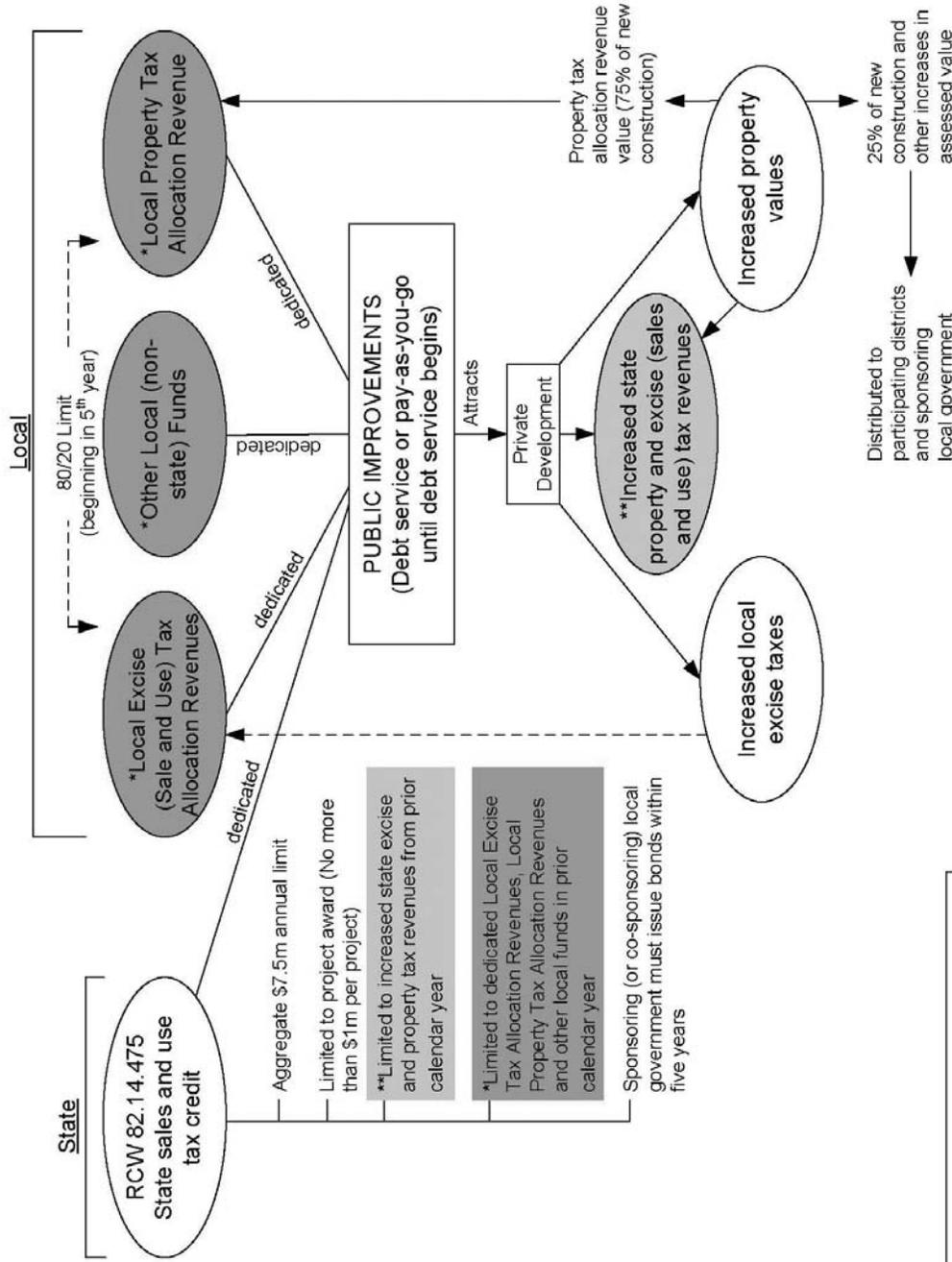
- Street, bridge and road construction and maintenance
- Water and sewer system construction and improvements
- Sidewalks, traffic controls and street lights
- Parking, terminal and dock facilities
- Park and ride facilities of a transit authority
- Park facilities and recreational areas
- Storm water and drainage management systems
- Expenditures for facilities and improvements that support affordable housing

The improvements cannot include projects funded with voted sales taxes available to public facilities districts. The financing is likely to be in the form of limited tax general obligation bonds issued by the sponsoring local government, although the statute authorizes revenue bonds (the statutory requirements and limitations with respect to revenue bonds are challenging). The 2007 legislation requires that bonds be issued by the fifth year in which the state sales and use tax credit is imposed.

Summary

The LIFT statute, as amended in 2007, provides some state funding for public infrastructure improvements designed to attract private development to generate additional tax revenues. As described above, the statute permits the formation of RDAs that meet specific statutory criteria and requires approval from CERB for the state sales and use tax credit. Successful applicants may receive up to \$1 million per year to finance public infrastructure, over a term of up to 25 years. The timeline for applying to CERB for state support is tight, particularly with respect to the 2007 application round.

Please let us know if you have any questions or need more information.



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