

LOCAL TAX INCREMENT FINANCING LEGAL FRAMEWORK IN WASHINGTON

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Presented by:

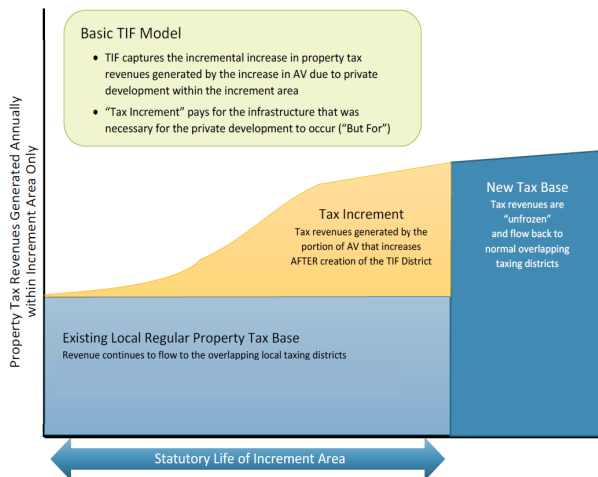
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BASIC TIF FINANCING MODEL



- "Growth Pays For Growth"
- In other states, new property tax assessments imposed within TIF district pay for the public improvements
- In Washington:
 - 1980s: Models based on other States met State constitutional hurdles
 - Non-uniformity of property taxes
 - Gifting of public funds/Lending of credit
 - No capture of State property tax for public schools (Leonard v. Spokane, 127 Wn.2d 194, 897 P.2d 358 (1995))



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WHAT'S WITH TIF AND WASHINGTON STATE? A BRIEF HISTORY LESSON

- 1980s – State Constitutional Challenges
- 2000s “TIF-Lite” Programs (CRF, HBZ, LIFT, LRF, LIPA)
 - Replaced State property tax with credit against State sales tax
 - Relied on allocation or contribution of local revenues
 - Property tax increment
 - Local sales tax contribution
- 2000s TIF-Lite Still Faced Policy & Political Hurdles
 - State General Fund contribution became politically problematic
 - Overlapping Taxing Districts push back against revenues being captured
 - Certain key legislators worry that TIF is a “handout to developers”
 - Heavy reliance on sales tax drives toward commercial development and can exacerbate housing and environmental pressures

Washington’s TIF & TIF “Lite” Tools

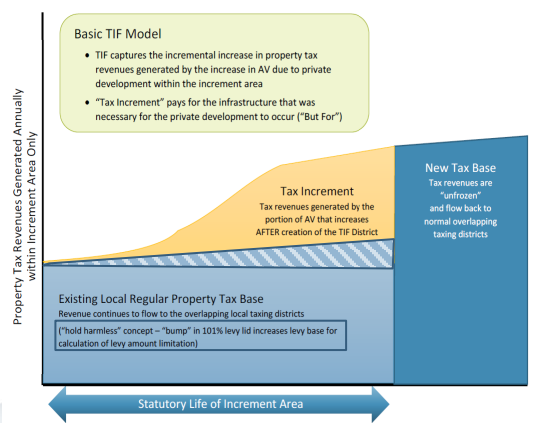
Year Enacted	Tool	RCW	
1982	CDRA	Community Development Refinancing Act	39.88*
2001	CRF	Community Revitalization Financing	39.89
2006	HBZ	Hospital Benefit Zones	39.100
2006	LIFT	Local Infrastructure Financing Tool	39.102
2009	LRF	Local Revitalization Financing	39.104
2011	LIPA	Local Infrastructure Project Areas	39.108
2021	LTIF	Local Tax Increment Financing	39.114

*Struck down in 1995 by *Leonard v. Spokane*



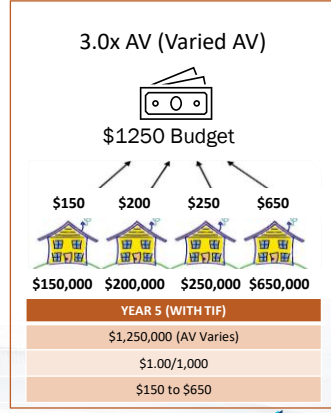
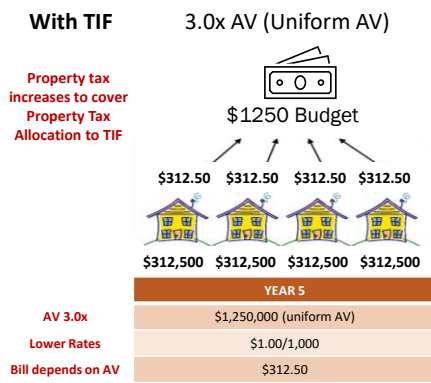
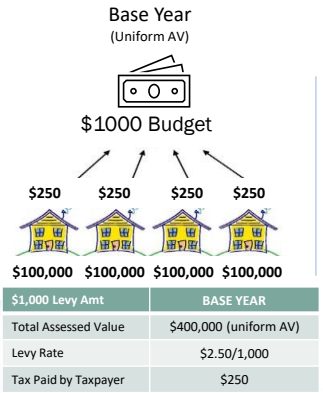
WHAT'S DIFFERENT ABOUT 2020S LTIF?

- **Minimal State Role**
 - **No State \$\$ contribution or limit on participation**
 - State Treasurer’s Office reviews Project Analysis, but not an “approval”
- **Overlapping Districts’ Role**
 - **Local Sales Tax Excluded**
 - Overlapping districts keep upside
 - **Local Property Taxes**
 - Excludes excess levies
 - Captures only “Tax Allocation Revenues” (regular levy revenues from incremental increase in AV within increment area)
 - Levy lid lift “hold harmless”
 - **Local Participation**
 - No “opt in” or “opt out”
 - Funding “mitigation plan” for fire, hospital and emergency services required



IMPACT OF LTIF ON PROPERTY TAXES

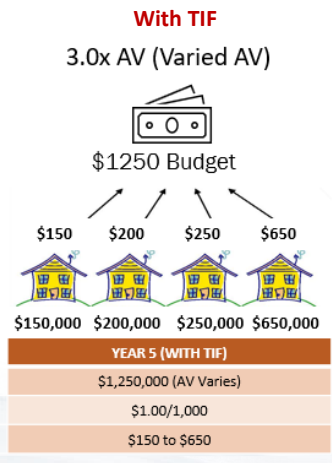
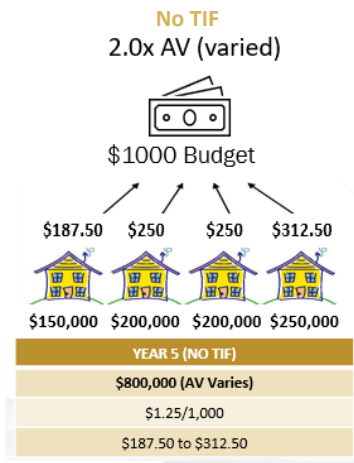
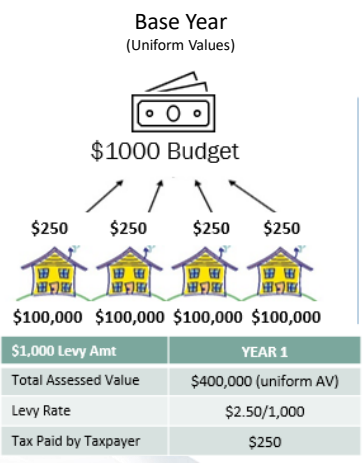
- Individual taxpayers will be affected based on whether their AV increases faster or slower than the AV in the IA
 - If an individual property's value increases at SAME or FASTER rate than the property in the IA, tax due will increase
 - If individual property's value increases more SLOWLY, tax due will decrease



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IMPACT OF LTIF ON PROPERTY TAXES



NUTS AND BOLTS OF LTIF (OVERVIEW OF CHAPTER 39.114 RCW)

- Available to **cities, counties and ports**
 - Project/site specific
 - LTIF is intended for a specific project/site
 - Must be a degree of certainty that the infrastructure will directly result in development
 - NOT “build it and they will come”
- The **“But for”** test:
 - Would the private development otherwise occur (within the reasonably foreseeable future) but for an investment in infrastructure?
 - Requires relatively sophisticated projections and financial models
 - Consider using outside professionals who may be more equipped to crunch the numbers and provide an outside point of view
 - Select assumptions carefully and test them



WHAT ARE ELIGIBLE “PUBLIC IMPROVEMENTS”?

“Public Improvements”

- **Infrastructure improvements** listed in statute
 - **Owned** by a **state** or **local government*** **within** or outside of and **serving** the increment area
 - Includes **real property owned or acquired by a local government* within** the increment area
 - **“Real Property”** includes real property and private improvements located on public property subject to leasehold excise tax or property tax
- **Eligible expenditures** for any of the following purposes:
 - **Housing** - for the purpose of creating or preserving long-term affordable housing
 - **Child care facilities** – for children/youth who are low-income, homeless, or in foster care
 - **Maintenance and security** for the public improvements
 - **Historic preservation** activities
 - **Relocation** and construction of a government-owned facility, with written permission from the agency owning the facility and the Office of Financial Management.

Infrastructure improvements:

- Street and road construction
- Water and sewer system construction and improvements
- Sidewalks and other non-motorized transportation improvements and streetlights
- Parking, terminal, and dock facilities
- Park and ride facilities or other transit facilities
- Park and community facilities and recreational areas
- Stormwater and drainage management systems
- Electric, broadband, or rail service
- Mitigation of brownfields

*Local government means any city, town, county, port district, or any combination thereof.



WHAT ELSE IS INCLUDED? ("PUBLIC IMPROVEMENT COSTS")

"Public Improvement Costs" means:

- Costs of the "Public Improvements" identified in the ordinance (including **hard** and **soft** costs)
- **Relocating property and utilities** (including maintaining and operating property during construction)
- **Financing costs** (including capitalized interest (up to six months), legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary debt service reserves)
- **Expenses incurred** by the **County** Assessor and Treasurer ("actual staff and software costs" directly related to implementation and ongoing administration)
- **Administrative expenses** incurred by the sponsoring local government (incl. feasibility studies and costs incurred before adoption of the ordinance)
- Funding for **mitigation to impacted taxing districts**



MITIGATION TO IMPACTED TAXING DISTRICTS



A "Mitigation Plan" is Required if:

- Increment Area will impact $\geq 20\%$ of the assessed value in a hospital or fire district, or
- District asserts (in annual report or board-adopted plan) a need for an increase in the level of service directly related to the increased development in the increment area

Requirement:

- Sponsoring local government must enter into negotiations for a mitigation plan with the impacted district to address level of service issues in the increment area
- If no agreement, arbitration is required to develop a mitigation plan

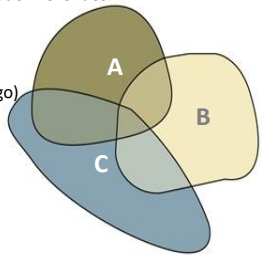
Other Considerations:

- No specific content requirements for the "mitigation plan"
- Sponsoring local government may include the costs to fund that mitigation plan in the "public improvement costs" to be funded
- The mitigation plan must be developed and agreed to before ordinance adoption



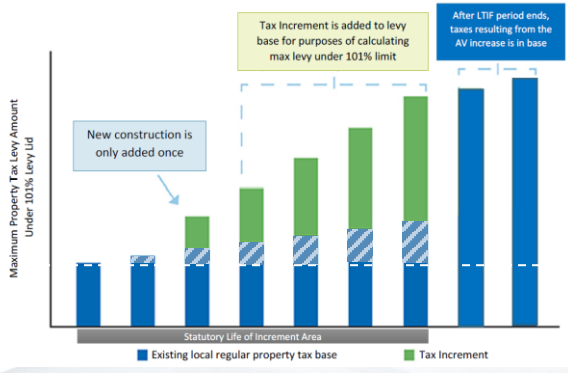
WORKING WITH OVERLAPPING DISTRICTS

- Communication with overlapping taxing districts is critical
- Talking points:
 - Public improvements that are TIF-financed 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 allocation revenues.
 - Property Tax Allocation:
 - Applies to regular local property taxes only
 - Limited to amount needed to pay for the Public Improvements (including debt service and pay-as-you-go)
 - Additional revenues are allocated back to the overlapping districts
 - How is the 101% Levy Lid and calculation of my highest lawful levy (HLL) affected?
 - $HLL = (\text{highest prior levy amount} * 101\%) + \text{adjustments for new construction, etc.} + \text{TIF Growth Adjustment}$
 - TIF Growth Adjustment
 - Increase in AV of real property within the IA, *excluding new construction*
 - New construction within the IA is added only once
 - TIF Growth Adjustment is added only once



“HOLD HARMLESS” AND “GROWING THE PIE”

- The 101% Levy Lid Problem
 - Taxing districts are limited to 1% growth in tax revenues
 - Any increase in AV *does not result in more tax revenue*
 - Overlapping taxing districts lose revenue when it is apportioned
- LTIF addresses this by:
 - Adding a TIF growth adjustment to the Highest Lawful Levy under 101% Lid
 - TIF Growth Adjustment gives credit to all overlapping taxing districts for the increase in AV that occurs in the IA
 - Adds increase in AV of real property within the IA, *excluding new construction* (new construction already added)
 - TIF Growth Adjustment is added only once each year



LTIF PROCEDURAL STEPS

Public Process

- **At least 90 days before ordinance**
 - Notice to County & overlapping taxing districts
 - Submit Project Analysis to State Treasurer's Office
- **Hold 2+ "public briefings"**
 - May be held no earlier than 90 days after submitting Project Analysis
 - Publish notice two weeks in advance
 - Sole topic = the tax increment project
 - Describe Public Improvements
 - "Detailed estimate" of tax revenues for all taxing districts and increment to be used

Project Analysis & Findings

- **Project Analysis feedback from OST**
- **Findings required in Ordinance**
 - Public Improvements are expected to encourage private development and to increase the assessed value
 - Expected private development is consistent with current zoning and development standards
 - "BUT FOR" TEST:
 - Private development would not occur "within the reasonably foreseeable future" without the Public Improvements
 - Assessed value increase would be less without the Public Improvements

Adopt Ordinance

- **Other Ordinance Contents**
 - Findings supported by Project Analysis
 - Designate boundaries of IA
 - Identify the Public Improvements
 - Identify maximum \$ amount of bonds to be issued
 - Deadline to commence construction of Public Improvements, *at least 5 years "into the future"*
 - Effective June 1 of *next* calendar year
 - Set a "sunset" date (25 yrs)

Certified copy of ordinance must be delivered to County Treasurer, County Assessor and each overlapping taxing district within 10 days



FORMATION CONSIDERATIONS

Formation Limitations

- **Geographic Limits**
 - Maximum two active Increment Areas per sponsoring jurisdiction
 - May not overlap
 - May not be 100% of sponsor's territory
- **Assessed Value Limits**
 - *Aggregate AV* of all IA's must be less than \$200 million or 20% of total AV (whichever is less)

Senate Bill 5801 provided special authorization for Bellevue to exceed maximum AV and other requirements.

Ordinance Considerations

- **Once Ordinance is adopted**
 - No changes to boundaries of Increment Area
 - May not change the Public Improvements to be financed
 - Exception: may "expand, alter or add to" the Public Improvements only "when doing so is necessary to assure the originally approved improvements can be constructed or operated"

Other Timing Considerations

- **Duration of Increment Area**
 - Limited to the time necessary to pay the Public Improvement Costs (including bonds)
 - Sunset Date
 - Max 25 years after first year in which tax allocation revenues are collected
 - Tax Allocation Revenues begin to be collected in calendar year after formation is effective

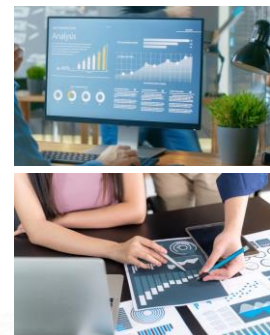


WHAT IS THE STATE'S ROLE?

- **State does not contribute money to or approve LTIF**
- **A Project Analysis** must be submitted to the State Treasurer's Office (approx. 90-day turnaround)
 - Not an "approval"...just a mandatory consultation process. Expect it to be iterative.
- **Tips for sponsoring jurisdictions**
 - Contact Office of the State Treasurer (OST) before you send off your submission
 - Provide such additional information as may be requested by OST
 - If providing projections:
 - Be prepared to delve into assumptions and methodology for all projections
 - Be prepared to kick the tires on projections of Assessed Value, Increment Value and Tax Allocation Revenues
 - Consider any comments that OST may provide and adjust project or plans accordingly
 - Make sure there is plenty of time

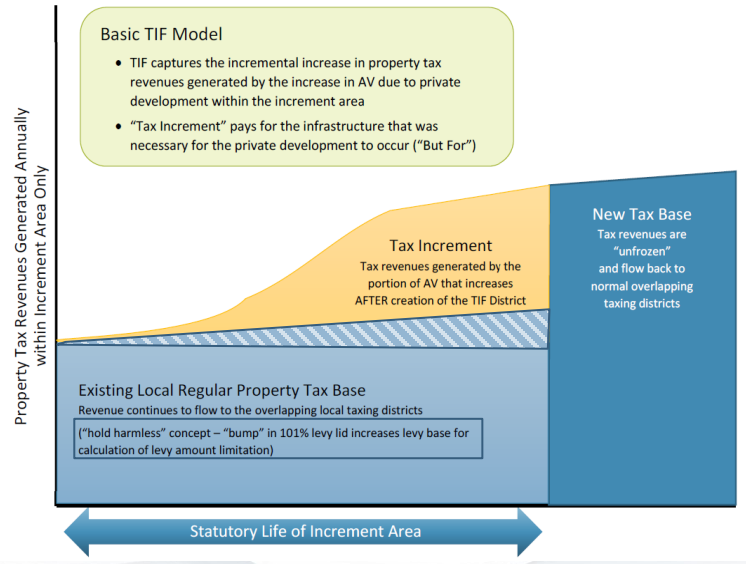
PROJECT ANALYSIS

- **What is in the Project Analysis?**
 - Objectives for the increment area
 - Statement re: property to be acquired by the sponsoring jurisdiction
 - Duration and boundaries (parcels) to be included in the increment area
 - Description of the expected private development, including a comparison of scenarios with and without the proposed public improvements
 - Description of the public improvements, estimated public improvement costs, and the estimated amount of bonds or other obligations expected to be issued
 - Assessed value within the increment area and estimate of tax allocation revenues expected
 - Estimate of the job creation (from public improvements and private development)
 - An assessment of any impacts and any necessary mitigation on: affordable and low-income housing; local business community; local school districts; local fire service, public hospital service, and emergency medical services
 - Assessment must include "any necessary mitigation" to fire, public hospital, and emergency medical service
 - Must include an "assessment of" impacts to other junior taxing districts



DEBT ISSUANCE

- Policy Considerations for Issuing Debt
 - Not Tax Allocation Bonds (revenue bond authorization is of limited utility)
 - What level of risk can the Sponsoring Jurisdiction tolerate?
 - General Obligation Bonds create an “indebtedness” that counts against Sponsoring Jurisdiction’s debt ca
 - Sponsoring Jurisdiction is on the hook
 - No State backstop and no guarantee that there will be any increase in the increment value
 - What happens if the private development does not materialize? How good are the projections?
 - How much can we afford?
 - Conservative structuring requires:
 - Realistic projections – tax allocation revenues, increment value
 - Understanding timing of potential development - When will sufficient tax revenues be generated?
 - Good construction estimates
- And finally....Make sure your Bond Counsel is involved in the early stages!



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