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Alabama Tax Increment Districts

TITLE 11. COUNTIES AND MUNICIPAL CORPORATIONS SUBTITLE 3. PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS CHAPTER 99. TAX INCREMENT DISTRICTS

§ 11-99-1. Legislative declaration

(a) It is hereby found and declared that there exist in municipalities and counties of the state blighted or economically distressed areas which constitute a serious and growing problem, injurious to the public health, safety, morals, and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability imposing onerous burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests sound growth, retards the provision of housing accommodations, aggravates traffic problems and substantially hampers the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blighted areas and economically distressed areas is a matter of state policy and state concern in order that the state and its municipalities and counties shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of public revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

(b) It is further found and declared that certain blighted and economically distressed areas or portions thereof may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of blight and economic distress may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils enumerated may be eliminated, remedied, or prevented; and that salvageable blighted and economically distressed areas can be conserved and rehabilitated through appropriate public action as herein authorized and the cooperation and voluntary action of the owners and tenants of property in such areas.

(c) It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain and police power exercised, and the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

§ 11-99-2 Definitions

(1) BLIGHTED OR ECONOMICALLY DISTRESSED AREA:

a. An area in which the structures, buildings, or improvements, by reason of dilapidation, deterioration, age, or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and are detrimental to the public health, safety, morals, or welfare, or

b. Any area which by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquencies exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of the foregoing, substantially impairs or arrests the sound economic growth of an area, retards the provision of housing accommodations, or constitutes an economic or social liability and is a detriment to the public health, safety, morals, or welfare in its present condition and use, or

c. Any area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound economic growth of an area, or

d. Any area which the local governing body certifies is in need of redevelopment or rehabilitation as a result of flood, fire, hurricane, tornado, earthquake, storm, or other catastrophe respecting which the Governor of the state has certified the need for disaster assistance under federal law, or

e. Any area containing excessive vacant land on which structures were previously located, or on which are located abandoned or vacant buildings or old buildings, or where excessive vacancies exist in existing buildings, or which contains substandard structures, or with respect to which there exist delinquencies in payment of real property taxes.

(2) DEFERRED TAX RECIPIENT. Each public entity, other than state, which receives ad valorem taxes with respect to property located in a proposed tax increment district.

(3) LOCAL FINANCE OFFICER. The legally authorized officer or agent responsible for receipt and disbursement of the revenues of a public entity.

(4) LOCAL GOVERNING BODY. The governing body of a county or municipality which proposes to create or has created a tax increment district.

(5) MUNICIPALITY. Any incorporated municipality in this state.

(6) PROJECT. Undertakings and activities of a public entity in a tax increment district for the elimination and prevention of the development or spread of blight and may include property acquisition, property clearance, redevelopment, rehabilitation, or conservation or a combination or part thereof in accordance with a project plan.

(7) PROJECT COSTS. Any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by a public entity which are listed in a project plan as costs of public works or improvements within a tax increment district, plus any costs incidental thereto, diminished by any special assessments, received or reasonably expected to be received by the public entity in connection with the implementation of the project plan. Project costs include, but are not limited to:

a. Capital costs, including the costs of the construction of public works or improvements, new buildings, structures, and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and fixtures, the acquisition of equipment, the acquisition, clearing and grading of land and the acquisition of interests in land;

b. Financing costs, including all interest paid to holders of tax increment obligations during the period of implementation of the project plan, the costs of any form of credit enhancement, printing and trustee costs, and any premium paid in excess of the principal amount thereof because of the redemption of such obligations prior to maturity;

c. Real property assembly costs, meaning any deficit resulting from the sale or lease as lessor by the public entity of real or personal property within a tax increment district for consideration which is less than its cost to the public entity;

d. Professional service costs, including those costs incurred for architectural, planning, engineering, fiscal, underwriting, and legal advice and services;

e. Imputed administrative costs, including reasonable charges for the time spent by officers and employees of the public entity in connection with the implementation of a project plan;

f. Relocation costs, including those relocation payments made following condemnation under Chapter 1A of Title 18;

g. Organizational costs, including the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of tax increment districts and the implementation of project plans;

h. The amount of any contributions made in connection with the implementation of the project plan that are within limits prescribed by law; and

i. Payments made, at the discretion of the local governing body, which are to be necessary or convenient to the creation of tax increment districts or the implementation of project plans.

(8) **PROJECT PLAN.** The properly approved plan for the development or redevelopment of a tax increment district, including all properly approved amendments thereto.

(9) **PUBLIC ENTITY.** Any municipality or county in the state.

(10) **TAX INCREMENT.** That amount obtained by multiplying the total revenue derived from ad valorem taxes levied by all local taxing authorities on all taxable property within a tax increment district in any tax year by a fraction having a numerator equal to that tax year's market value of all taxable property in the district minus the tax increment base and a denominator equal to that tax year's equalized value of all taxable property in the district. In any tax year, a tax increment is "positive" if the tax increment base is less than the aggregate value of taxable property as equalized by the Department of Revenue; it is "negative" if the base exceeds such value.

(11) **TAX INCREMENT BASE.** The aggregate value, as equalized by the Department of Revenue, of all taxable property located within a tax increment district on the date the district is created, determined as provided in Section 11-99-4 hereof.

(12) **TAX INCREMENT DISTRICT.** A contiguous geographic area within the boundaries of a public entity defined and created by resolution of the local governing body.

(13) **TAX INCREMENT FUND.** A fund into which all tax increments not retained by a taxing unit as provided by Section 11-99-10(b) hereof are paid, and from which money is disbursed to satisfy claims of holders of tax increment obligations issued for the tax increment district.

(14) **TAX INCREMENT OBLIGATIONS.** Bonds, warrants, notes or other evidences of indebtedness issued by a public entity to fund all or any project costs.

(15) **TAXABLE PROPERTY.** All real and personal property located in a tax increment district which is subject to ad valorem taxation on the date of adoption of the resolution creating the tax increment district.

§ 11-99-3 Powers of municipalities and counties.

In addition to any other powers conferred by law, each municipality and county in the state shall have and may exercise any powers necessary and convenient to carry out the purposes of this chapter, including the power to:

- (1) Create tax increment districts and to define the boundaries thereof;
- (2) Cause project plans to be prepared, to approve plans, and to implement the provisions and effectuate the purposes of project plans;
- (3) Issue tax increment obligations;
- (4) Deposit moneys into the tax increment fund for any tax increment district; and
- (5) Enter into any covenants, contracts or agreements, including conditions, restrictions or covenants which either run with the land or otherwise regulate the use of the land and any covenants, contracts and agreements with or for the benefit of holders of tax increment obligations, determined by the local governing body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans.

§ 11-99-4 Creation of tax increment districts and approval of project plans.

In order to exercise its powers under this chapter, a public entity shall take the following steps:

- (1) The local governing body shall hold a public hearing at which all interested parties are afforded a reasonable opportunity to express their views on the concept of tax increment financing, on the proposed creation of a tax increment district and its proposed boundaries, and its benefits to the public entity. Notice of the hearing shall be published in a newspaper of general circulation in either the county or in the city, as the case may be, in which the proposed tax increment district is to be located with such notice to be published at least twice in the 15-day period immediately preceding the date of the hearing. Prior to publication, a copy of the notice shall be sent by first class mail to the chief executive officer of each deferred tax recipient.
- (2) In addition to the notice required by subdivision (1) of this section, and either before or after such hearing, the local governing body shall make a written submission to the governing body of each deferred tax recipient. The submission shall include a description of the proposed boundaries of the tax increment district, the tentative plans for the development or redevelopment of the tax increment district, and an estimate of the general impact of the proposed project plan on property values and tax revenues. Not later than the fifteenth day after the date on which the notice required by subdivision (1) of this section is mailed, each deferred tax recipient shall designate a representative empowered to meet with the local governing body to discuss the project plan and the tax increment financing and shall notify the local governing body of its designation. Failure

of any deferred tax recipient to designate a representative within the said 15-day period, or to notify the local governing body of its designation, shall not prevent the local governing body from proceeding hereunder. If a deferred tax recipient which has failed to so designate a representative shall thereafter designate a representative and shall notify the local governing body of such designation, such representative shall be entitled to notice of any meetings held thereafter pursuant to this section, and shall be entitled to attend such meetings, but shall have no right to have matters discussed again which have already been discussed. The local governing body shall call a meeting, or meetings, of the representatives of the deferred tax recipients to be held at any time after 20 days from the mailing notice referred to in subdivision (1) of this section. Each representative shall be notified of each meeting at least three days before it is to be held, but such notice may be waived. At the meetings the local governing body and the representatives of the deferred tax recipients may discuss the boundaries of the tax increment district, development within such district, the exclusion of particular parcels of property from such district, and tax collection for such district. On the motion of the local governing body any other matter relevant to the proposed tax increment district may be discussed.

(3) The local governing body shall adopt a resolution (which need not be published) which:

a. Describes the boundaries of the tax increment district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included, which shall include only those whole units of property (other than publicly-owned property such as streets, easements and rights of ways) assessed for general property tax purposes and, if the public entity is a county, which shall include only those areas which lie outside the corporate limits of any municipality, unless the governing body of a municipality has consented to the inclusion of land within its corporate limits within a tax increment district formed by a county;

b. Creates the tax increment district as of a given date after the date of adoption of the resolution, and fixes the period for its duration, which may be for a period not to exceed 30 years, unless an amendment is made to the project plan under subdivision (7) of this section;

c. Assigns a name to the tax increment district for identification purposes, such as "tax increment district number one";

d. Contains findings (which shall not be subject to review except after a showing of fraud, corruption or undue influence) that:

1. Not less than 50 percent, by area, of the real property within the tax increment district is a blighted area and is in need of rehabilitation or conservation work; and

2. The aggregate value of equalized taxable property in the district plus all existing districts created by the public entity does not exceed 10 percent of the total value of equalized taxable property within the public entity.

(4) The local governmental body shall prepare and adopt a project plan for each tax increment district. The plan shall include a statement listing the kind, number, and location of all proposed public works or improvements within the district; a detailed list of estimated project costs; and a description of the methods of financing all estimated project cost and the time when related costs or monetary obligations are to be incurred. The project plan shall also include: a map showing existing uses and condition of real property in the district; a map showing proposed improvements and uses therein; proposed changes of zoning, master map plan, building code, and other ordinances or resolutions affecting the district; a list of estimated nonproject costs; and a proposed plan for the relocation of families, persons, and businesses to be temporarily or permanently displaced from housing or commercial facilities in the district by implementation of the plan.

(5) The local governing body shall certify before approving the project plan that:

a. The proposed tax increment district on the whole has not been subject to growth and development through investment by private enterprise and it is not reasonable to anticipate that the land in the district will be developed without the adoption of the project plan;

b. A feasible method exists for the relocation and compensation of individuals, families, and businesses that will be displaced by the project in decent, safe and sanitary accommodations within their means and without undue hardship to such individuals, families, and businesses;

c. The plan conforms to the applicable master plan of the local entity (if there is one); and

d. The plan will afford maximum opportunity, consistent with the sound needs of the public entity as a whole, for the rehabilitation or redevelopment of the tax increment district by private enterprise.

(6) A copy of the project plan shall be mailed to the governing body of each deferred tax recipient, before approval of the project plan.

(7) The local governing body may at any time adopt an amendment to a project plan by complying with the procedures for the original adoption of a project plan.

§ 11-99-5 Determination of tax increment base.

(a) Upon the creation of a tax increment district or adoption of any amendment pursuant to subsection (c) of this section, the tax increment base shall be determined.

(b) Upon application in writing by the local finance officer, the tax assessor (or the officer of the county performing the duties of a tax assessor) for each county in which any part of the district is located shall determine according to his best judgment from all sources available to him the full aggregate value of the taxable property in the district

located in that county. The aggregate valuation from all such tax assessors or other such public officials, upon certification to the local finance officer, shall constitute the tax increment base of the district.

(c) If the public entity adopts an amendment to the original project plan for any district which includes additional project costs for which tax increments may be received by such public entity, the tax increment base for the district shall be redetermined pursuant to subsection (b) of this section as of 90 days following the effective date of the amendment, except that if the effective date of the amendment is October 1 of any year, the redetermination shall be made on that date. The tax increment base as redetermined under this subsection shall be effective for the purposes of this chapter only if it exceeds the original tax increment base determined under subsection (b) of this section.

(d) There shall be a rebuttable presumption that any property within a tax increment district acquired or leased as lessee by the public entity or any agency or instrumentality thereof within one year immediately preceding the date of the creation of the district was so acquired or leased in contemplation of the creation of the district. The presumption may be rebutted by the public entity with proof that the property was so leased or acquired primarily for a purpose other than to reduce the tax increment base. If the presumption is not rebutted, in determining the tax increment base of the district, but for no other purpose, the taxable status of such property shall be determined as though such lease or acquisition had not occurred.

(e) The local tax assessor or person performing his duties shall identify upon the tax records prepared by him under Chapter 7 of Title 40 those parcels of property which are within each existing tax increment district, specifying the name of each district. A similar notation shall also appear on the tax records made by the local finance officer.

(f) The Department of Revenue shall annually give notice to the designated finance officer of all governmental entities having the power to levy taxes on property within each district as to both the assessed and equalized value of the property and the assessed and equalized value of the tax increment base. The notice shall state that the taxes collected in excess of the base will be paid to the public entity.

§ 11-99-6 Allocation of positive tax increments.

(a) Positive tax increments of a tax increment district shall be allocated and paid over to the public entity which created the district for each year commencing on the October 1 following the date when the district is created until the earlier of:

(1) That time, after the completion of all public improvements specified in the project plan or amendments thereto, when the public entity has received aggregate tax increments from the district in an amount equal to the aggregate of all expenditures previously made or monetary obligations previously incurred for project costs for the district; or

(2) Thirty-five years after the last expenditure identified in the project plan is made. No expenditure may be provided for in the project plan to be made more than five years after the district is created unless an amendment is adopted by the local governing body under Section 11-99-4(7) hereof.

(b) Notwithstanding any other provision of law, every officer charged by law to collect and pay over or retain local general property taxes shall first, on the next settlement date provided by law, pay over to the local finance officer out of all such taxes which have been collected that portion which represents a tax increment allocable to a tax increment district, identifying the amount for each district.

(c) All tax increments received for a tax increment district shall, upon receipt by the local finance officer, be deposited into the tax increment fund for that district. The local finance officer may deposit additional moneys into the fund pursuant to an appropriation by the local governing body. Moneys shall be paid out of the fund only to reimburse the public entity for payments theretofore made by it for principal of or interest on tax increment obligations for that district if such obligations are general obligations of the public entity, or to satisfy claims of holders of tax increment obligations issued for that district. Subject to any agreement with security holders, moneys in the fund may be temporarily invested in the same manner as other surplus funds of the public entity. After the principal of and interest on all tax increment obligations of the district have been paid or provided for, subject to any agreement with security holders, if there remain in the fund any moneys, they shall be paid over to the chief finance officer of the state, each county, each municipality, each school district, and to the general fund of the public entity in such amounts as are due to each respectively, having due regard for what portion of such moneys, if any, represents tax increments not allocated to the public entity and what portion thereof, if any, represents voluntary deposits of the public entity into the fund.

§ 11-99-7 Termination of tax increment districts.

The existence of a tax increment district shall terminate when:

- (1) Positive tax increments are no longer allocable to a district under Section 11-99-6(a) hereof; or
- (2) The local governing body, by resolution, dissolves the district.

§ 11-99-8 Financing of project costs.

(a) Payment of project costs may be made by any of the following methods or any combination thereof:

- (1) Payment from the tax increment fund of the tax increment district if the purpose of the payment is one provided for in Section 11-99-6 hereof;

(2) Payment out of the general funds of the public entity;

(3) Payment out of the proceeds of the sale of warrants, bonds or notes (whether public improvement bonds or notes, mortgage bonds, notes or certificates, revenue bonds or notes, or otherwise) issued by the public entity;

(4) Payment out of the proceeds of the sale of tax increment obligations issued by the public entity under this section; and

(5) Payment as otherwise provided by law.

(b) For the purposes of paying project costs or of refunding obligations issued as otherwise provided by law or under this section, the local governing body may issue tax increment obligations payable out of positive tax increments. Such tax increment obligations shall not be included in the computation of the constitutional debt limitation of the public entity unless they are also secured by a pledge of the full faith and credit of the public entity.

(c) Tax increment obligations may be authorized by resolution of the local governing body without the necessity of a referendum or any approval by the electorate. The resolution shall state the name of the tax increment district, the amount of obligations authorized, and the interest rate or rates to be borne thereby or the method of computing the same. The resolution may prescribe the terms, form, and content of the obligations and such other matters as the local governing body deems useful.

(d) Tax increment obligations may not be issued in an amount exceeding the aggregate project costs of a project. The tax increment obligations shall mature not more than 30 years from the date thereof. The tax increment obligations may (i) contain provisions authorizing the redemption thereof, in whole or in part, at stipulated prices, at the option of the public entity, on any dates named therein and provide the method of selecting the obligations to be redeemed, (ii) be payable at any time or times and at any place, (iii) be payable to bearer or registered as to principal or principal and interest, (iv) be in any denominations, and (v) be sold at public or private sale.

(e) Tax increment obligations shall be payable only out of a stipulated tax increment fund created pursuant to Section 11-99-6 hereof, except as provided in paragraph (f) of this section. The local governing body shall irrevocably pledge all or a part of such tax increment fund to the payment of the tax increment obligations. The tax increment fund may thereafter be used only for the payment of the principal of and interest on the tax increment obligations payable therefrom until they have been fully paid.

(f) To increase the security and marketability of tax increment obligations, the public entity may:

(1) Create a lien for the benefit of the security holders upon any public improvements or public works financed thereby or the revenues therefrom;

- (2) Pledge the full faith and credit of the public entity to the payment thereof; and
- (3) Make covenants and do any and all acts as may be necessary or convenient or desirable in the judgment of the local governing body in order additionally to secure such obligations or make the obligations more marketable.
- (g) For the purpose of paying project costs, the local governing body may also allow payments to be made in full at the time such costs accrue, thus allowing a project to be all or partially funded on a pay-as-you-go basis.

§ 11-99-9 Overlapping tax increment districts.

- (a) Subject to any agreement with security holders, a tax increment district may be created, the boundaries of which overlap one or more existing tax increment districts. Districts created on the same date, however, may not have overlapping boundaries.
- (b) If the boundaries of two or more tax increment districts overlap, in determining how positive tax increments generated by that area which is within two or more districts are allocated among the districts, but for no other purpose, the aggregate value of the taxable property in the area as equalized by the Department of Revenue in any year as to each earlier created district is deemed to be that portion of the tax increment base of the district next created which is attributable to such overlapped area.

§ 11-99-9 Equalized valuation for apportionment of property taxes.

- (a) With respect to any other governing body having the power to levy taxes on property located within a tax increment district, the calculation of the equalized valuation of taxable property in a tax increment district may not exceed the tax increment base of the district until the district is terminated, unless agreement has been made for other arrangements under subsection (b) of this section.
- (b) In such cases where it can be shown that losing tax increments would be harmful to any given taxing unit or cause such unit not to honor a prior binding commitment, by contract executed with the public entity prior to the designation of the tax increment district, and if an agreement has been made for such allowances through a process of negotiation at the time of the creation of the tax increment district, a taxing unit may make payments into the tax increment fund, less the sum of:
- (1) Any property taxes produced from the tax increments which are required to be paid by the taxing unit to another political subdivision; and
- (2) A portion, not to exceed 20 percent or a one-time payment mutually agreed upon at the time of the creation of the tax increment district, of the tax increment produced in the district by the taxes levied on behalf of that taxing unit.

(c) All tax increments which have accrued with respect to school districts under this chapter shall be determined and the amounts shall be paid on February 1 of each year out of the taxes of all school districts which have territory in a tax increment district.

(d) The use of the increased valuations in the tax increment district before the completion of the project in calculating any general state school aid formula is prohibited.

(e) A taxing unit is not required to pay a tax increment into the tax increment fund for a district beyond three years from the date the district was created unless one or more of the following conditions exist or have been met:

(1) Tax increment obligations have been issued for the district;

(2) The public entity has acquired property within the district pursuant to the project plan;
or

(3) Construction of improvements pursuant to the project plan has commenced in the district.