

## MEMORANDUM

---

TO	Tax Increment Study and Formulating Committee
FROM	Richard F. Warren.
DATE	December 3, 2018
SUBJECT	Tennessee TIF Statutes

---

This memorandum will briefly summarize key provisions in the State of Tennessee statutes related to tax increment financing (“TIF”), all of which are included in the State Law tab on the Committee’s SharePoint site.

**The Housing Authorities Law Tenn. Code Ann. §13-20-101; Redevelopment Plans Under §13-20-202**

Chapter 20 of Title 13 provides for the creation of housing authorities. The Metropolitan Development and Housing Authority (“MDHA”) operates under this statute.

Part 202 gives housing authorities the power to create “redevelopment plans” pursuant to which the agency can undertake “redevelopment projects” in and around “blighted areas.”

“Blighted areas” are defined in Part 201 as areas (including slum areas) with buildings and improvements which are detrimental to the safety, health, morals, or welfare of the community. Not all land covered by a Redevelopment Plan must be blighted and a particular Redevelopment Project need not be blighted as long as it is located in a Redevelopment District.

T.C.A. §13-20-203(a) sets forth the mandatory content of each Redevelopment Plan as well as notice and public hearing requirements for Davidson County and Shelby County. If the Redevelopment Plan includes TIF authority it must be approved by the Redevelopment Agency (MDHA) and, for Davidson County, the Metro Council after a public hearing. The Plan is required to provide an outline for the development or redevelopment of a designated area sufficiently complete to:

(A) Indicate its relationship to defined local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements;

(B) Indicate proposed land uses and building requirements in the area; and

(C) Indicate the method of the temporary relocation of persons living in such areas, and also the method of providing, unless already available, decent, safe and sanitary dwellings substantially equal in number to the number of substandard dwellings to be cleared from the

area, at rents within the financial reach of the income groups displaced from such substandard dwellings.

Redevelopment Plans may contain other provisions that are not required by the statute. For instance, it is common to require new development in the Plan district to be approved by an architectural review committee even though that is not a statutory obligation.

Part 205 permits the Plan to include a tax increment financing provision. If TIF is included then the Plan must also describe the following:

- (A) An estimate of the cost of the redevelopment project;
- (B) The sources of revenue to finance the costs of the project, including the estimated tax increment;
- (C) An estimate of the amount and the final maturity of bonded or other indebtedness to be incurred; and
- (D) An estimate of the impact of the tax increment financing provision upon all taxing agencies in which the redevelopment project is to be located.

The total amount of authorized TIF is established when each Redevelopment Plan is approved or amended. The TIF cap may be a gross amount for each Redevelopment District; under this approach the Redevelopment Agency has the power to allocate TIF to various projects without further governmental approvals or public hearings. In the alternative, a TIF cap may be established for each development by amending the Redevelopment Plan in each instance; this requires governmental approvals and public hearings for each project.

Pursuant to Part 205, the amount of TIF available is calculated by first determining the Base Assessment. For Redevelopment Plans adopted or amended prior to July 1, 2006, this is the most recently determined valuation for tax assessments prior to the date of the Redevelopment Agency's acquisition of the property. For Plans adopted or amended after July 1, 2006, the valuation is the most recently determined value prior to the date on which the municipality approved the Redevelopment Plan or amendment. The municipality retains an amount equal to the Base Assessment multiplied by the tax rate adopted for the current tax year. The balance of the taxes (the "increment" above the tax on the Base Assessment) is paid to the Redevelopment Agency and can be pledged to secure a TIF loan, subject to the limitation that the municipality and County (in our case, Metro) can retain that portion of Tax Increment Revenues that is attributable to taxes levied for the payment of principal and interest on all bonds, loans or other indebtedness of the taxing agency.

TIF loans are authorized in Part 202(a)(8) and may be secured by the Redevelopment Agency's pledge of the Tax Increment Revenues arising from a Redevelopment Project for a specific period of time which cannot extend beyond the expiration date of the applicable Redevelopment Plan.

The Redevelopment Agency may acquire title to each redevelopment parcel for an agreed value (not more than market value) and can then “write down” the land by selling it to a developer for its “use value” which can be nominal.

The developer then acts as the Redevelopment Agency’s agent to undertake certain activities or make improvements that are “eligible” for TIF expenditures. Local legislation authorizing TIF may be more restrictive as to eligible uses but cannot be broader than the Housing Law. “Eligible uses” as set forth in Part 202(a) may include the following:

- Acquisition of blighted areas or other real property for the purpose of removing, preventing or reducing blight
- Acquisition of real property where the condition of the title, the diverse ownership of the real property to be assembled, the street or lot layouts, or other conditions, prevent a proper development of the property
- Site clearance and site preparation (including utility and street construction and relocation)
- Remediation of any environmental condition
- Parks, public open spaces, public playgrounds, pedestrian ways, and parking garages in accordance with a Redevelopment Plan
- Architectural, engineering, planning and legal expenses but only to the extent that they relate to an eligible improvement
- Pay the design costs, commissioning costs and fees and costs of required documentation associated with meeting the requirements of the Leadership in Energy and Environmental Design (LEED) and similar programs as well as greening costs for new construction, existing buildings and other projects
- Construction period interest on TIF loans (i.e. interest due before the TIF revenue is generated) is generally considered an eligible expense

The concept of eligible expenses is the key factor in the awarding of TIF. The type of project can include any of the following which have eligible expenses:

- Residential – Apartments and Condominiums, often with a mixed use component
- Office – Bell South, Caremark Headquarters
- Retail – Eckerd’s, Church Street Centre
- Restaurants – Jubilee Restaurant
- Manufacturing – Fluffo Mattress

- Other – Bennie Dillon Parking Garage

The Redevelopment Agency has the power to acquire property within Redevelopment Districts by eminent domain. The U.S. and Tennessee Constitutions require that any taking be for “public use.” The acquisition of land needed to implement a Redevelopment Plan in a blighted area is a “public use” under Tennessee statutes.

### **Transit-oriented Redevelopment Plans Under §13-20-701**

In 2017 the Tennessee legislature added Part 701 et seq. to the Housing Act, finding that there are areas in counties and municipalities that have a transit deficiency lacking adequate high capacity transit options and granting various powers to housing authorities to address these concerns. Thus it authorized housing authorities to take various actions to carry out transit-oriented redevelopment projects. The list of activities set forth in Part 703 is very similar to the list of eligible uses set forth in Part 202(a) for traditional TIFs but adds subsection (a)(4)(D), installing, constructing or reconstructing “privately-owned affordable housing or workforce housing as those terms are defined in §5-9-113” making those costs eligible expenses under this statute. It also permits the use of eminent domain to acquire or lease land for public infrastructure including high capacity transit facilities.

Part 702 offers a number of definitions. “High capacity transit” is defined as carrying more people or offering more frequent service than buses. A “high capacity transit facility” is defined very broadly to include a right of way for high capacity transit, boarding stations, rail track, bridges and park-and-ride lots. A “transit-deficient area” is one that needs additional transit.

Such projects must be undertaken pursuant to a transit-oriented redevelopment plan approved by the municipality in which the project is to be located meeting the requirements of Part 704 which includes a public hearing. Pursuant to Part 705, the plan may make available land at its use value so long as it is used to support the transit plan.

The plan may also include a tax increment financing provision permitting the use of incremental taxes generated by properties within the boundaries of the transit-oriented redevelopment plan area for years after the effective date of the approval of the plan. This is set forth in Part 706 which further sets forth matters that must be included in the plan if it allows the use of TIF. These include cost estimates, funding sources, and an estimate of the fiscal impact on all taxing agencies in the district.

### **Industrial Development Corporation TIFs Tenn. Code Ann. §7-53-101**

This statute authorizes the creation of Industrial Development Boards (“IDBs”) which are authorized, through the adoption of an economic impact plan (“Plan”) to designate an area (“Economic Impact Area”) with respect to which the IDB is entitled to receive the incremental property tax. The Economic Impact Area must be located in the municipality that created the

IDB and also must include either an industrial park as defined in §13-16-202 or a project as defined in §7-53-101(15).

The definition of “projects” which an IDB can own or finance include land, buildings, facilities and personal property suitable for:

- Manufacturing or assembling of products, warehousing and distribution
- Canals, ports, parking, and railroads
- Office buildings
- Certain healthcare facilities and educational facilities
- Certain recreational facilities, theme or amusement parks
- Low or moderate income, elderly or handicapped multifamily housing
- Planetariums or museums
- Hotels and motels (with restrictions)
- Pollution control, coal gasification & energy production
- Buildings or improvements for farming, ranching and agricultural

A Plan is required to (i) identify the boundaries of the area subject to the plan, (ii) identify the industrial park or project located within the Economic Impact Area, (iii) discuss the expected benefits to the municipality from the development of the Economic Impact Area, and (iv) limit the allocation of TIF to 20 years unless approval is obtained from the Comptroller and the Commissioner of Economic and Community Development.

The IDB is required to hold a public hearing after giving two weeks’ notice before approving the Plan and submitting it to the municipality that created it whose approval is also required. If the increment is to pay for anything other than public infrastructure, the Commissioner and Comptroller must approve it.

### **The Uniformity Act Tenn, Code Ann §9-23-101**

In 2012 the Tennessee legislature added the Uniformity Act to the Code overriding certain provisions relating to tax increment financing whether done under a redevelopment plan approved by a housing authority, an IDB or a community redevelopment plan pursuant to the CRA Act.

Part 103 provides that base taxes and dedicated taxes (the portion of property taxes that a taxing agency has designated to pay debt service on the taxing agency’s debt) are allocated to the taxing agency and the increment may be allocated to the tax increment agency although the taxing agency has the authority to retain more than the base and dedicated taxes. Once the

eligible expenses have been funded from the tax increment any remaining excess reverts to the taxing agency general fund.

The Act also imposes time limitations on allocations of tax increments in Part 104 of no more than 20 years for an IDB TIF or the term of the Redevelopment District not to exceed 30 years in the case of a Redevelopment TIF unless both the Comptroller and the Commissioner of Economic and Community Development approve a longer term as in the “best interests of the State” (defined as meaning that the project would not have occurred “but for” the payment or that an extended term is reasonably required for completion of the plan).

It also authorizes an administrative fee of up to 5% of the incremental tax revenues for administrative expenses and requires that certain reports be filed by the tax increment agencies with the assessor of property and the Comptroller.

Finally, Part 108 limits the use of TIF by IDBs to public infrastructure costs unless a “best interests of the State” determination is made in writing by the Comptroller and the Commissioner of Economic and Community Development.

#### **The Inner-City Redevelopment Act of 2003 Tenn. Code Ann. §7-84-602**

I am not familiar with the operations of this statute. Recognizing that inner-city area within certain municipalities have deteriorated, this act authorizes municipalities to create one or more inner-city redevelopment districts. A public hearing is required before the creation of a district. Municipalities are authorized to construct certain public improvements and parking facilities and may delegate this authority to a district management corporation set up to manage the district. The municipality may also levy special assessments against all properties located within the inner-city development district to cover the costs and expenses of making public improvements within the district and may borrow money and issue bonds to finance such improvements.