

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 962

By: Monson

COMMITTEE SUBSTITUTE

[urban renewal and public finance -
emergency]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 2001, Section 38-118, is amended to read as follows:

Section 38-118. No public official or employee of a municipality (or Board or Commission thereof), and no Commissioner or employee of an Urban Renewal Authority which has been vested by a municipality with urban renewal project powers under this article, shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property that is to be acquired or developed with public finance assistance and that is included or planned to be included in any urban renewal project of such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the municipal governing body. If such official, Commissioner or employee presently owns or controls, or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the municipal governing body, and any such officials, Commissioner or employee

shall not participate in any action by the municipality (or Board or Commission thereof), or Urban Renewal Authority affecting such property. The disclosure required to be made by this section to the municipal governing body shall concurrently be made to the Urban Renewal Authority which has been vested with urban renewal project powers by the municipality pursuant to the provisions of this article. No Commissioner or other officer of any Urban Renewal Authority, Board or Commission exercising the powers pursuant to this article shall hold any other public office under the municipality other than his commissionership or office with respect to such Urban Renewal Authority.

SECTION 2. AMENDATORY 62 O.S. 2001, Section 854, as amended by Section 2, Chapter 255, O.S.L. 2003 (62 O.S. Supp. 2004, Section 854), is amended to read as follows:

Section 854. In addition to any other powers conferred by law, a city, town or county may exercise any powers necessary to carry out the purpose of this act, including power to:

1. Establish districts and create plans pursuant to the provisions of this act;
2. Cause project plans to be prepared, to approve the plans, and to implement the provisions and effectuate the purposes of the plans;
3. Cause bonds to be issued by public entities as provided for in Section 863 of this title;
4. Apportion local taxes or local fees and direct the use of local taxes and local fees for the purpose provided for in this act. Pursuant to Section 6C of Article X of the Constitution of the State of Oklahoma, a direction of apportionment may be prospective and may continue for one (1) or more years, and apportioned tax increments may be pledged beyond the current fiscal year to the repayment of indebtedness of other public entities, notwithstanding the

provisions of Section 26 of Article X of the Constitution of the State of Oklahoma or any other provisions of law;

5. Enter into any contracts or agreements determined by the governing body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

6. Receive, from the federal government or the state, loans and grants for, or in aid of a project and to receive contributions from any other source to defray project costs;

7. Grant tax incentives or exemptions in the manner provided for in this act;

8. Acquire by purchase, donation or lease, and own, convey, lease, mortgage, or dispose of land and other property, real or personal, or rights or interests therein;

9. Clear and improve property acquired by it pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration, or repair of the property;

10. Cause parks, playgrounds, or schools, including capital improvements to public schools, or water, sewer, or drainage facilities or any other public improvements which it is otherwise authorized to undertake, to be laid out, constructed, or furnished in connection with the project;

11. Lay out and construct, alter, relocate, change the grade of, make specific repairs upon, or discontinue public ways and construct sidewalks in, or adjacent to, the project area;

12. Cause sidewalks, ways for vehicular travel, playgrounds, or water, sewer, or drainage facilities and similar improvements to be constructed within the project area for the particular benefit of the project area or those dwelling or working in it;

13. Adopt ordinances or resolutions or repeal or modify such ordinances or resolutions or establish exceptions to existing

ordinances and resolutions regulating the design, construction, and use of buildings;

14. Sell, mortgage, lease, transfer, or dispose of any property, or interest therein, acquired by it pursuant to the project plan for development, redevelopment, or rehabilitation in accordance with the plan, upon such terms and conditions determined by the governing body to be appropriate for achieving the objectives of the project plan; provided, in the event of disposition by lease or sublease to a lessee not entitled to a tax exemption, the improvements placed thereon shall not be entitled to a tax exemption;

15. Incur project costs;

16. Designate a public entity to exercise the powers enumerated in this section, except paragraphs 1, 4 and 7 of this section;

17. Invest project revenues as provided in this act; and

18. Do all things necessary or convenient to carry out the powers granted in this act and otherwise authorized by the laws of this state.

SECTION 3. AMENDATORY 62 O.S. 2001, Section 856, as last amended by Section 57, Chapter 5, O.S.L. 2004 (62 O.S. Supp. 2004, Section 856), is amended to read as follows:

Section 856. A. The governing body shall designate and adopt the proposed boundaries of any district and the proposed boundaries of any project area. Except as otherwise provided in this subsection, any districts created by a city or town shall be confined to that territory within the corporate limits of such city or town and any districts created by a county shall be confined to that territory within the unincorporated areas of the county. Any city, town or county may by agreement jointly create a contiguous district with another entity.

B. Upon the adoption and approval of the project plan, the governing body shall adopt an ordinance or resolution, whichever is applicable, which:

1. Describes the boundaries of districts and project areas sufficiently definite to identify with ordinary and reasonable certainty the territory included in them;

2. Creates the district as of a date provided in it;

3. Assigns a name to the district for identification purposes.

The first district created shall be known as either an Incentive District or Increment District Number One, City, Town or County of _____, whichever is applicable. Each subsequently created district shall be appropriately named and shall be assigned the next consecutive number; and

4. Contains findings that:

a. the project area or district meets at least one of the following criteria:

(1) is a reinvestment area,

(2) is a historic preservation area,

(3) is an enterprise area, or

(4) is a combination of the areas specified in divisions (1), (2) and (3) of this subparagraph,

b. the improvement of the area is likely to enhance the value of other real property in the area and to promote the general public interest. It shall not be necessary to identify the specific parcels meeting the criteria,

c. the guidelines specified in paragraphs 1 and 2 of Section 852 of this title shall be followed,

d. the aggregate net assessed value of the taxable property in all districts as determined pursuant to Section 862 of this title within the city or town shall not exceed twenty-five percent (25%) of the

total net assessed value of taxable property within the city or town for cities or towns having a population of fifty thousand (50,000) or more or shall not exceed thirty-five percent (35%) of the total net assessed value of taxable property within the city or town for cities or towns having a population of less than fifty thousand (50,000),

- e. for projects approved by a county, the aggregate net assessed value of the taxable property in all districts as determined pursuant to Section 862 of this title within the county shall not exceed fifteen percent (15%) of the total net assessed value of the taxable property within the county,
- f. the aggregate net assessed value of the taxable property in all districts as determined pursuant to Section 862 of this title within the city, the town or the county shall not exceed twenty-five percent (25%) of the total net assessed value of any affected school district located within the city, town or county, and
- g. the land area of this district and all other districts within the city, the town or the county shall not exceed twenty-five percent (25%) of the total land area of the city, the town or the county.

C. It is the intention of the Legislature in adopting the Local Development Act that no long-term contractual obligation be created by the mere adoption of an ordinance or resolution establishing an increment district. Notwithstanding any provision contained in an ordinance, resolution or project plan, an ordinance or resolution establishing an increment district shall constitute a legislative act and may be repealed, modified or amended at any time during the term of the increment district, by subsequent action of the governing body except as otherwise authorized pursuant to Sections

854 and 863 of this title; provided, however, that no such ordinance shall be repealed, modified or amended during the time that any bonds payable from incremental revenues are outstanding without the consent of the bondholders, if such bonds are issued pursuant to the provisions of Article X, Section 35 of the Oklahoma Constitution following its amendment by State Question No. 693.

D. However, nothing in the Local Development Act shall restrict the ability of:

1. Any city, town or county to:

- a. issue debt in accordance with the applicable provisions of Article X of the Oklahoma Constitution, and any statutes enacted in connection therewith, and
- b. use incremental revenues derived from an increment district to pay principal, interest or premium associated with such indebtedness; or

2. Any public entity, other than a city, town or county, to:

- a. issue tax apportionment bonds or notes in accordance with Section 863 of this title or to issue other types of revenue bonds or notes in accordance with other applicable provisions of Oklahoma law, and
- b. use incremental revenues derived from an increment district to pay principal, interest or premium associated with such indebtedness.

SECTION 4. AMENDATORY 62 O.S. 2001, Section 857, is amended to read as follows:

Section 857. A. If any member of the governing body of a city, town or county which is in the process of adopting a project plan for a district or which has adopted such a plan pursuant to the provisions of ~~this act~~ the Local Development Act or if any member of the governing body of a taxing entity within the boundaries of a district or any person who is a member of the immediate family of such member, owns or controls a financial interest, direct or

indirect, in any property in any ~~district or proposed district~~
project area to be acquired or developed with public financial
assistance, said member shall disclose the same in writing to the
clerk of the city, town or county with such disclosure entered into
the minutes of the governing body. Any such member with any
interest of ten percent (10%) or more or any such member with an
immediate family member with any interest of ten percent (10%) or
more shall be ineligible to vote on any matter or transaction
pertaining to such property, and shall refrain from taking any other
official action related to such property.

B. For purposes of this act and unless otherwise provided
therein, any matter requiring a vote by the governing body of a
city, town or county or a governing body of a taxing entity within
the district shall be by a majority of those eligible to vote.

SECTION 5. AMENDATORY 62 O.S. 2001, Section 858, as
amended by Section 5, Chapter 255, O.S.L. 2003 (62 O.S. Supp. 2004,
Section 858), is amended to read as follows:

Section 858. A. The governing body shall cause to be prepared
a project plan. The appropriate local planning commission shall
review the proposed project plan and shall make a recommendation on
the plan to the governing body. The project plan shall include the
following items, if applicable, according to the type of district
being formed:

1. A description of the proposed boundaries of the district and
the proposed boundaries of the project area by legal description and
by street or other recognizable physical feature accompanied by a
sketch clearly delineating the area in detail;

2. A general description of the proposed public works or
improvements, the anticipated private investments and the estimated
public revenues which should accrue;

3. A list of estimated project costs including administrative
expenses;

4. A general description of the methods of financing the estimated project costs, the expected sources of revenue to finance or pay project costs, and the general time when the costs or monetary obligations related thereto are to be incurred;

5. A map showing existing uses and conditions of real property in the district and a map showing proposed improvements to and proposed uses of that property;

6. Proposed changes in zoning;

7. Proposed changes in the master plan and city ordinances if required to implement the project plan;

8. The name of the person who shall be in charge of the implementation of all of the project plans of the district with such name being forwarded to the Department of Commerce; and

9. A designation of any public entity to be authorized to carry out all or any part of the project plan.

B. Before the governing body may approve such project plan, notice must be given and public hearings must be held pursuant to the provisions of Section 859 of this title. The approval by the governing body must be by ordinance if a city or town or by resolution if a county which contains findings that the plan is feasible and conforms to the master plan, if any, of the city, town or county.

C. Except as otherwise provided in this section, the planning commission may recommend an amendment to a project plan, which amendment shall be subject to review by the review committee and approval by the governing body. Prior to the adoption of the amendment, the governing body shall give notice concerning such amendment and hold public hearings on such amendment in the manner prescribed by Section 859 of this title. The approval by the governing body must be by ordinance if a city or town or by resolution of a county which contains findings that the plan is

feasible and conforms to the master plan, if any, of the city, town or county.

D. The governing body may grant the department, agency or public entity in charge of the implementation of the project plan the authority to make minor amendments to the plan. An amendment is considered to be minor if such amendment does not change the character or purpose of the plan; does not affect more than five percent (5%) of the district's area; or does not affect more than five percent (5%) of the public costs of the plan to be financed by apportioned tax increments. All amendments made pursuant to the provisions of this subsection shall be considered on a cumulative basis.

E. Approval by any ad valorem taxing entities, if required pursuant to the provisions of Section 850 et seq. of this title, shall be secured before any plan or amendment thereto goes into effect.

F. Any project plan adopted by a transportation authority pursuant to Section 1370.7 of Title 68 of the Oklahoma Statutes, after having met the provisions of this section, shall be submitted to a vote of the people within the boundaries of the authority, pursuant to the provisions of subsections D through H of Section 868 of this title.

SECTION 6. AMENDATORY 62 O.S. 2001, Section 863, as amended by Section 9, Chapter 255, O.S.L. 2003 (62 O.S. Supp. 2004, Section 863), is amended to read as follows:

Section 863. A. With the approval of the governing body, a public entity, other than a city, town or county, may issue tax apportionment bonds or notes, other bonds or notes, or both, the proceeds of which may be used to pay project costs pursuant to the plan notwithstanding any other statutory provision to the contrary. Subject to the approval of the governing body, such public entity may issue refunding bonds or notes for the payment or retirement of

bonds or notes previously issued by the public entity to pay project costs pursuant to the plan.

B. The public entity issuing tax apportionment bonds or notes may, as authorized by the governing body pursuant to Section 6C of Article X of the Constitution of the State of Oklahoma, irrevocably pledge all or part of the apportioned increments and other revenue for payment of the tax apportionment bonds or notes. The part of the apportioned increments pledged in payment may be used only for the payment of the bonds or notes or interest on the bonds or notes until the bonds or notes have been fully paid. A holder of the bonds or notes or of coupons issued on the bonds has a lien to the extent authorized by the pledge against the apportionment fund and the future increments for payment of the bonds or notes and interest on the bonds or notes and may protect or enforce the lien at law or in equity.

C. The issuing public entity may provide in the contract with the owners or holders of tax apportionment bonds that they will pay into the apportionment fund all or any part of the revenue produced or received from the operation or sale of a facility acquired, improved, or constructed pursuant to a project plan, to be used to pay principal and interest on the bonds. If the public entity agrees, the owners or holders of these bonds may have a lien or mortgage on a facility acquired, improved, or constructed with the proceeds of the bonds.

D. Tax apportionment bonds may be issued to mature in a period not to exceed twenty-five (25) years in one or more series; provided, however, that for any increment district established after November 1, 1992, such time period shall be tolled for a period of time equal to the pendency of any litigation directly or indirectly challenging the increment district or apportionment or disbursement. The trust indenture, ordinance, or resolution approved, issued in connection with such bond or note, shall provide:

1. The date that the bond or note bears;
2. That the bond or note is payable on demand or at a specified time;
3. The interest rate that the bond or note bears;
4. The denomination of the bond or note;
5. Whether the bond or note is in coupon or registered form;
6. The conversion or registration privileges of the bond or note;
7. The manner of execution of the bond or note;
8. The medium of payment in which and the place or places at which the bond or note is payable;
9. The terms of redemption, with or without premium, to which the bond or note is subject;
10. The manner in which the bond or note is secured; and
11. Any other characteristic of the bond or note.

E. A bond or note issued pursuant to the provisions of the Local Development Act is fully negotiable. In a suit, action, or other proceeding involving the validity or enforceability of a bond or note issued pursuant to the provisions of the Local Development Act or the security of a bond or note issued pursuant to the provisions of the Local Development Act, if the bond or note recites in substance that it was issued by the public entity pursuant to the Local Development Act, the bond or note is deemed to have been issued for that purpose, and the recital shall be conclusive of its validity and the regularity of its issuance.

F. A bank, trust company, savings bank or institution, savings and loan association, investment company or other person carrying on a banking or investment business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, curator, trustee, or other fiduciary may invest any sinking funds, money, or other funds belonging to it or in its control in tax apportionment bonds or notes issued under the

Local Development Act. This act does not relieve any person of the duty to exercise reasonable care in selecting securities or of complying with other applicable laws.

G. A tax apportionment bond or note issued pursuant to the provisions of this section is not a debt, liability, or obligation of the city, town or county creating or approving the plan, project or increment district. The bond or note does not give rise to a charge against the general credit or taxing powers of such city, town or county and is not payable except as provided by the Local Development Act. Bonds or notes issued pursuant to the provisions of this section are not general obligations of the state and have no claim on the revenues or resources of the state. A bond or note issued pursuant to the provisions of this section must state the restrictions of this subsection on its face.

H. A tax apportionment bond or note issued pursuant to the provisions of this section may not be included in any computation of the general obligation debt of the city, town or county creating or approving the plan, project or increment district.

I. A public entity may not issue bonds or notes, pursuant to the provisions of this section, providing for repayment of any portion of the principal from apportioned tax increments in an amount that exceeds the total cost of implementing the project plan for which the bonds or notes are issued except to the extent that bond or notes issues may be sized to include costs of issuance, credit enhancement fees or premiums, and reasonably required reserves or amounts to be repaid from sources other than apportioned tax increments.

J. All bonds issued pursuant to the provisions of this section shall be reviewed by the Oklahoma State Bond Advisor who will give a recommendation on such bonds to the issuing entity.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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