

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 844

By: Gumm

AS INTRODUCED

An Act relating to public finance; amending 62 O.S. 2001, Sections 856, as last amended by Section 57, Chapter 5, O.S.L. 2004, 861, as amended by Section 7, Chapter 255, O.S.L. 2003 and 863, as amended by Section 9, Chapter 255, O.S.L. 2003 (62 O.S. Supp. 2004, Sections 856, 861 and 863), which relate to the Local Development Act; deleting legislative intent; deleting provision construing certain ordinances or resolutions; deleting prohibition against repeal or modification of certain ordinances; deleting requirement that certain resolutions or ordinances contain specified provision; updating reference; and providing an effective date.

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

SECTION 1. 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; 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~~ 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 2. AMENDATORY 62 O.S. 2001, Section 861, as amended by Section 7, Chapter 255, O.S.L. 2003 (62 O.S. Supp. 2004, Section 861), is amended to read as follows:

Section 861. A. A project plan may contain a provision that the increments from certain local taxes or fees may be used to finance project costs in areas qualified under the Local Development Act. The increment from local taxes or fees levied from and after the effective date of the approval of such plan shall be apportioned in the following manner for a period not to exceed twenty-five (25) years or the period required for payment of project costs, whichever is less; 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:

1. That portion of the ad valorem taxes which are produced by the levy at the rate fixed each year by or for each such ad valorem taxing entity upon the base assessed value of the increment district determined pursuant to Section 862 of this title and as to an area later added to the increment district, the effective date of the addition to the increment district, shall be paid to each taxing entity and all or any portion of local sales taxes, other local taxes or local fees collected each year which are not subject to apportionment shall be paid or retained as otherwise provided by law; and

2. All or any portion of:

- a. ad valorem taxes, in excess of such amount specified in paragraph 1 of this subsection,
- b. the increment of local sales taxes, other local taxes or local fees, or a combination thereof, paid to or for the benefit of the city, town, or county approving the plan, and
- c. with its consent, evidenced by agreement in writing, the increment of local sales tax, other local taxes or local fees, or combination thereof, payable to any other local public taxing entity,

shall be apportioned to, and when collected, shall be paid into an apportionment fund established for the project pursuant to the project plan. Such revenues shall be used for the payment of the project costs and for the payment of the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred to finance project costs, whether funded, refunded, assumed, or otherwise, for financing, in whole or in part, eligible project costs. Nothing shall prohibit the increments from being used to directly pay

eligible project costs. When all eligible project costs and such bonds, loans, advances of money or indebtedness, if any, including interest thereon and any premiums due in connection with them, have been paid and the governing body adopts an ordinance or resolution dissolving the tax apportionment financing, all ad valorem taxes upon the taxable property within the boundary of such district shall be paid into the funds of the respective taxing entities.

~~B. If a project plan contains a provision for apportionment as provided in subsection A of this section, and notwithstanding any other provision of law to the contrary, the governing body shall direct in the resolution or ordinance approving the plan which portion of the increments, including whether any or all, to be paid into the apportionment fund shall constitute a part of the general fund to be appropriated annually by the governing body, and which portion, including whether any or all, shall constitute funds of a public entity authorized to issue tax apportionment bonds or notes or to incur project costs.~~

~~C.~~ To the extent that collections exceed project costs and the provisions for payment of principal and interest along with sufficient reserves on any bonds issued pursuant to the provisions of Section 863 of this title, the excess shall be paid into the funds of the respective taxing entities unless the taxing entity agrees to some other use of such collections.

~~D.~~ C. Except as provided in subsection ~~E~~ D of this section, for any year in which taxes or fees are apportioned in the manner specified in paragraph 2 of subsection A of this section, any increase in assessed valuation of taxable real property or taxable personal property within the boundaries of such district in excess of the base assessed value shall not be considered by any taxing entity in computing any debt limitation or for any other purpose except for the levy of taxes and in determining the amount to be apportioned.

~~E.~~ D. In the event there is a change in the assessment ratio for ad valorem tax property valuations of property within the boundaries of an increment district, the portions of valuations for assessment pursuant to paragraphs 1 and 2 of subsection A of this section shall be proportionately adjusted in accordance with such reassessment.

~~F.~~ E. Nothing in this section shall be construed as relieving property in such project area from being assessed as provided in the Ad Valorem Tax Code of the Oklahoma Statutes, or as relieving owners of such property from paying a uniform rate of taxes, as required by Section 5 of Article X of the Oklahoma Constitution.

~~G.~~ F. If property in an increment district is owned by a public trust or public entity and is leased for a private use, the lease shall require the private user to pay ad valorem taxes or an in lieu ad valorem tax payment, whichever is appropriate, on the value of the leasehold.

SECTION 3. 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, the proceeds of which may be used to pay project costs pursuant to the plan. 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 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, 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.

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 4. This act shall become effective November 1, 2005.

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