

ENROLLED HOUSE
BILL NO. 3352

By: Terrill, Dorman,
Morrissette and Peterson
(Pam) of the House

and

Mazzei of the Senate

An Act relating to public finance; imposing certain reporting responsibilities upon local government entities related to districts formed pursuant to the Local Development Act; requiring certain revenue estimate; amending 62 O.S. 2001, Sections 857, as amended by Section 4, Chapter 210, O.S.L. 2005, 858, as last amended by Section 5, Chapter 210, O.S.L. 2005, 861, as amended by Section 7, Chapter 255, O.S.L. 2003, 864 and 867, as amended by Section 10, Chapter 255, O.S.L. 2003 (62 O.S. Supp. 2007, Sections 857, 858, 861 and 867), which relate to the Local Development Act; authorizing acquisition of certain assets by members of certain governing bodies; providing for disclosure; modifying provisions related to amendments to project plans; modifying reference to certain duration of apportioned revenues; defining term; providing for imposition of ad valorem taxes with respect to certain property; providing for determination of tax amount; providing for ad valorem tax treatment of certain property acquired by certain entities; modifying statutory reference; modifying required content of certain report; amending 11 O.S. 2001, Section 38-118, as amended by Section 1, Chapter 210, O.S.L. 2005 (11 O.S. Supp. 2007, Section 38-118), which relates to municipal urban renewal authorities; authorizing acquisition of certain assets by certain public officials; providing for disclosure; amending 62 O.S. 2001, Section 372, which relates to certain actions for recovery of public money or property; providing immunity for certain transactions approved

in good-faith reliance upon certain advice or matters submitted for certain judicial determination; amending 11 O.S. 2001, Section 40-105.1, which relates to the Neighborhood Redevelopment Act; modifying provisions related to certain summary document; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 867.1 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Within thirty (30) days after the creation of either an incentive district or an increment district, the sponsoring governmental entity shall notify the Oklahoma Tax Commission, upon such form as the Commission shall prescribe, of the geographic area where the district is located, a description of any locally authorized tax incentives, such as property tax exemptions, sales tax exemptions or for purposes of an increment district, whether there is or will be indebtedness incurred the repayment of which will partially or entirely be paid from incremental tax revenues apportioned for such purpose.

B. If an incentive district or increment district is dissolved or for any reason ceases to be operative, the sponsoring entity shall notify the Oklahoma Tax Commission within thirty (30) days of such dissolution or termination upon a form to be prescribed by the Commission for such purpose.

C. The Oklahoma Tax Commission, in conjunction with the Oklahoma Department of Commerce, shall make an estimate of the annual revenue loss resulting from all matching payments to be made pursuant to Section 844 of Title 62 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 62 O.S. 2001, Section 857, as amended by Section 4, Chapter 210, O.S.L. 2005 (62 O.S. Supp. 2007, 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 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 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. This section shall not preclude acquisition of a residence, acquisition of any property after issuance of a certificate of completion, or agreement to develop in accordance with the objectives of such project plan, provided such member discloses any actual or prospective interest and does not participate in any official action approving such agreement.

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 3. AMENDATORY 62 O.S. 2001, Section 858, as last amended by Section 5, Chapter 210, O.S.L. 2005 (62 O.S. Supp. 2007, 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~~ add more than five percent (5%) ~~of~~ to the district's area; or does not ~~affect~~ add more than five percent (5%) ~~of~~ to 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 4. AMENDATORY 62 O.S. 2001, Section 861, as amended by Section 7, Chapter 255, O.S.L. 2003 (62 O.S. Supp. 2007, 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) fiscal years thereafter 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. For the purposes of this section, "local sales tax" means amounts payable to or for the benefit of a local governmental entity calculated as a percentage of gross sales whether imposed by ordinance, resolution, covenant, or agreement. 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. Except as provided in subsection E 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. 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. 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. ~~If~~ Subject to constitutional exemptions, if property in an increment district is owned by a public trust or public entity and is leased to or operated for a private use, including, without limitation, use by a not-for-profit corporation or trust, the lease portion of the property so leased or operated shall be assessed by the county assessor as if such portion of the property were taxable, and, during the term of the increment district, the public entity owning such property shall pay or require the private user thereof to pay ad valorem taxes or an in lieu ad valorem tax payment,

whichever is appropriate, on the value of the leasehold in an amount not less than the amount that would have resulted if taxes had otherwise been levied on such portion of the property. If property subject to ad valorem tax in an increment district is acquired by a private not-for-profit corporation or public or private trust, it shall continue to be assessed and subject to ad valorem taxes or an in lieu ad valorem payment by the user thereof until termination of the increment district unless and only to the extent of the portion of the property and the use thereof that is:

1. Acquired to implement the project plan;
2. Converted to a new tax-exempt use by a tax-exempt user; or
3. Entitled to claim a constitutional exemption notwithstanding statutory provisions.

During the period of an increment district, such nonexempt uses and interests are severable for purposes of ad valorem and in lieu of ad valorem assessment and payments, notwithstanding any statutory provisions to the contrary.

SECTION 5. AMENDATORY 62 O.S. 2001, Section 864, is amended to read as follows:

Section 864. In those cases where the net assessed valuation of the real property within a school district increases as a result of the provisions of Sections ~~11 or 12~~ 860 and 861 of this ~~act~~ title, the school district's State Aid shall be determined by subtracting such increase in the net assessed valuation from the assessed valuation of the school district and the state. Such increase shall be subtracted for each fiscal year during which the incentives or exemptions are granted in the case of property within an incentive district or such increase shall be subtracted for each fiscal year the increment is captured in the case of property within an increment district. The increase in net assessed valuation subtracted, in the case of property within an increment district, shall be the amount that represents that portion of the increment which is captured and which is actually used for the purposes of this act.

SECTION 6. AMENDATORY 62 O.S. 2001, Section 867, as amended by Section 10, Chapter 255, O.S.L. 2003 (62 O.S. Supp. 2007, Section 867), is amended to read as follows:

Section 867. A. For those increment districts in operation for nine (9) months or more, on or before the ninetieth day following the end of each fiscal year, the governing body of a city, town or county shall submit a report to the chief executive officer of each taxing entity that levies ad valorem taxes on property in an increment district. The report shall include:

1. The amount and source of revenue captured and apportioned pursuant to the ~~public trust~~ project plan;

2. The amount and purpose of expenditures;

3. The amount of principal and interest due on outstanding bonded indebtedness;

4. The tax increment base and current captured appraised value or the other local tax or fees collections retained by the area;

5. The captured appraised value or the other local tax or fee collections shared by the city, town or county and other taxing entities, the total amount of tax increments received and any additional information necessary to demonstrate compliance with the plan adopted by the city, town or county;

6. The name of the person who is currently in charge of the implementation of the plan; and

7. The names of the persons who have disclosed an interest as required pursuant to Section 857 of this title and the interest disclosed.

B. For those incentive districts in operation for nine (9) months or more, on or before the ninetieth day following the end of each fiscal year, the governing body of a city, town or county shall submit to the chief executive officer of each taxing entity that levies property taxes on real property in an incentive district. The report shall include:

1. The parties receiving incentives or exemptions;

2. A general description of the property and the improvements to be made;

3. The portion and fair market value of the property to be exempted or that portion of the local taxes to be subject to incentives or to be exempted;

4. The duration of the incentives or exemptions;

5. Any additional information necessary to demonstrate compliance with the tax incentives or exemptions;

6. The name of the person who is currently in charge of the implementation of the plan; and

7. The names of the persons who have disclosed an interest as required pursuant to Section 857 of this title and the interest disclosed.

C. At the time of submitting the reports as required by subsections A and B of this section, the governing body shall publish in a newspaper of general circulation in the city, town or county, a summary of the relevant financial information along with a notice to the effect that such report has been prepared and that the report is available for inspection during business hours in the office of the municipal or county clerk.

SECTION 7. AMENDATORY 11 O.S. 2001, Section 38-118, as amended by Section 1, Chapter 210, O.S.L. 2005 (11 O.S. Supp. 2007, 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. This section shall not preclude acquisition of a residence, acquisition of any property after issuance of a certificate of completion, or agreement to redevelop in accordance with the objectives of such urban renewal project, provided such official, Commissioner, or employee discloses any actual or prospective interest and does not participate in any official action approving such agreement. 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 8. AMENDATORY 62 O.S. 2001, Section 372, is amended to read as follows:

Section 372. Every officer of the state and of any county, township, city, town or school district, who shall hereafter order or direct the payment of any money or transfer of any property belonging to the state or to such county, city, town or school district, in settlement of any claim ~~known to such officers to be fraudulent or void,~~ or in pursuance of any unauthorized, unlawful or fraudulent contract or agreement made or attempted to be made, for the state or any such county, city, town or school district, by any officer thereof, known to such officer to be fraudulent or void, and every person, having notice of the facts, with whom such unauthorized, unlawful or fraudulent contract shall have been made, or to whom, or for whose benefit such money shall be paid or such transfer of property shall be made, shall be jointly and severally liable in damage to all innocent persons in any manner injured thereby, and shall be furthermore jointly and severally liable to the state, county, city, town or school district affected, for triple the amount of all such sums of money so paid, and triple the value of property so transferred, as a penalty, to be recovered at the suit of the proper officers of the state or such county, city, town or school district, or of any resident taxpayer thereof, ~~as hereinafter provided~~ pursuant to Section 373 of this title; provided, however, no action for personal liability shall lie against any such officer for a transaction approved in good-faith

reliance on advice of legal counsel for the public entity authorizing the transaction or which has been submitted to a court of competent jurisdiction for determination of legality.

SECTION 9. AMENDATORY 11 O.S. 2001, Section 40-105.1, is amended to read as follows:

Section 40-105.1 A. Following adoption of the ordinance described in Section 40-104 of this title, the redevelopment trust named in such ordinance shall thereafter develop a comprehensive approach to remedy those blighted conditions which were found to exist within the redevelopment district. This comprehensive approach shall consist of one or more program plans designed to address the blighted conditions within such redevelopment district. Before the adoption of a program plan requiring the acquisition of land, the redevelopment trust shall provide to the city a feasibility study, which study shall show that the benefits derived from the program plan will exceed the costs and that the income there from will be sufficient to pay for the program plan.

B. Prior to the adoption of a program plan, a redevelopment trust shall adopt a resolution relating to the proposed program plan, which resolution shall:

1. State that a public hearing will be held to consider the adoption of a program plan, and fix the date, hour and place of such public hearing;

2. Describe the geographic boundaries of the area to which such program plan relates; and

3. State that the program plan, including a summary of any feasibility study, relocation assistance plan, financial guarantees of a prospective developer, if applicable, and a description and map of the area to be redeveloped are available for inspection during regular office hours in the office of the city clerk.

C. The date fixed for the public hearing shall be not less than ten (10) days nor more than thirty (30) days following the date of the adoption of the resolution fixing the date of such hearing. The resolution shall be published in a newspaper of general circulation within such city or town as a legal, public notice once each week for two (2) consecutive weeks, the last publication to be not more than two (2) weeks preceding the date fixed for public hearing. A If a program plan provides for the use of eminent domain pursuant to

Section 40-115 of this title, then a summary of the program plan shall be mailed by certified mail to each owner and occupant of land within the proposed redevelopment district not more than ten (10) days following the date of the adoption of the resolution. A statement shall be included in the summary of the program plan that the program plan is available for inspection and copying during regular office hours in the office of the city clerk.

D. Following the hearing, the trustees of the redevelopment trust may, by resolution, adopt the program plan as originally proposed, or may adopt the program plan with such amendments as deemed appropriate by the trustees of the redevelopment trust. Thereafter, any substantial changes to a program plan, as adopted, shall be subject to public hearing following publication of notice thereof at least twice in a newspaper of general circulation within such city or town.

E. After the adoption of a program plan, or any substantial change to a program plan, the governing body of such municipality, upon a finding by the planning commission that the program plan, or any substantial change to the program plan is consistent with the general comprehensive plan for the development of the city, may approve the program plan, or any substantial change to the program plan, as being consistent with the comprehensive general plan for the development of the city. Thereafter, a redevelopment trust may undertake specific redevelopment projects; provided, that:

1. Such projects are undertaken pursuant to a project plan which clearly sets forth the actions being taken by the redevelopment trust with regard to a specific parcel or lot;

2. Such projects are undertaken within the period of time specified in the program plan; and

3. The terms and conditions relating to such projects are consistent with the terms and conditions of the program plan.

SECTION 10. This act shall become effective November 1, 2008.

Passed the House of Representatives the 23rd day of May, 2008.

Presiding Officer of the House of
Representatives

Passed the Senate the 23rd day of May, 2008.

Presiding Officer of the Senate