

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               1st Session of the 58th Legislature (2021)

4   HOUSE BILL 1138

By: Fetgatter and **Lawson**

7                               AS INTRODUCED

8           An Act relating to public finance; amending 62 O.S.  
9           2011, Sections 861 and 863, which relate to the Local  
10          Development Act; modifying maximum duration of  
11          increment districts; prescribing procedure for  
12          approval of exemption by governing body; providing  
13          for extension of maturity date of certain  
14          obligations; and providing an effective date.

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

15           SECTION 1.        AMENDATORY        62 O.S. 2011, Section 861, is  
16   amended to read as follows:

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

1 to the provisions of Section 3 of this act; provided, however, that  
2 for any increment district established after November 1, 1992, such  
3 time period shall be tolled for a period of time equal to the  
4 pendency of any litigation directly or indirectly challenging the  
5 increment district or apportionment or disbursement:

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

16 2. All or any portion of:

- 17 a. ad valorem taxes, in excess of such amount specified  
18 in paragraph 1 of this subsection,  
19 b. the increment of local sales taxes, other local taxes  
20 or local fees, or a combination thereof, paid to or  
21 for the benefit of the city, town, or county approving  
22 the plan, and  
23 c. with its consent, evidenced by agreement in writing,  
24 the increment of local sales tax, other local taxes or

1           local fees, or combination thereof, payable to any  
2           other local public taxing entity,  
3 shall be apportioned to, and when collected, shall be paid into an  
4 apportionment fund established for the project pursuant to the  
5 project plan. Such revenues shall be used for the payment of the  
6 project costs and for the payment of the principal of, the interest  
7 on, and any premiums due in connection with the bonds of, loans,  
8 notes, or advances of money to, or indebtedness incurred to finance  
9 project costs, whether funded, refunded, assumed, or otherwise, for  
10 financing, in whole or in part, eligible project costs. For the  
11 purposes of this section, "local sales tax" means amounts payable to  
12 or for the benefit of a local governmental entity calculated as a  
13 percentage of gross sales whether imposed by ordinance, resolution,  
14 covenant, or agreement. Nothing shall prohibit the increments from  
15 being used to directly pay eligible project costs. When all  
16 eligible project costs and such bonds, loans, advances of money or  
17 indebtedness, if any, including interest thereon and any premiums  
18 due in connection with them, have been paid and the governing body  
19 adopts an ordinance or resolution dissolving the tax apportionment  
20 financing, all ad valorem taxes upon the taxable property within the  
21 boundary of such district shall be paid into the funds of the  
22 respective taxing entities.

23       B. If a project plan contains a provision for apportionment as  
24 provided in subsection A of this section, and notwithstanding any

1 other provision of law to the contrary, the governing body shall  
2 direct in the resolution or ordinance approving the plan which  
3 portion of the increments, including whether any or all, to be paid  
4 into the apportionment fund shall constitute a part of the general  
5 fund to be appropriated annually by the governing body, and which  
6 portion, including whether any or all, shall constitute funds of a  
7 public entity authorized to issue tax apportionment bonds or notes  
8 or to incur project costs.

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

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

23 E. In the event there is a change in the assessment ratio for  
24 ad valorem tax property valuations of property within the boundaries

1 of an increment district, the portions of valuations for assessment  
2 pursuant to paragraphs 1 and 2 of subsection A of this section shall  
3 be proportionately adjusted in accordance with such reassessment.

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

9 G. Subject to constitutional exemptions, if property in an  
10 increment district is owned by a public entity and is leased to or  
11 operated for a private use, including, without limitation, use by a  
12 not-for-profit corporation or trust, the portion of the property so  
13 leased or operated shall be assessed by the county assessor as if  
14 such portion of the property were taxable, and, during the term of  
15 the increment district, the public entity owning such property shall  
16 pay or require the user thereof to pay ad valorem taxes or an in  
17 lieu ad valorem tax payment in an amount not less than the amount  
18 that would have resulted if taxes had otherwise been levied on such  
19 portion of the property. If property subject to ad valorem tax in  
20 an increment district is acquired by a private not-for-profit  
21 corporation or public or private trust, it shall continue to be  
22 assessed and subject to ad valorem taxes or an in lieu ad valorem  
23 payment by the user thereof until termination of the increment  
24

1 district unless and only to the extent of the portion of the  
2 property and the use thereof that is:

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

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

11 SECTION 2. AMENDATORY 62 O.S. 2011, Section 863, is  
12 amended to read as follows:

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

22 B. The public entity issuing tax apportionment bonds or notes  
23 may, as authorized by the governing body pursuant to Section 6C of  
24 Article X of the Constitution of the State of Oklahoma, irrevocably

1 pledge all or part of the apportioned increments and other revenue  
2 for payment of the tax apportionment bonds or notes. The part of  
3 the apportioned increments pledged in payment may be used only for  
4 the payment of the bonds or notes or interest on the bonds or notes  
5 until the bonds or notes have been fully paid. A holder of the  
6 bonds or notes or of coupons issued on the bonds has a lien to the  
7 extent authorized by the pledge against the apportionment fund and  
8 the future increments for payment of the bonds or notes and interest  
9 on the bonds or notes and may protect or enforce the lien at law or  
10 in equity.

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

20 D. Tax apportionment bonds may be issued to mature in a period  
21 not to exceed twenty-five (25) years in one or more series except as  
22 extended pursuant to the provisions of Section 3 of this act;  
23 provided, however, that for any increment district established after  
24 November 1, 1992, such time period shall be tolled for a period of

1 time equal to the pendency of any litigation directly or indirectly  
2 challenging the increment district or apportionment or disbursement.  
3 The trust indenture, ordinance, or resolution approved, issued in  
4 connection with such bond or note, shall provide:

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

20 E. A bond or note issued pursuant to the provisions of the  
21 Local Development Act is fully negotiable. In a suit, action, or  
22 other proceeding involving the validity or enforceability of a bond  
23 or note issued pursuant to the provisions of the Local Development  
24 Act or the security of a bond or note issued pursuant to the



1 provisions of the Local Development Act, if the bond or note recites  
2 in substance that it was issued by the public entity pursuant to the  
3 Local Development Act, the bond or note is deemed to have been  
4 issued for that purpose, and the recital shall be conclusive of its  
5 validity and the regularity of its issuance.

6 F. A bank, trust company, savings bank or institution, savings  
7 and loan association, investment company or other person carrying on  
8 a banking or investment business; an insurance company, insurance  
9 association, or other person carrying on an insurance business; or  
10 an executor, administrator, curator, trustee, or other fiduciary may  
11 invest any sinking funds, money, or other funds belonging to it or  
12 in its control in tax apportionment bonds or notes issued under the  
13 Local Development Act. This act does not relieve any person of the  
14 duty to exercise reasonable care in selecting securities or of  
15 complying with other applicable laws.

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

1 issued pursuant to the provisions of this section must state the  
2 restrictions of this subsection on its face.

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

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

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

19 SECTION 3. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 863.1 of Title 62, unless there  
21 is created a duplication in numbering, reads as follows:

22 If the governing body approves an extension by a majority vote  
23 of its members, the duration of a tax increment finance district may  
24 exceed twenty-five (25) years, but may not exceed a duration of

1 twenty-eight (28) years, if the governing body finds that the  
2 economic conditions within the district were adversely affected by  
3 the effect of the COVID-19 virus, either upon the health of persons  
4 residing or doing business within the district, or that effects of  
5 the virus on persons and business activity outside the district had  
6 a sufficiently adverse impact to provide an extension of the  
7 duration of the district and any obligations issued in connection  
8 with the increment district for a maximum additional three (3)  
9 years.

10 SECTION 4. This act shall become effective November 1, 2021.

11  
12 COMMITTEE REPORT BY: COMMITTEE ON COUNTY AND MUNICIPAL GOVERNMENT,  
13 dated 02/22/2021 - DO PASS, As Coauthored.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24