

## No. 1990-113

## AN ACT

## HB 2179

Providing for the creation of tax increment districts; providing for additional powers and duties to be exercised by redevelopment authorities and by industrial and commercial development authorities; authorizing the creation and approval of project plans for tax increment financing; providing for the establishment of a tax increment base; allocating the payment of positive tax increments; providing for the financing of project costs; and providing for the issuance of tax increment bonds and notes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

**Section 1. Short title.**

This act shall be known and may be cited as the Tax Increment Financing Act.

**Section 2. Legislative findings and policy.**

(a) **Legislative findings.**—The General Assembly finds and declares as follows:

(1) The General Assembly previously found in the enactment of the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law, that, among other things, there exist in urban communities in this Commonwealth areas which have become blighted because of:

- (i) the unsafe, unsanitary, inadequate or overcrowded condition of the dwellings in the area;
- (ii) inadequate planning of the area or excessive land coverage by the buildings thereon;
- (iii) the lack of proper light and air and open space;
- (iv) the defective design and arrangement of the buildings;
- (v) faulty street or lot layout; or
- (vi) economically or socially undesirable land uses.

(2) Despite the efforts exerted under the Urban Redevelopment Law, the conditions found in these areas by the General Assembly still exist.

(3) The authorization of tax increment financing will provide an alternative method for use by authorities in pursuing redevelopment efforts under the Urban Redevelopment Law and other applicable laws.

(b) **Purpose.**—It is found and declared that, in order to maintain the public health, safety, morals and welfare of the people of this Commonwealth generally, and to increase their commerce, welfare and prosperity, and in order to further remedy the conditions found to exist in this Commonwealth as declared in the Urban Redevelopment Law, it is essential to provide new employment opportunities to prevent, arrest and alleviate blighted, decayed and substandard areas in municipalities, to increase the tax base and to improve the general economy of this Commonwealth. It is the purpose of this act to provide an additional and alternative means to finance

public facilities and residential, commercial and industrial development and revitalization, all to the public benefit and good, in the manner provided in this act.

### Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Authority.” An industrial and commercial development authority or a redevelopment authority.

“Finance officer.” The legally authorized agent of a municipality or school district responsible by law for receipt and disbursement of the revenues of the municipality or school district.

“Governing body.” The legislative body of a municipality authorized by law to levy taxes. The term includes the board of directors of a school district authorized by law to levy taxes.

“Industrial and commercial development authority.” An authority created pursuant to the act of August 23, 1967 (P.L.251, No.102), known as the Industrial and Commercial Development Authority Law.

“Issuing authority.” The industrial and commercial development authority, municipal authority or redevelopment authority that issues tax increment bonds or notes in accordance with section 9.

“Municipal authority.” A municipal authority organized pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945.

“Municipality.” A county, city, borough, incorporated town, township or home rule municipality.

“Planning commission.” A planning commission as defined by the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

“Project.” The undertakings and activities of an authority in a tax increment district for the elimination and prevention of the development or spread of blight, which may include property acquisition, clearance, redevelopment, rehabilitation or conservation in a tax increment district, or a combination or part thereof in accordance with a project plan.

“Project costs.” Any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred which are listed in a project plan as costs of public works or improvements within a tax increment district, plus any costs incidental thereto. Project costs include, but are not limited to:

- (1) Capital costs, including the actual costs of the construction of public works or improvements, new buildings, structures and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures; the acquisition, upgrade or rehabilitation of machinery and equipment; and the acquisition, clearing and grading of land. Capital costs also include the actual cost of the construction, rehabilitation or repair of publicly owned infrastructure improvements located outside the boundaries of a tax increment district which are of direct benefit to a project.

(2) Financing costs, including all costs of issuance of tax increment bonds or notes, reserve funds for tax increment bonds or notes, all interest paid to holders of evidences of indebtedness issued to pay for project costs, and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity.

(3) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the authority of real property within a tax increment district for consideration which is less than its cost to the authority.

(4) Professional service costs, including those costs incurred for architectural, planning, engineering and legal advice and services.

(5) Administrative costs, including reasonable charges for the time spent by employees of a municipality or an authority in connection with the implementation of a project plan.

(6) Relocation costs.

(7) Organizational costs, including the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of tax increment districts and the implementation of project plans.

(8) Costs which are found to be necessary or convenient to the creation of tax increment districts or the implementation of project plans, or for the reimbursement of prior expenditures made for any of the costs under this definition.

“Project plan.” The properly approved plan for the development or redevelopment of a tax increment district, including all properly approved amendments to the plan.

“Redevelopment area.” Any area, whether improved or unimproved, which a planning commission may find to be blighted because of the existence of the conditions enumerated in section 2 of the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law, so as to require redevelopment under the provisions of the Urban Redevelopment Law or this act.

“Redevelopment authority.” An authority created pursuant to the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

“School district.” The term includes school districts of all classes as defined by the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Tax increment.” Generally, the incremental tax revenues resulting from the increase in property values or from the increase in sales activity as a result of a project. More specifically, the term includes the following:

(1) The tax levied on property situated in, or otherwise assignable for the purposes of property taxation to, a tax increment district to the extent that such tax is attributable to an excess of the aggregate taxable valuation as of the tax increment base date. The portion of the tax levy attributable to the increased valuation after the tax increment base date shall be calculated using the same factors as were used as of the base date or without these factors if property was not classified for tax purposes as of the base date.

(2) The payment in lieu of taxes assigned to or agreed to be paid by governmental entities or nonprofit organizations with property situated or otherwise assignable to a tax increment district. Whether all or only a portion of this payment is to be considered part of the tax increment shall be determined at the time the tax increment district is created.

(3) The tax paid on the sale or use of tangible personal property within the tax increment district. Whether all or only a portion of this tax is to be considered part of the tax increment shall be determined at the time the tax increment district is created. This paragraph applies only to a sales or use tax levied by a governing body.

“Tax increment base.” The aggregate value of all taxable property located within a tax increment district on the date the district is created, as determined in accordance with section 6.

“Tax increment district” or “district.” A contiguous geographic area within a redevelopment area defined and created by resolution or ordinance of the governing body of the municipality creating the district in accordance with section 5.

“Tax increment fund” or “fund.” A fund into which are paid all tax increments and into which are deposited all revenues from the sale of tax increment finance bonds or notes, revenues from the sale of any property acquired as part of a project plan or revenues to be used in the district, and from which money is disbursed to pay project costs for the district or to satisfy claims of holders of tax increment bonds or notes issued for the district.

“Taxable property.” The term includes only taxable property located within a tax increment district.

“Urban Redevelopment Law.” The act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

#### Section 4. Powers of authorities.

In addition to all other powers conferred by law, an authority may exercise any powers necessary and convenient to carry out the purposes of this act, including the power to:

- (1) Propose tax increment districts and the boundaries thereof.
- (2) Cause project plans to be prepared and to implement the provisions and effectuate the purposes of the plans.
- (3) Issue tax increment bonds and notes.
- (4) Deposit moneys into the tax increment fund of any tax increment district.
- (5) Enter into any contracts or agreements, including agreements with bondholders, as determined to be necessary or convenient to implement the provisions and effectuate the purposes of project plans. The contracts or agreements may include conditions, restrictions or covenants which either run with the land or otherwise regulate the use of the land.

#### Section 5. Creation of tax increment districts and approval of project plans.

A tax increment district shall be created in the following manner:

(1) The authority shall make a formal presentation to the governing bodies of all municipalities and school districts which levy property taxes within the area in which the proposed tax increment district will be located. The presentation shall include a description of the proposed boundaries of the district, the tentative plans for the development or redevelopment of the district, and an estimate of the general impact of the proposed district on property values and tax revenues.

(2) Each affected municipality and school district shall designate a representative to meet with the authority to discuss the project plan and the tax increment financing, and shall notify the authority of its designated representative. The authority shall meet with the designated representative to discuss the creation of the district, the boundaries of the district, development within the district, the tax increment that the municipality and school district would contribute to the tax increment fund, the exclusion of particular parcels of property from the district, tax collection for the district and any other matter relevant to the proposed tax increment district.

(3) The authority shall recommend the boundaries of a tax increment district to be created and shall submit the recommendation to the governing body of the municipality which will create the district. The municipality may be a county.

(4) The authority shall prepare a project plan for each tax increment district and submit the plan to the governing body of the municipality which will create the district and to the governing body of any other municipality or school district that levies property taxes within the boundaries of the proposed district. The plan shall include the following:

(i) A statement listing the kind, number and location of all proposed public works or improvements within the district.

(ii) An economic feasibility study of the project and the fiscal effects on the municipal tax base.

(iii) A detailed list of estimated project costs.

(iv) A description of the methods of financing all estimated project costs and the time when related costs or monetary obligations are to be incurred.

(v) A map showing existing uses and conditions of real property in the district.

(vi) A map showing proposed improvements and uses therein.

(vii) Proposed changes of any zoning ordinance, master plan, map, building code or ordinance.

(viii) A list of estimated nonproject costs.

(ix) A statement of a proposed method for the relocation of families, persons and businesses to be temporarily or permanently displaced from housing or commercial facilities in the project area by implementation of the plan.

(5) The governing body of the municipality which will create the tax increment district shall hold at least one public hearing at which interested parties are afforded a reasonable opportunity to express their views on the concept of tax increment financing, on the proposed creation of a tax

increment district and its proposed boundaries, on the proposed adoption of a project plan for the district and the benefits to the municipality. Notice of the hearing shall be published in accordance with the terms of the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, and said notice shall be provided by first class mail, postage prepaid, to the governing body of any municipality or school district that levies property taxes within the boundaries of a proposed tax increment district. This notice shall be provided not less than 30 days before the date of the hearing.

(6) *In order to create a district and adopt a project plan, the governing body of the municipality which will create the tax increment district shall adopt, not earlier than three weeks after the public hearing described in paragraph (5) has been held, a resolution or ordinance which:*

(i) *Describes the boundaries of a tax increment district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included. The governing body shall take care that the boundaries include only those whole units of property assessed for general property tax purposes.*

(ii) *Creates the district as of a given date. A tax increment district may exist for a period not to exceed 20 years, unless an amendment is made to the project plan under paragraph (8).*

(iii) *Assigns a name to the district for identification purposes.*

(iv) *Contains findings that, among other things:*

(A) *The district is a contiguous geographic area within a redevelopment area.*

(B) *The improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district. It is not necessary to identify the specific parcels meeting this criterion.*

(C) *The aggregate value of equalized taxable property of the district, plus all existing tax increment districts, does not exceed 10% of the total value of equalized taxable property within the municipality.*

(D) *The area comprising the district as a whole has not been subject to adequate growth and development through investment by private enterprise and would not reasonably be anticipated to be adequately developed without the adoption of the plan.*

(E) *A feasible method exists for the compensation of individuals, families and small businesses that will be displaced by the project and for their relocation to decent, safe and sanitary dwelling accommodations within their means, without undue hardship to such individuals, families and businesses.*

(F) *The project plan conforms to the municipal or county master plan, if any.*

(G) *The project plan will afford maximum opportunity, consistent with the sound needs of the community as a whole, for the rehabilitation or redevelopment of the tax increment district by private enterprise.*

(H) The district is a blighted area containing characteristics of blight as described in the Urban Redevelopment Law and the project to be undertaken is necessary to eliminate such conditions of blight.

(7) The governing body of a municipality or school district that levies property taxes within the boundaries of a proposed tax increment district shall, by ordinance or resolution, agree to participate or opt not to participate in the tax increment district. Such ordinance or resolution shall be adopted and a copy thereof delivered to the governing body of the municipality which will create the district on or before the date on which the public hearing described in paragraph (5) is held.

(8) The governing body of the municipality creating the tax increment district may at any time, subject to the provisions of section 6(c), adopt an amendment to a project plan which shall be subject to approval in the same manner as the original project plan.

**Section 6. Determination of tax increment and tax increment base.**

(a) Tax increment base.—Upon the creation of a tax increment district or the adoption of any amendment to a project plan subject to subsection (c), the tax increment base of the district shall be determined.

(b) Determination of base.—Upon application in writing by the finance officer of the municipality which created the district, the assessor for that municipality shall determine, according to its best judgment from all sources available to it, the full aggregate value of the taxable property in the district, which aggregate valuation constitutes the tax increment base of the district.

(c) Amendment of plan.—If the original project plan for any district is amended and the amendment includes additional project costs for which tax increments may be received by the municipality, to the extent reimbursement of previously incurred costs and debt has been made as described in section 7(a), the tax increment base for the district shall be redetermined pursuant to subsection (b) within 90 days following the effective date of the amendment. The tax increment base, as redetermined under this subsection, is effective for the purposes of this act only if it exceeds the original tax increment base.

(d) Rebuttable presumption.—It is a rebuttable presumption that any property within a tax increment district acquired or leased as lessee by the authority within one year immediately preceding the date of the creation of the district was so acquired or leased in contemplation of the creation of the district. The presumption may be rebutted by the authority with proof that the property was leased or acquired primarily for a purpose other than to reduce the tax increment base. If the presumption is not rebutted, in determining the tax increment base of the district, but for no other purpose, the taxable status of the property shall be determined as though such lease or acquisition had not occurred.

(e) Identification.—The assessor for the municipality which created the district shall identify upon the assessment roll, returned and examined in accordance with law, those parcels of property which are within each existing tax increment district, specifying the name of each district. A similar notation shall also appear on the tax roll made by the finance officer for the

municipality creating the district and by the finance officer for any municipality or school district that participates in a tax increment district.

**Section 7. Allocation of positive tax increments.**

(a) **Allocation of positive tax increments.**—Positive tax increments of a tax increment district shall be allocated to the issuing authority for each year from the date when the district is created until that time, after the completion of all public improvements specified in the plan or amendments thereto, when the issuing authority has received aggregate tax increments of the district in an amount equal to the aggregate of all expenditures made or monetary obligations incurred for project costs for the district, including the payment of tax increment bonds or notes.

(b) **Collection and payment of tax increments.**—Notwithstanding any other provision of law, the finance officer for the municipality which created the district and the finance officer for any municipality or school district which participates in a tax increment district shall, on the next settlement date provided by law, pay over to the issuing authority, out of all such taxes which have been collected, that portion which represents the tax increment allocable to the issuing authority.

(c) **Deposit of tax increments.**—All tax increments received by the issuing authority shall be deposited into the tax increment fund for the district. Each finance officer may also transmit, for deposit into the fund, additional moneys pursuant to an appropriation by the governing body the officer represents or from any other source. Moneys shall be paid out of the fund by the issuing authority in accordance with section 9(h). To the extent that any moneys remain in the fund after all foregoing costs have been paid or satisfied, the remaining moneys shall be distributed on an equal basis to all municipalities and school districts which participated in the tax increment district.

**Section 8. Termination of tax increment districts.**

The existence of a tax increment district shall terminate when either of the following occurs:

(1) Positive tax increments are no longer allocable to a district under section 7(a).

(2) The governing body of the municipality which created the district, by resolution, dissolves the district. The district may not be dissolved as long as tax increment bonds or notes for the district remain outstanding.

**Section 9. Financing of project costs.**

(a) **Payment of costs.**—Payment of project costs may be made by any of the following methods or combination thereof:

(1) Payment out of the municipality's general funds.

(2) Payment out of the proceeds of the sale of tax increment bonds or notes.

(3) Payment as otherwise permitted by law.

(b) **Tax increment bonds and notes.**—

(1) For the purposes of paying project costs or of refunding bonds or notes issued under this section, an authority may issue tax increment bonds or notes payable from positive tax increments.



(2) A redevelopment authority may enter into an agreement with an industrial and commercial development authority or a municipal authority whereby the redevelopment authority appoints or authorizes the industrial and commercial development authority or the municipal authority to act as the agent of the redevelopment authority in the issuance of tax increment bonds and notes. If such an agreement is entered into, the industrial and commercial development authority or municipal authority shall have the power to issue tax increment bonds and notes in accordance with the provisions of this section. Nothing contained in this paragraph shall be construed to limit the powers otherwise granted to an industrial and commercial development authority by this act.

(c) Resolution.—Tax increment bonds or notes shall be authorized by resolution of the issuing authority. The resolution shall state the name of the tax increment district, the amount of bonds or notes authorized and the interest rate or rates to be borne by the bonds or notes. The resolution may prescribe the terms, form and content of the bonds or notes and other matters as the authority deems useful.

(d) Amount and term.—Tax increment bonds or notes may not be issued in an amount exceeding the aggregate project costs. The bonds or notes shall mature over a period not exceeding 20 years from the date of issue. The principal and interest on the bonds and notes may be payable at any time and at any place. The bonds or notes may be payable to bearer or may be registered as to the principal or principal and interest. The bonds or notes may be in any denominations. *The bonds or notes may be sold at public or private sale.*

(e) Exempt from taxation.—The tax increment bonds issued hereunder and the income therefrom shall at all times be free from taxation for State or local purposes under any law of this Commonwealth. The interest on the bonds or notes may or may not be excluded from gross income for purposes of Federal income taxation.

(f) Liability; presumption.—Neither the members of an issuing authority nor any person executing the bonds shall be liable personally on any such bonds by reason of the issuance thereof. Any bond reciting in substance that it has been issued to accomplish the public purposes of this act shall be conclusively deemed, in any suit, action or proceeding involving the validity or enforceability of such bond or security therefor, to have been issued for such purpose.

(g) Negotiable instruments.—The tax increment bonds issued in this act are hereby declared to have all the qualities of negotiable instruments under the law merchant and the negotiable instruments law of this Commonwealth.

(h) Payment of bonds and notes.—Tax increment bonds or notes are payable in whole or in part from the tax increment fund. To the extent that bonds or notes are payable in whole, each bond or note shall contain recitals as are necessary to show that it is only so payable and that it does not constitute an indebtedness of any municipality or school district or a charge against the general taxing power thereof. The issuing authority shall irrevocably pledge all or a part of the tax increment fund to the payment of the bonds or notes. The fund or designated part thereof may thereafter be used only for

the payment of the bonds or notes and interest until they have been fully paid, and a holder of the bonds or notes or of any coupons appertaining thereto shall have a lien against the fund for payment of the bonds or notes and interest, and may either at law or in equity protect and enforce the lien. Notwithstanding the foregoing, a municipality or school district may guarantee the payment of tax increment bonds or notes pursuant to the provisions of the act of July 12, 1972 (P.L.781, No.185), known as the Local Government Unit Debt Act. In such instance, appropriate notation of such shall be reflected in the recitals of each bond or note.

(i) Security of bonds or notes.—To increase the security and marketability of tax increment bonds or notes, the issuing authority may:

(1) Create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom.

(2) Make covenants and do any and all acts not inconsistent with law as may be necessary or convenient or desirable in order to additionally secure bonds or notes or tend to make the bonds or notes more marketable according to the best judgment of the authority or the governing body of the municipality which created the district.

(j) Additional payment method.—For the purpose of paying project costs, the governing body of the municipality may also allow payments to be made in full at the time such costs accrue, thus allowing the project to be all or partially funded on a pay-as-you-go basis.

(k) Applicability of other laws.—

(1) Tax increment bonds and notes issued under this act shall be subject to the provisions of the act of December 20, 1985 (P.L.483, No.113), known as the Tax-Exempt Bond Allocation Act, to the extent required by Federal law.

(2) Except for guarantees of tax increment bonds and notes as provided in subsection (h), tax increment bonds and notes issued under this act shall not be subject to the provisions of the Local Government Unit Debt Act.

(3) With respect to property located within a tax increment district, a governing body may not grant, prior to the dissolution of the district, any tax exemptions pursuant to the provisions of the act of December 1, 1977 (P.L.237, No.76), known as the Local Economic Revitalization Tax Assistance Act.

Section 10. Comprehensive report.

The Department of Commerce, in cooperation with other State agencies and local governments, shall make a comprehensive report to the Governor and the General Assembly every two years commencing January 1, 1992, as to the social, economic, and financial effects and impact of tax increment financing projects.

Section 11. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

**Section 12. Repeals.**

All acts and parts of acts are repealed insofar as they are inconsistent with this act.

**Section 13. Effective date.**

This act shall take effect January 1, 1990, or immediately, if enacted after January 1, 1990.

**APPROVED—**The 11th day of July, A. D. 1990.

**ROBERT P. CASEY**