

## No. 1992-164

## AN ACT

## HB 2439

Amending the act of July 11, 1990 (P.L.465, No.113), entitled "An act 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," further providing for certain definitions, for project plans, for creation of tax increment districts, for the tax increment base and for certain regulations.

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

Section 1. The definitions of "project costs," "tax increment" and "tax increment base" in section 3 of the act of July 11, 1990 (P.L.465, No.113), known as the Tax Increment Financing Act, are amended to read:

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:

\* \* \*

"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 *or residential, commercial or industrial development or revitalization* 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 *or residential, commercial or industrial development or revitalization*, 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.

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“Tax increment.” Generally, the incremental tax revenues, *determined with reference to the tax increment base*, resulting from the increase in property values or from the increase in [sales] *commercial* 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.]**

***(1) The incremental tax revenues resulting from an increase in the total market value of taxable real property situated in a tax increment district and an increase in the business use and occupancy of such taxable real property. This paragraph applies only to ad valorem taxes on real property and tax imposed by the governing body on the use and occupancy of real property.***

(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.]**

**(3) The incremental tax revenues resulting from an increase in total taxable sales and rentals of tangible personal property and in the rendition of taxable services by vendors located in a tax increment district. This paragraph applies only to a sales tax levied by a governing body.**

**(4) The incremental tax revenues resulting from an increase in total gross receipts or gross or net profits or income realized by persons or entities from business conducted in a tax increment district. This paragraph applies only to those taxes levied under the authority of the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act, the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, and the act of May 30, 1984 (P.L.345, No.69), known as the First Class City Business Tax Reform Act.**

**["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 base." The term means one or more of the following, as appropriate:**

**(1) The aggregate market value of all taxable real property located within a tax increment district on the date the district is created.**

**(2) In a district where the governing body has levied a tax on the business use and occupancy of real estate, the average aggregate market value of real property located within the district and used or occupied for business purposes during the last available 12-month period preceding the date of creation of the district.**

**(3) In a district where the governing body has levied a sales tax, the total amount of taxable sales, rentals and services subject to the sales tax of the Commonwealth and occurring within the district during the last calendar year or the last available 12-month period preceding the date of creation of the district.**

**(4) In a district where the governing body has levied a mercantile license tax, business privilege tax, net profits tax or similar tax for the privilege of engaging in business within the district, the total amount of taxable gross receipts, net income or net profits, as the case may be, realized by taxpayers at locations within the district during their last taxable period which ended before the date of creation of the district.**

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**Section 2. Sections 5, 6(b) and 7(a) of the act are amended to read:**

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

**(a) General rule.—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] and/or all residential, commercial or industrial development and revitalization improvements.**

(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]** *or* would not reasonably be anticipated to be adequately developed *or further 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 whole or in part* 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.

*(b) Cities of the first class.—In cities of the first class, a tax increment district shall be permitted only in a certified redevelopment area created pursuant to the Urban Redevelopment Law.*

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

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(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 *market* value of the taxable property in the district[, which aggregate valuation constitutes the tax increment base of the district.] *as of the date on which the district was created. The finance officer of the municipality may determine the sales tax base or any other tax increment base contemplated hereby in any manner which is reasonable and prudent and meets sound business practice.*

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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.

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Section 3. The act is amended by adding a section to read:

**Section 9.1. Rules and regulations.**

*The Secretary of Commerce may, in the manner provided by law, promulgate the rules and regulations necessary to carry out this act. Regulations so promulgated shall not apply to districts created prior to the effective date of such regulations.*

Section 4. This act shall take effect immediately.

APPROVED—The 16th day of December, A. D. 1992.

ROBERT P. CASEY