



Economic Development

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Economic Development

Reference Number: MTAS-57

Economic and Community Development Board

T.C.A. § 6-58-114 mandates that each county shall set up a board to advance economic and community development. All municipalities in the county are required to participate on this board, and the mayor or city manager of each municipality in the county is an ex officio member. The board must be established by interlocal agreement under T.C.A. § 5-1-113. The board is funded based on the per capita population of each participating governmental entity. This board may donate funds from participating governments to other public or non-profit entities in the county for economic and community development purposes. When applying for any state grant, a city or county must certify its compliance with the requirements of this statute.

Industrial Parks and Buildings

Reference Number: MTAS-99

Disclosure of Economic Development Agreements; Conditions and Term of Agreements

All economic development agreements granting property tax incentives must be submitted in writing to the chief executive officer of each jurisdiction in which the property is located and to the state comptroller. The agreement must be submitted within 10 days after execution. To determine the exempt status of property subject to the agreement, the parties may petition the local and state boards of equalization for adjudication in the manner required for filing local assessment appeals. T.C.A. §§ 4-17-301, et seq.. Lessees must make annual reports to the state board of equalization on property leased and in-lieu-of-tax payments made. T.C.A. § 7-53-305(e).

Tax Increment Financing and Economic Impact Plans for Industrial Development

T.C.A. § 7-53-312 authorizes and establishes procedures for using tax increment financing and economic impact plans for industrial development.

Uniformity in Tax Increment Financing Act of 2012

Regardless of the authority for a tax-increment financing plan base and dedicated taxes are defined by T.C.A. § 9-23-101, et seq. These provisions also govern the allocation of taxes collected within a tax-increment finance area. Allocation of tax-increment financing revenue is capped at 20 years for an economic development plan and at 30 years in the case of a redevelopment plan or community development plan. These limits may be increased with approval from the comptroller and the commissioner of economic and community development.

Regional Megasite Authorities

Municipalities and counties may create regional megasite authorities, which are similar to a regional industrial development corporation (IDC). A "megasite" must consist of at least 1,000 contiguous acres before an authority may be created. The authority is incorporated similarly to an IDC and governed by a board of directors on which the mayor of each participating municipality sits. The authority can issue bonds and may be delegated the authority to require in-lieu-of-tax payments by lessees. Restrictions on tax breaks and in-lieu-of-tax payments are similar to those for IDCs. The authority also may prepare economic impact plans. Any authority is subject to sunset review T.C.A. §§ 64-6-101, et seq.

Local Development Authority: Industrial Development Loans

The Tennessee Local Development Authority has authority to issue notes or bonds whose proceeds may be used for loans to cities to finance constructing sewage treatment facilities, waterworks, correctional facilities, and resource and energy recovery facilities. The loan agreements are between the Department of Environment and Conservation and the city. T.C.A. § 4-31-101.

The state Funding Board and the Tennessee Local Development Authority are authorized to approve an application to the Department of Economic and Community Development for a loan of up to \$250,000 to a city of less than 25,000 population or to a county with no city of more than 50,000 population. Each must have had an unemployment rate for 12 months higher than the state average or an average per

capita income below the state average for the previous 12 months. The loan's primary purpose must be to increase the number of manufacturing jobs. It may be used for water and sewerage facilities, land acquisition, site preparation, extending utilities, road access, and environmental monitoring equipment. T.C.A. § 4-31-301.

Industrial Building Bond Act

Reference Number: MTAS-277

The Industrial Building Bond Act is highly restrictive. Cities may issue bonds and construct industrial buildings under this Act, but the bonds must be approved by a three-fourths affirmative vote in a referendum. T.C.A. § 7-55-107.

The building may be up to 10 miles from the city limits. The bonds may be secured only by rentals from the building, or the city may additionally pledge its full faith and credit.

To proceed with the project, the city must get a certificate of public purpose and necessity from the building finance committee in the Industrial Development Division of the Department of Economic and Community Development. The committee is empowered not only to issue the certificate but also to determine:

- the amount of bonds to be issued;
- the property to be acquired and acquisition terms;
- the expenditures that may be made in constructing and equipping the building; and
- the method of lease, rental and operation of the building.

As a condition of the certificate being issued, the committee must require the maximum economically feasible use of solar heating systems and solar water heaters and that the lessee of the building agree to make payments in lieu of taxes in amounts equivalent to the ad valorem property taxes that would have been levied on the building if it were owned by the lessee and subject to property taxation. If the city's governing body refuses to follow all the committee's requirements, then any member of the governing body voting for the refusal is personally liable for any loss the city sustains. T.C.A. §§ 7-55-105–106.

Industrial Building Revenue Bond Act of 1951

Reference Number: MTAS-278

The Industrial Building Revenue Bond Act of 1951 authorizes the issuance of industrial revenue bonds that are not backed by the city's full faith and credit, in order to build industrial buildings. In order for bonds to be issued under this Act, a three-fourths majority vote of the registered voters in the municipality voting in a referendum on the issue must approve of the bond issuance. T.C.A. §§ 7-37-101 through 7-37-116.

Industrial Development Corporation Act

Reference Number: MTAS-279

The Industrial Development Corporation Act allows creating a non-profit corporation with broad powers to acquire and develop buildings and sites for economic development. Eligible projects for the corporation include everything from railroad lines to planetariums to certain tourist attractions.

The act prescribes a detailed process for creating the corporation. Three or more people who are both city electors and city taxpayers may obtain a charter of incorporation from the secretary of state after their application has been approved in a resolution adopted by a city's governing body. The resulting corporation must have at least seven directors who are elected by the city's governing body for staggered six-year terms. The directors must be both city electors and city taxpayers. No director may be a city officer or city employee.

Typically, the industrial development corporation recruits a company to build a plant in the community. To fund the construction, the development corporation sells industrial revenue bonds. The company uses the bond proceeds to build the plant. However, on paper, the development corporation holds title to the plant. The company runs its plant and gives the corporation annual payments to cover the bond principal and interest.

Since the loss of the federal income tax exemption for this type of industrial development bond, some industrial development corporations have issued taxable industrial development bonds as a legal way to give property tax breaks to new companies.

A city may not back the corporation's bonds with its full faith and credit unless a certificate has been issued by the building finance committee of the Industrial Development Division of the state Department of Economic and Community Development, and a three-fourths majority approves the question in a local referendum.

A city may give property, assets, and loans to the corporation. A city also may develop infrastructure (power lines, water, sewer, etc.) in an industrial park and sign leases with the corporation.

Properties held by the corporation are tax exempt. The city may delegate authority to the corporation to negotiate in-lieu-of-tax payments from businesses using the corporation-owned properties. T.C.A. § 7-53-305.

Industrial Park Act

Reference Number: MTAS-280

The Industrial Park Act permits cities to build industrial parks and related economic development facilities through the issuance of bonds without the bond issuance being approved by a three-fourths majority vote in a referendum. Pledging the full faith and credit of the city requires a referendum. But with state approval, a city council may act on its own to issue bonds pledging fees, rents, tolls, and other charges connected with an industrial park. T.C.A. § 13-16-103(2).

The city still is required to obtain a certificate of public purpose and necessity, but the building finance committee's role is expanded. The committee has to determine that "the project is well conceived and has a reasonable prospect of success," "there is a good probability that the project will be self-sustaining," "the project will tend to provide proper economic development . . . and encourage industry to locate there" and the total indebtedness will not exceed 10 percent of the assessed value of the property in the community. In making the "self-sustaining" determination, the committee counts not only revenues from selling and leasing land in the park, but also utility revenues, increased ad valorem taxes, and other tax revenues resulting directly from the industrial park.

If the committee approves the project, then the city may secure its bonds with pledges of proceeds from sales of municipal property, any or all utility revenues, any or all tax revenues, and any other revenues from fees, rents, and charges. The committee has to approve both the amount of bonds issued and the security pledged.

The city may use eminent domain to acquire industrial park property, but only for a "public use" as the term is defined in T.C.A. § 29-17-102, and the must obtain a certificate of public purpose and necessity from the Department of Economic and Community Development, even if no money is borrowed for the purchase. It may develop and operate an industrial park itself or turn the responsibility over to an organization, such as an industrial development corporation. It may join with other local governments to develop and operate its industrial parks. T.C.A. §§ 13-16-101–107.

A municipality also may issue bonds for construction of a business park as long as the development is larger than five acres, the bonded indebtedness will not exceed 10 percent of the assessed value of the property in the community, and the project is well conceived, has a reasonable prospect of success, will provide economic development and employment will encourage businesses to locate there and will not become a burden to the taxpayers. The procedure for issuing such bonds is the same as that for an industrial park. T.C.A. § 9-21-105(21)(B)(i), T.C.A. § 9-21-402(B).

Central Business District

Reference Number:

MTAS-100

Central Business Improvement Districts

There are four ways under two statutes that a city can create a central business improvement district. T.C.A. §§ 7-84-101–120, *et seq.*, authorize the creation of a central business district by ordinance upon:

- a petition signed by a numerical majority of the owners of real property who own two-thirds of the assessed value of the real property in the proposed district; or
- a city's own initiative by resolution.

The actual organizational details, including those associated with funding the district, must be created by ordinance. T.C.A. § 7-84-202, T.C.A. § 7-84-207. Written protest against the creation of the district by this method by the owners representing more than one-half of the assessed value of the property to be included in the district will block the creation of the district. However, the municipality can amend the protestors out of the district's boundaries.

T.C.A. §§ 7-84-501, *et seq.*, authorize creating a central business improvement district by ordinance passed by a majority vote of the city's governing body present and voting upon:

- petition of a numerical majority of the owners of real property who own at least two-thirds of the assessed value of the real property in the proposed district; or
- the city's own initiative by resolution.

See previous note regarding the resolution and ordinance. T.C.A. § 7-84-511 and T.C.A. § 7-84-515. The creation of the district may be blocked, and the municipality can remove the block in the same manner that applies to a district created under T.C.A. §§ 7-84-101–120.

Under T.C.A. §§ 7-84-501, *et seq.*, the city creates a "district management corporation," which may be either a new or an existing body. The district management corporation acts as an advisory body "for the purpose of making recommendations for the use of special assessment revenues and for the purpose of administering activities within the district, the making of improvements within and for the district, and the provision of services and projects within and for the district." The extent of the district management corporation's powers is determined by ordinance. The city may contract with the district management corporation for services. The speakers of the Senate and the House each appoint to the district management corporation's board of directors an ex officio representative and senator from the House and Senate districts in which the majority of the central business improvement district lies. (An alternative arrangement is made for Shelby County.)

Both laws give cities broad powers to make various improvements in central business improvement districts, acquire improvements from private entities, and levy special assessments on property within the districts to finance the improvements. The laws also prescribe methods of assessment and allow the issuance of improvement revenue bonds. The authority to issue revenue bonds may be delegated to either the industrial development corporation or the public building authority. T.C.A. § 7-84-305.

Connecting CBIDs

The governing bodies of two or more municipalities may enter into an agreement to connect their central business improvement districts. The connected district is subject to all provisions that apply to a single district. T.C.A. § 7-84-209. See also T.C.A. § 7-84-103(3).

Downtown Revitalization

Reference Number: MTAS-104

Inner-city Redevelopment Districts

T.C.A. §§ 7-84-601, *et seq.*, authorize any municipality by ordinance to create a self-financing inner-city redevelopment district. These districts may not overlap CBIDs. The ordinance may be initiated by petition of owners of two-thirds of property to be included or by resolution of the governing body. The municipality may borrow money for public works improvements in the district and use special assessment revenues to pay it back. The authority to provide public works may be delegated to the governing body of the district.

Industrial Highways

Reference Number: MTAS-105

Municipalities are authorized to participate with the state and county in constructing and maintaining highways to secure an industrial site or park or to relieve related traffic congestion. The city will be responsible for the local share of the cost of such highways inside its jurisdiction. Any funds available to the city may be used for this purpose. The state Department of Transportation may use any funds not "specifically allocated by legislative action to other categories of highway construction and maintenance". T.C.A. §§ 54-5-401–406.

Local Enterprise Zones

Reference Number: MTAS-283

Home rule municipalities are authorized to create an enterprise zone management board with authority to designate enterprise zones. Home rule municipalities wanting an enterprise zone within their jurisdiction must apply to this board. To be designated an enterprise zone, an area must be in poverty and consist of underutilized or vacant lands. If a zone is designated, the local government may establish a non-profit enterprise zone development corporation empowered to own property, solicit and accept grants, and make loans and grants. Various incentives can be provided that encourage enterprise zone development. T.C.A. §§ 13-28-201–211.

Parking Authority

Reference Number: MTAS-106

In counties with a population of more than 50,000, a public corporation (designated a "Parking Authority") may be formed by the county or a city to construct and operate off-street parking facilities. The authority is under the control of a board of not fewer than five directors appointed by the mayor or county executive with the governing body's approval. A governing body may amend the certificate of incorporation by resolution. If bonds extend beyond an authority's duration, the municipality shall assume their obligations. Revenue bonds with up to 40-year terms may be issued and additionally secured by mortgages on facilities and on-street parking meter revenues. This act is not applicable in counties with a metropolitan form of government. T.C.A. §§ 7-65-101–124.

Redevelopment Authority

Reference Number: MTAS-282

Housing authorities may serve as redevelopment authorities. Such authorities are empowered to undertake urban renewal projects and issue tax increment bonds to finance redevelopment projects. Blighted property may be acquired, cleared, and assembled for redevelopment. Under tax increment financing, the new tax revenue resulting from a successful redevelopment project is earmarked for public investments that made redevelopment possible. County approval is required unless county taxes are exempted from the tax increment provisions (except in Davidson and Shelby counties). T.C.A. §§ 13-20-202–216.

Tourism

Reference Number: MTAS-103

Appropriations to Advertise and Promote a City to Attract Tourism

Spending municipal funds for advertising to attract new industries and tourists to a community is authorized by T.C.A. §§ 6-54-201–203. A city may make general fund appropriations up to \$30,000 annually (\$60,000 if involved in a joint effort with a county, presumably \$30,000 from each, but this is not stated explicitly). Additionally, a municipal governing body may levy a tax of up to 2 cents to create a

special fund for such purposes. An advertising tax in excess of that amount requires a referendum upon a petition signed by 5 percent of a city's registered voters.

Convention Center and Tourism Financing

A municipality may create a tourism development zone in an area in which a public use facility is located or planned. The zone may not exceed one mile in radius from the facility, and the facility must have more than 250,000 square feet and cost more than \$75 million. The benefit of creating a zone is that the city will receive from state and local sales and use taxes an amount equal to the incremental increase in such taxes resulting from the facility, except when the rate increases. The municipality may enter into structured lease agreements relative to these facilities. The allocation continues until the debt on the facility is paid off or it ceases to be used for public purposes. Exceptions and enhancements to this program have been added for particular facilities and for larger counties T.C.A. §§ 7-88-101, *et seq.*

Tourism Development Authority

One or more cities or counties may establish a tourism development authority that may be funded by the general fund(s) or an occupancy tax. Authority has broad powers to undertake tourism project including visitors' centers, recreational facilities and other tourism-promoting projects. The creating local government(s) is not liable for the debts of the authority. Not applicable to Shelby County. T.C.A. §§ 7-9-101, *et seq.*

Regional Tourism Funding

The state provides a \$2 match for each \$1 (up to \$35,000 in annual local expenditures) spent on regional tourism promotion. T.C.A. § 4-3-2207(b).

Hotel/Motel Tax

Many cities fund tourism promotion programs with a hotel/motel tax. Home rule cities are authorized to levy a tax of up to 5 percent. T.C.A. §§ 67-4-1401–1425. General law cities (except those in certain counties, in which the municipality may levy the tax by ordinance passed by a two-thirds vote of the governing body) and private act charter cities must have special acts to authorize the tax.

Non-profit Corporations

Reference Number: MTAS-1776

A city may appropriate money to any non-profit charitable or civic organization "which provides year-round service benefitting the general welfare." T.C.A. § 6-54-111. Non-profit civic organizations are exempted from taxation pursuant to Section 501(c)(4) or (c)(6) of the Internal Revenue Code. Organizations falling in this category include chambers of commerce and other organizations that promote, maintain, and increase employment by promoting industry, trade, commerce, tourism, and recreation by inducing manufacturing, industrial, governmental, educational, financial, and other enterprises to locate in the city. Any appropriation under this statute must meet guidelines issued by the state comptroller's office.

Private-purpose Utility Projects

Reference Number: MTAS-1777

Cities are prohibited from constructing water and sewer projects for private purposes. Such purposes include any commercial project, commercial subdivision, private residence, or privately owned residential subdivision. It also includes constructing individual water and sewer lines beyond a meter that measures service or on private property where the municipality does not have an easement. But municipalities may do sewer work on private property when there is excessive inflow from rainwater or groundwater that causes overflows and creates health issues, and the owner agrees to hold the municipality harmless. T.C.A. § 7-35-401.

Compliance with Public Chapter 1101

Reference Number:

MTAS-1142

Joint Economic Development Boards Must Comply With Requirements of Public Chapter 1101

The Tennessee Department of Economic and Community Development (ECD) will not approve grants for entities not in compliance with the requirements of Public Chapter 1101. Effective September 1, 2003, all state grant applications administered by ECD must include supporting documentation that the joint economic and community development board (1) is legally established and (2) is composed of the minimum required members, and (3) that the board and its executive committee have met according to state law. A copy of the interlocal agreement establishing the joint board and certified minutes shall be the minimum acceptable documentation. The department will accept applications where good faith efforts to meet are demonstrated by a schedule for both the board and executive committee indicating meeting dates between September 1, 2003, and June 30, 2004. By July 1, 2004, every local government applying for a state grant administered by ECD must provide records documenting that a minimum of four board meetings and four executive committee meetings were held during the previous 12 months.

Public Chapter 1101 requires that each county, and cities therein, establish a joint economic and community development board for the purpose of “fostering communications with regard to economic and community development between and among governmental entities, industry, and private citizens.” Cities and counties generally have complied with the requirement that such joint boards be established.

T.C.A. § 6-58-114(f) requires that the board meet a minimum of four times annually and that the board's executive committee meet at least four times annually. When applying for state grants, cities and counties are required to certify compliance with the requirements of T.C.A. § 6-58-114.

The commissioner is required by law to ensure local government compliance with Public Chapter 1101. The stakes are simply too high not to comply with the law. Accordingly, MTAS recommends that:

- Every city develop and maintain documentation proving the existence of a joint board by interlocal agreement with the minimum required members;
- Every joint board schedule the required four board meetings and four executive committee meetings for each year; and
- Every joint board maintain minutes proving that the board has met the required number of times for any given 12-month period.

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