Municipal Technical Advisory Service
INSTITUTE for PUBLIC SERVICE

Published on *MTAS* (https://www.mtas.tennessee.edu) November 26, 2020

Industrial Parks and Buildings

Dear Reader:

The following document was created from the MTAS website (mtas.tennessee.edu). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

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,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

Table of Contents

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).

Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE