

CHAPTER 358 (HB 852)

AN ACT relating to incremental financing by local governments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 11 of this Act:

- (1) *“City” means any city or urban-county;*
- (2) *“Commencement date” means the date a development area is established, as provided in the ordinance creating the development area;*
- (3) *“County” means any county or charter county;*
- (4) *“Debt charges” means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on increment bonds as the payments come due and are payable and any charges related to the payment of the foregoing;*
- (5) *“Development area” means a contiguous geographic area, which may be within one (1) or more cities or counties, defined and created for economic development purposes by an ordinance of a city or county in which one (1) or more economic development projects is proposed to be located;*
- (6) *“Economic development project” means any property, asset, or improvement certified by the governing body, which certification is conclusive as:*
 - (a) *Being for a public purpose;*
 - (b) *Being for economic development purposes;*
 - (c) *Being in or related to a development area; and*
 - (d) *Having an estimated life or period of usefulness of one (1) year or more, including, but not limited to, real estate, buildings, personal property, equipment, furnishings, and site improvements and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements so certified as having an estimated life or period of usefulness of one (1) year or more;*
- (7) *“Economic development purposes” means the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, or any combination thereof, which is determined by the governing body establishing the development area as contributing to economic development;*
- (8) *“Financing agreement” means an agreement made between cities, counties, or a combination thereof providing for the release of increments under the authority of Sections 1 to 11 of this Act;*
- (9) *“Governing body” means the body possessing legislative authority in a city or county;*
- (10) *“Increment bonds” means bonds and notes issued for the purpose of paying the costs of one (1) or more economic development projects in a development area, the payment of which is secured solely by a pledge of increments or by a pledge of increments and other sources of payment that are otherwise permitted by law to be pledged or used as a source of payment of the bonds or notes;*

- (11) *"Increments" means that amount of revenue due to be received by a city or county, determined by subtracting the amount of old revenues from the amount of new revenues with respect to a development area;*
- (12) *"Issuer" means a city or county issuing increment bonds;*
- (13) *"New revenues" means the revenues received with respect to a development area in any year after the commencement date for the development area;*
- (14) *"Old revenues" means the amount of revenues received with respect to a development area in the last year prior to the commencement date for the development area;*
- (15) *"Outstanding" means increment bonds that have been issued, delivered, and paid for, except any of the following:*
 - (a) *Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;*
 - (b) *Increment bonds in replacement of which or in exchange for which other bonds have been issued; or*
 - (c) *Increment bonds for the payment, or redemption or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;*
- (16) *"Revenue collector" means any official charged with collecting revenues in a development area;*
- (17) *"Revenues" means ad valorem revenues and occupational license fees received by the city or county creating a development area and by each city and county that is a party to a financing agreement related to that development area;*
- (18) *"Special fund" means a special fund created in accordance with Section 5 of this Act into which increments are to be deposited;*
- (19) *"Termination date" means the date on which the development area shall cease to exist, which date shall be no earlier than the date any increment bonds secured by increments from a development area are no longer outstanding, and which shall be no later than the first December 31st that is at least thirty (30) years from the commencement date; and*
- (20) *"Year" means January 1st to December 31st of the same calendar year.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares that economic development created by the development of economic development projects to support economic revitalization and improvement in a development area which results in the increase in the value of property located in a development area or results in increased employment opportunities within or around a development area serves a public purpose.

SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

In addition to any other powers conferred by law, any city or county may exercise any powers necessary or convenient to carry out the purposes of Sections 1 to 11 of this Act, including the power to:

- (1) Create development areas and to define their boundaries;*
- (2) Undertake economic development projects;*
- (3) Issue increment bonds and pledge increments to the payment of debt charges on those increment bonds;*
- (4) Create a special fund established for the deposit of increments and other funds that may be used or pledged for the payment of increment bonds and to pay the costs of economic development projects; and*
- (5) Utilize increments to pay the costs of economic development projects and for the payment of amounts due on increment bonds.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) Any city or county may establish or modify a development area by:*
 - (a) Holding a public hearing by its governing body or its designee at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation or modification of a development area and its boundaries. Notice of the hearing shall:*
 - 1. Include a declaration that the purpose of the hearing is to afford interested parties an opportunity to express their views regarding the development area;*
 - 2. Include a general description of the boundaries of the proposed development area;*
 - 3. State the time and place of the hearing; and*
 - 4. Be published in a local newspaper of general circulation at least seven (7) days but no more than twenty-one (21) days prior to the scheduled hearing date; and*
 - (b) Adopting an ordinance which shall:*
 - 1. Describe the boundaries of the development area with sufficiency to allow ordinary and reasonable certainty of the territory included. However, no development area shall include property located in any other development area;*
 - 2. Create the development area on a date certain, which shall be referred to as the commencement date, and, if deemed appropriate by the governing body, establish a termination date;*
 - 3. Assign a name to the development area for identification purposes;*
 - 4. Contain findings that the designation of the proposed development area will result in the increase in the value of property located in the development area or result in increased employment within or around the development area, or both;*

5. *Approve the financing agreement, if any, relating to the economic development project;*
 6. *Establish a special fund for that development area; and*
 7. *Contain any other findings, limitations, rules or procedures regarding the development area and its establishment or maintenance as deemed necessary by the governing body; and*
- (c) *Providing the revenue collector, if the collector is not an employee of the city or county designating the development area, with a description of the development area and any other information available which is needed to determine increments or new revenues.*
- (2) *Increments generated in a development area shall be submitted by the revenue collector to the city or county establishing the special fund for that development area, deposited to that special fund and used to pay the costs of economic development projects or to pay debt charges on increment bonds, except that increments payable to any city or county other than the city or county establishing the economic development area shall be submitted to that city or county as if no development area existed unless that city or county is a party to a financing agreement that provides that some or all of the increments are to be submitted to a special fund.*
- (3) *The existence of a development area shall terminate on the termination date and if no termination date is established by the ordinance creating the development area, on the earlier of the termination date subsequently established by ordinance or the first December 31st that is at least thirty (30) years from the commencement date.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

While increment bonds are outstanding, the issuer shall maintain a special fund which shall be pledged for the retirement of those increment bonds. Revenue collectors shall, for each year a financing agreement is in effect or any increment bonds are outstanding with respect to a development area, determine the amount of increments from the development area which they are charged with collecting and submit those increments for deposit in the special fund established by the governing body for that development area. Funds deposited in a special fund for the payment of increment bonds shall be disbursed at the times and in the amounts required to pay debt charges on those increment bonds. Accrued interest from the sale of increment bonds shall be deposited in the special fund pledged to the payment of those bonds. Amounts in a special fund which exceed the amount required to pay debt charges on related increment bonds in any fiscal year may accumulate in the special fund for the payment of future debt charges or to pay the costs of additional economic development projects in the development area, or may be transferred by the governing body from the special fund under the terms of a financing agreement or used for any lawful purpose.

SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Increment bonds shall be issued, administered, and regulated only by ordinance adopted by the governing body which, in addition to any other provisions deemed appropriate by the governing body, shall:

- (1) Declare the necessity of the increment bond issue;*
- (2) State the principal amount or maximum principal amount of the increment bonds to be issued;*
- (3) State the purpose of the increment bond issue;*
- (4) State or provide for the date of, and the dates and amounts or maximum amount of, maturities or principal payments on the increment bonds;*
- (5) State any provisions for a mandatory sinking fund, mandatory sinking fund redemption, or for redemption prior to maturity;*
- (6) Provide for the rate or rates of interest, or maximum rate or rates of interest, or the method for establishing or determining the rate or rates of interest to be paid on the increment bonds; and*
- (7) State any provision for a designated officer of the issuer to determine any of the specific terms required to be stated or provided for in this section, subject to any limitations stated in the proceedings.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) Increment bonds may be issued to pay the costs of economic development projects. The provisions of KRS 66.021, KRS 66.031, KRS 66.041, KRS 66.045, KRS 66.071, KRS 66.091, KRS 66.121, KRS 66.131, KRS 66.141, KRS 66.151, KRS 66.171, KRS 66.181, and KRS 66.191 shall apply to the issuance of increment bonds.*
- (2) Debt payments on increment bonds may be paid from increments, from any other funds of the issuer, or from funds identified in a financing agreement, or any combination thereof. If increment bonds are payable solely from increments, the issuer shall, prior to the issuance of the increment bonds, make a determination that the increments are adequate to make the debt payments so long as the increment bonds are outstanding.*
- (3) Increment bonds may also be issued to fund or refund all or any portion of outstanding increment bonds. Any increment bonds issued under this subsection shall mature as determined by the governing body consistent with KRS 66.091, but their maturity shall not be later than the date that would have been permitted by KRS 66.091, as of the date the original bonds were issued.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Any city or county may pledge increments to the payment of increment bonds by an ordinance adopted by the governing body or by a financing agreement adopted by ordinance. Any pledge of increments adopted under this section shall, as to the increments, but not as to any other revenues, be superior to any other pledge of revenues for any other purpose and shall, from the effective date of the ordinance to the termination date, supersede any statute or ordinance regarding the application or use of increments. No ordinance in conflict with an ordinance pledging increments shall be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances pledging increments on a subordinate basis to any existing pledges may be adopted.

SECTION 9. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon establishment of a development area, any city or county may release, by a financing agreement with any other city or county, increments expected to be collected by that city or county in the related development area for a period that does not extend beyond the termination date.*
- (2) *The financing agreement shall include the following provisions:*
 - (a) *The identity of each city and county participating in the financing agreement;*
 - (b) *A detailed description of each economic development project that is the subject of the financing agreement, including an estimate of its costs of construction or acquisition and development;*
 - (c) *A detailed description of the development area;*
 - (d) *A detailed summary estimating old revenues collected and projected new revenues in the development area for each city and county that is a party to the financing agreement, on an annual basis, for the term of the proposed financing agreement;*
 - (e) *The maximum amount of increments to be released by the parties to the financing agreement, if any, and the maximum number of years the release will be effective, including an agreement to deposit the increments in a special fund created for that purpose, which, if any increment bonds are to be issued, shall be held by the issuer of the increment bonds;*
 - (f) *The times and procedures for depositing increments and other funds, if any, in the special fund to be established for the development area and any provisions relating to the collection of the increments;*
 - (g) *Any covenants regarding additional funds or to pay the costs of the economic development projects;*
 - (h) *Any covenants regarding completion of the economic development project;*
 - (i) *Terms of default and remedies, except that no remedy shall permit the withholding by any party to the financing agreement of any increments to be deposited in the special fund identified in the financing agreement so long as any increment bonds are outstanding that are secured by a pledge of those increments; and*
 - (j) *Any other provisions not inconsistent with Sections 1 to 11 of this Act that are deemed necessary or appropriate by the parties to the financing agreement.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The authority granted by Sections 1 to 11 of this Act is in addition to and not a limitation on any other authorizations granted by or pursuant to law for the same or similar purposes.

SECTION 11. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 11 of this Act may be cited as the Kentucky Increment Financing Act.

Approved April 6, 2000