

HOUSE BILL No. 2737

By Committee on Commerce, Labor and Economic Development

Requested by Fred Patton on behalf of Hageman Capital

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AN ACT concerning economic development; relating to tax increment financing; providing for alternative financing of projects through taxpayer agreements; enacting the taxpayer agreement act; amending K.S.A. 12-1774 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Sections 1 through 5, and amendments thereto, shall be known and may be cited as the taxpayer agreement act.

(b) For purposes of the taxpayer agreement act:

(1) "Act" means the taxpayer agreement act.

(2) "Project" means an economic development project of a city eligible for tax increment financing pursuant to K.S.A. 12-1770 et seq., and amendments thereto.

(3) "Taxpayer agreement" means an agreement between a city and a project developer that meets the requirements of and is subject to the provisions of this act.

New Sec. 2. (a) A city authorized to undertake a tax increment financing project pursuant to this act and K.S.A. 12-1770 et seq., and amendments thereto, may enter into a taxpayer agreement with the owner or developer of real property located within a tax increment or redevelopment district. A taxpayer agreement may be used to:

(1) Limit such owner's or developer's rights to challenge the owner's or developer's assessment or property taxes or enforcement of a tax lien established pursuant to this act;

(2) guarantee, enhance or otherwise secure the repayment of bonds, notes or other obligations issued to finance project costs by such city;

(3) provide for payments in lieu of or in addition to tax increment revenues; or

(4) provide for any payment obligation designed to support the financing or refinancing of project costs.

(b) A taxpayer agreement entered into pursuant to this section constitutes a voluntary and binding payment obligation of the property owner or developer and shall not constitute a pledge of the credit or taxing power of the state or any city. Nothing in this act shall be construed to require a city to enter into a taxpayer agreement.

1 (c) If a taxpayer agreement provides that payments due under the
2 agreement are secured by a lien on real property, such lien:

3 (1) Shall arise and be in full force and effect automatically upon the
4 execution and recordation of the agreement;

5 (2) shall constitute and be treated in the same manner as a municipal
6 claim and real estate tax lien pursuant to law, except for limitations on the
7 property owner's or developer's rights to challenge the lien, assessment or
8 property taxes pursuant to subsection (a);

9 (3) shall have parity with real estate tax liens, taking priority over any
10 existing or subsequent mortgage, judgment, lien or encumbrance, except
11 for previously filed real estate tax liens; and

12 (4) may be enforced, collected and foreclosed in the same manner as
13 real estate taxes, except for limitations on the property owner's or
14 developer's rights to challenge the lien, assessment or property taxes
15 pursuant to subsection (a), including tax claim bureau sale, sheriff's sale or
16 judicial foreclosure.

17 (d) A taxpayer agreement containing a lien under subsection (c) shall
18 be recorded with the register of deeds in the county where the property is
19 located. Such recordation shall provide constructive notice and perfect
20 such lien without further action.

21 (e) (1) Payments due under a taxpayer agreement shall be deemed
22 delinquent if unpaid on the required date as provided by the taxpayer
23 agreement. A delinquency may be certified and enforced in any manner
24 pursuant to the taxpayer agreement and as delinquent real estate taxes
25 pursuant to law.

26 (2) All interest, penalties, fees and collection costs applicable to
27 delinquent real estate taxes shall apply to delinquent taxpayer agreement
28 payments.

29 (f) A taxpayer agreement and any lien securing the taxpayer
30 agreement may be assigned to a trustee or purchaser of bonds issued to
31 finance project costs secured by such taxpayer agreement. The assignee
32 shall possess all enforcement rights held by the city.

33 (g) Upon full payment of all obligations secured by the taxpayer
34 agreement, the city shall execute and record a release of lien, which shall
35 extinguish the lien effective upon recording.

36 New Sec. 3. (a) In addition to any powers under this act or other law,
37 a city may issue bonds as a conduit issuer to finance project costs within a
38 tax increment or redevelopment district.

39 (b) (1) Bonds issued under this section may be secured by:

40 (A) Payments due under a taxpayer agreement authorized by section
41 1, and amendments thereto;

42 (B) any lien created by a taxpayer agreement;

43 (C) incremental tax revenues; or

1 (D) reserves, guaranties or private security.

2 (2) The city may pledge, assign or grant a security interest in such
3 payments, liens, revenues or other security to a trustee or purchaser of the
4 bonds.

5 (c) Bonds issued pursuant to this section:

6 (1) Are payable solely from the security pledged;

7 (2) do not constitute a general obligation of the city or the state;

8 (3) do not constitute municipal debt for purposes of any statutory or
9 constitutional debt limitation; and

10 (4) impose no financial obligation on a city beyond receipt and
11 remittance of pledged payments.

12 (d) A city issuing bonds pursuant to this section acts solely as a
13 conduit issuer, and repayment shall be limited to:

14 (1) Taxpayer agreement payments;

15 (2) pledged incremental tax revenues; or

16 (3) any additional private security.

17 (e) (1) A city may assign to a trustee or bondholders:

18 (A) The city's right to receive payments under a taxpayer agreement;

19 (B) any lien securing such payments; and

20 (C) any enforcement rights pursuant to section 1, and amendments
21 thereto.

22 (2) An assignee shall have all enforcement powers held by the city.

23 (f) Nothing in this act shall be construed to limit the powers of a city
24 under the tax increment financing law, K.S.A. 12-770 et seq., and
25 amendments thereto.

26 (g) Nothing in this act shall be construed to:

27 (1) Require any city to enter into a taxpayer agreement;

28 (2) impose any financial obligation on a city;

29 (3) constitute a guarantee by a city or the state of any bond issued
30 pursuant to this act.

31 New Sec. 4. (a) A city may exercise all powers necessary to issue
32 conduit bonds pursuant to the provisions of sections 1 through 3, and
33 amendments thereto, including:

34 (1) Pledging or assigning payments due under a taxpayer agreement;

35 (2) pledging or assigning any lien created by a taxpayer agreement;

36 (3) entering agreements with trustees, servicers or purchasers of
37 bonds; or

38 (4) enforcing or foreclosing any lien securing the agreement pursuant
39 to the terms of the taxpayer agreement and applicable law.

40 (b) Conduit bonds issued by a city pursuant to the provisions of this
41 act shall be payable solely from the revenues and security pledged and
42 shall not constitute a debt of the state or any city.

43 Sec. 5. (a) A lien securing payments under a taxpayer agreement

1 authorized by sections 1 through 4, and amendments thereto, shall
2 constitute a municipal claim.

3 (b) A taxpayer agreement lien, as provided by section 2, and
4 amendments thereto, shall constitute and have the same priority and effect
5 as a real estate tax lien, subordinate only to real estate tax liens previously
6 filed.

7 (c) A taxpayer agreement lien may be enforced pursuant to the terms
8 of the taxpayer agreement, including any limitation of rights to challenge
9 such lien, and any law governing the collection of delinquent real estate
10 taxes.

11 (d) Payments delinquent under a recorded taxpayer agreement
12 pursuant to sections 1 through 4, and amendments thereto, shall be deemed
13 claims of the same character and enforceability as delinquent real estate
14 taxes, except as rights to challenge such enforcement may have been
15 limited by such taxpayer agreement, and may be included in tax sales or
16 judicial sales in the same manner as other delinquent real estate taxes, as
17 provided by sections 1 through 4 and this section, and amendments
18 thereto.

19 Sec. 6. K.S.A. 12-1774 is hereby amended to read as follows: 12-
20 1774. (a) (1) Any city shall have the power to issue special obligation
21 bonds in one or more series ~~and/or~~ or execute and deliver a loan from the
22 Kansas transportation revolving fund pursuant to K.S.A. 75-5063 et seq.,
23 and amendments thereto, to finance the undertaking of any redevelopment
24 project or bioscience development project in accordance with the
25 provisions of this act. Such special obligation bonds or loans shall be made
26 payable, both as to principal and interest:

27 (A) From tax increments allocated to, and paid into a special fund of
28 the city under the provisions of K.S.A. 12-1775, and amendments thereto;

29 (B) from revenues of the city derived from or held in connection with
30 the undertaking and carrying out of any redevelopment project or projects
31 or bioscience development project or projects under this act including
32 environmental increments;

33 (C) from any private sources, contributions or other financial
34 assistance from the state or federal government;

35 (D) from a pledge of a portion or all of the revenue received by the
36 city from any transient guest and local sales and use taxes which are
37 collected from taxpayers doing business within that portion of the city's
38 redevelopment district or bioscience development district established
39 pursuant to K.S.A. 12-1771, and amendments thereto, occupied by a
40 redevelopment project or bioscience development project. A city proposing
41 to finance a major motorsports complex pursuant to this paragraph shall
42 prepare a project plan which shall include:

43 (i) A summary of the feasibility study done, as defined in K.S.A. 12-

1 1770a, and amendments thereto, which will be an open record;

2 (ii) a reference to the district plan established under K.S.A. 12-1771,
3 and amendments thereto, that identifies the project area that is set forth in
4 the project plan that is being considered;

5 (iii) a description and map of the location of the facility that is the
6 subject of the special bond project or major motorsports complex;

7 (iv) the relocation assistance plan required by K.S.A. 12-1777, and
8 amendments thereto;

9 (v) a detailed description of the buildings and facilities proposed to be
10 constructed or improved; and

11 (vi) any other information the governing body deems necessary to
12 advise the public of the intent of the special bond project or major
13 motorsports complex plan.

14 The project plan shall be prepared in consultation with the planning
15 commission of the city. Such project plan shall also be prepared in
16 consultation with the planning commission of the county, if any, if a major
17 motorsports complex is located wholly outside the boundaries of the city;

18 (E) from a pledge of a portion or all increased revenue received by
19 the city from: (i) Franchise fees collected from utilities and other
20 businesses using public right-of-way within the redevelopment district; (ii)
21 from a pledge of all or a portion of the revenue received by the city from
22 sales taxes; or (iii) both of the above;

23 (F) with the approval of the county, from a pledge of all of the
24 revenues received by the county from any transient guest, local sales and
25 use taxes which are collected from taxpayers doing business within that
26 portion of the redevelopment district established pursuant to K.S.A. 12-
27 1771, and amendments thereto; *and*

28 (G) if a project is financed in whole or in part with the proceeds of a
29 loan to the municipality from the Kansas transportation revolving fund,
30 such loan shall also be payable from amounts available pursuant to K.S.A.
31 75-5063 et seq., and amendments thereto;

32 (H) by any combination of these methods.

33 The city may pledge such revenue to the repayment of such special
34 obligation bonds prior to, simultaneously with, or subsequent to the
35 issuance of such special obligation bonds.

36 (2) Bonds issued under paragraph (1) of subsection (a) shall not be
37 general obligations of the city, nor in any event shall they give rise to a
38 charge against its general credit or taxing powers, or be payable out of any
39 funds or properties other than any of those set forth in paragraph (1) of this
40 subsection and such bonds shall so state on their face. This paragraph shall
41 not apply to loans from the Kansas transportation revolving fund pursuant
42 to K.S.A. 75-5063 et seq., and amendments thereto.

43 (3) Bonds issued under the provisions of paragraph (1) of this

1 subsection shall be special obligations of the city and are declared to be
2 negotiable instruments. They shall be executed by the mayor and clerk of
3 the city and sealed with the corporate seal of the city. All details pertaining
4 to the issuance of such special obligation bonds and terms and conditions
5 thereof shall be determined by ordinance of the city. All special obligation
6 bonds issued pursuant to this act and all income or interest therefrom shall
7 be exempt from all state taxes. Such special obligation bonds shall contain
8 none of the recitals set forth in K.S.A. 10-112, and amendments thereto.
9 Such special obligation bonds shall, however, contain the following
10 recitals, viz., the authority under which such special obligation bonds are
11 issued, they are in conformity with the provisions, restrictions and
12 limitations thereof, and that such special obligation bonds and the interest
13 thereon are to be paid from the money and revenue received as provided in
14 paragraph (1) of this subsection.

15 (b) (1) Subject to the provisions of paragraph (2) of this subsection,
16 any city shall have the power to issue full faith and credit tax increment
17 bonds to finance the undertaking of any redevelopment project in
18 accordance with the provisions of K.S.A. 12-1770 et seq., and
19 amendments thereto, other than a project that will create a major tourism
20 area. Such full faith and credit tax increment bonds shall be made payable,
21 both as to principal and interest: (A) From the revenue sources identified
22 in paragraph (1) of subsection (a) or by any combination of these sources;
23 and (B) subject to the provisions of paragraph (2) of this subsection, from
24 a pledge of the city's full faith and credit to use its ad valorem taxing
25 authority for repayment thereof in the event all other authorized sources of
26 revenue are not sufficient.

27 (2) Except as provided in paragraph (3) of this subsection, before the
28 governing body of any city proposes to issue full faith and credit tax
29 increment bonds as authorized by this subsection, the feasibility study
30 required by K.S.A. 12-1772, and amendments thereto, shall demonstrate
31 that the benefits derived from the project will exceed the cost and that the
32 income therefrom will be sufficient to pay the costs of the project. No full
33 faith and credit tax increment bonds shall be issued unless the governing
34 body states in the resolution required by K.S.A. 12-1772, and amendments
35 thereto, that it may issue such bonds to finance the proposed
36 redevelopment project.

37 The governing body may issue the bonds unless within 60 days
38 following the date of the public hearing on the proposed project plan a
39 protest petition signed by 3% of the qualified voters of the city is filed
40 with the city clerk in accordance with the provisions of K.S.A. 25-3601 et
41 seq., and amendments thereto. If a sufficient petition is filed, no full faith
42 and credit tax increment bonds shall be issued until the issuance of the
43 bonds is approved by a majority of the voters voting at an election thereon.

1 Such election shall be called and held in the manner provided by the
2 general bond law.

3 The failure of the voters to approve the issuance of full faith and credit
4 tax increment bonds shall not prevent the city from issuing special
5 obligation bonds in accordance with this section.

6 No such election shall be held in the event the board of county
7 commissioners or the board of education determines, as provided in
8 K.S.A. 12-1771, and amendments thereto, that the proposed
9 redevelopment district will have an adverse effect on the county or school
10 district.

11 (3) As an alternative to paragraph (2) of this subsection, any city
12 which adopts a redevelopment project plan but does not state its intent to
13 issue full faith and credit tax increment bonds in the resolution required by
14 K.S.A. 12-1772, and amendments thereto, and has not acquired property in
15 the redevelopment project area may issue full faith and credit tax
16 increment bonds if the governing body of the city adopts a resolution
17 stating its intent to issue the bonds and the issuance of the bonds is
18 approved by a majority of the voters voting at an election thereon. Such
19 election shall be called and held in the manner provided by the general
20 bond law.

21 The failure of the voters to approve the issuance of full faith and credit
22 tax increment bonds shall not prevent the city from issuing special
23 obligation bonds pursuant to paragraph (1) of subsection (a). Any project
24 plan adopted by a city prior to the effective date of this act in accordance
25 with K.S.A. 12-1772, and amendments thereto, shall not be invalidated by
26 any requirements of this act.

27 (4) During the progress of any redevelopment project in which the
28 redevelopment project costs will be financed, in whole or in part, with the
29 proceeds of full faith and credit tax increment bonds, the city may issue
30 temporary notes in the manner provided in K.S.A. 10-123, and
31 amendments thereto, to pay the redevelopment project costs for the
32 project. Such temporary notes shall not be issued and the city shall not
33 acquire property in the redevelopment project area until the requirements
34 of paragraph (2) or (3) of this subsection, whichever is applicable, have
35 been met.

36 (5) Full faith and credit tax increment bonds issued under this
37 subsection shall be general obligations of the city and are declared to be
38 negotiable instruments. They shall be issued in accordance with the
39 general bond law. All such bonds and all income or interest therefrom shall
40 be exempt from all state taxes. The amount of the full faith and credit tax
41 increment bonds issued and outstanding which exceeds 3% of the assessed
42 valuation of the city shall be within the bonded debt limit applicable to
43 such city.

1 (6) Any city issuing special obligation bonds or full faith and credit
2 tax increment bonds under the provisions of this act may refund all or part
3 of such issue pursuant to the provisions of K.S.A. 10-116a, and
4 amendments thereto.

5 (c) Any increment in ad valorem property taxes resulting from a
6 redevelopment project in the established redevelopment district undertaken
7 in accordance with the provisions of this act, shall be apportioned to a
8 special fund for the payment of the redevelopment project costs, including
9 the payment of principal and interest on any special obligation bonds or
10 full faith and credit tax increment bonds issued to finance such project
11 pursuant to this act and may be pledged to the payment of principal and
12 interest on such bonds.

13 (d) A city may use the proceeds of special obligation bonds or full
14 faith and credit tax increment bonds, or proceeds of a loan from the
15 Kansas transportation revolving fund pursuant to K.S.A. 75-5063 et seq.,
16 and amendments thereto, or any uncommitted funds derived from sources
17 set forth in this section to pay the redevelopment project costs as defined
18 in K.S.A. 12-1770a, and amendments thereto, to implement the
19 redevelopment project plan.

20 (e) *As an alternative to financing the undertaking of a redevelopment*
21 *project as provided by subsections (a) and (b), a city may issue bonds*
22 *pursuant to a taxpayer agreement entered into in accordance with the*
23 *provisions of sections 1 through 5, and amendments thereto.*

24 Sec. 7. K.S.A. 12-1774 is hereby repealed.

25 Sec. 8. This act shall take effect and be in force from and after its
26 publication in the statute book.