Dear Commissioner Shaheen:

Please find below an explanation of our ongoing concerns with the current draft of the "Policy for County Participation in Tax Increment Reinvestment Zones". I will try to provide these by section of the document.

Participation Requirements –
2. Eligible Zone. b. While everyone understands the general term "net financial benefit" there are many ways to getting to such a number. Our question would be is it the intent that this calculation would include the base value and the increment not pledged to the TIRZ, as well as the additional growth that is spurred by a specific TIRZ project that may not necessarily be within the TIRZ?

4. Terms of Participation. a. This item states that "As an example, if the City projects tax revenue (property & sales) of $100 million for the life of proposed TIRZ and agrees to refund $40 million to the TIRZ, the County's participation may not be more than 40%". This has caused a couple of questions –

a. Are the "City...tax revenues" contemplated in this section those within the increment that remains in the TIRZ, are they the portion beyond the increment (assuming the City participates at less than 100%), or a combination of both? This makes a substantial difference in the calculations.

b. While it is recognized that the County does not benefit from sales tax proceeds there seems to be a counterintuitive problem with reducing the County's participation based on how much tax revenues. Under the scenario provided the less the City participates in the TIRZ the greater percentage participation by the County. In the example provided assuming the City is participating at 100% to generate $100 million, if the City only participates at 90% which would generate $90 million then dividing by $40 million generates 44% participation for the County.

c. It appears that the having the cap contained in 4.h. has already set a maximum.

d. This seems to be an attempt to balance the participation, however, there seems to simply be a difference of opinion that this methodology works in the best interests of a given project.

Application & approval Process –
5. It our opinion that this provision is detrimental to the financial health of a TIRZ that sells any debt. This provision provides that one of the committed funding sources may cease five (5) years into a twenty (20) year bond. As once can see this could greatly jeopardize the sale of bonds as this provision would have to disclosed to the bond market/potential buyers.

Additionally, please examine the inserted sections of the Tax Code below. I have highlighted some of the relevant language that applies here...

§ 311.015. TAX INCREMENT BONDS AND NOTES.

(b) Tax increment bonds and notes are payable, as to both principal and interest, solely from the tax increment fund established for the reinvestment zone. The governing body of the municipality may pledge irrevocably all or part of the fund for payment of tax increment bonds or notes. The part of the fund pledged in payment may be used only for the payment of the bonds or notes or interest on the bonds or notes until the bonds or notes have been fully paid. A holder of the bonds or notes or of coupons issued on the bonds has a lien against the fund for payment of the bonds or notes and interest on the bonds or notes and may protect or enforce the lien at law or in equity.

§ 311.017. TERMINATION OF REINVESTMENT ZONE. (a) A reinvestment zone terminates on the earlier of:

(1) the termination date designated in the ordinance or order, as applicable, creating the zone or an earlier termination date designated by an ordinance or order adopted subsequent to the ordinance or order creating the zone; or

(2) the date on which all project costs, tax increment bonds, and interest on those bonds have been paid in full.

(b) The tax increment pledged to the payment of bonds and interest on the bonds may be discharged and the reinvestment zone may be terminated if the municipality or county that created the zone deposits or causes to be deposited with a trustee or other escrow agent authorized by law funds in an amount that, together with the interest on the investment of the funds in direct obligations of the United States, will be sufficient to pay the principal of, premium, if any, and interest on all bonds issued on behalf of the reinvestment zone at maturity or at the date fixed for redemption of the bonds, and to pay any other amounts that may become due, including compensation due or to become due to the trustee or escrow agent.

Below is an excerpt from the Texas Attorney General's "Economic Development Handbook for Texas Cities (2008)", page 129, which indicates the parameters under which a taxing unit may stop making payments into the tax increment fund.

The board must ensure that: 1) bonds have been issued for the zone, 2) the city or count acquired property in the zone pursuant to the project plan, and/or 3) constructic improvements has begun in the zone. If at least one of the above three items is not accompl within the first three years of the zone's existence, the other taxing units are not requir continue payments into the tax increment fund.[607]

I hope this is helpful.

Respectfully,
Ron Patterson
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