

## **Summary of the Provision of 2007 HB549**

### **Overview**

HB549 establishes a new, comprehensive, statewide tax increment financing program that makes this financing method available in every city and every county in Kentucky. The first step for all programs is the establishment of a TIF development area by a city, a county, or a combination of cities and counties acting jointly. Two types of local TIF development areas are authorized. One type of local TIF development area, which is available for use on vacant land, is local only, which means that the local government cannot ask for state participation. The second type of local TIF development area, which is primarily for the redevelopment of blighted areas, qualifies for state participation if the requirements for state participation are met. There are three separate state participation programs available, each of which have different requirements for qualifications. Details are provided below.

### **Prior Law**

There were tax increment financing laws on the books prior to the passage of HB 549, however the most attractive program that offered state participation was available only in Jefferson County, and the other statutes were difficult to read and understand. Thus, prior to the passage of HB 549, the only TIF districts with state participation were in Jefferson County.

### **Continuation of Prior Law**

HB549 date limits the old tax increment financing statutes, which means that the old laws will continue to apply to tax increment financing districts created before the passage of HB549, but no new TIF development areas can be created or governed under the old laws after the passage of HB549. All new TIF development areas must be created under the provisions of HB549.

### **Development Areas Must Be Established by Local Governments**

Under the provisions of HB549, all development areas for TIF must initially be established by a city or county or a combination of cities and counties acting jointly. All development areas are subject to the following conditions:

The maximum size cannot exceed three square miles; and

The total amount of property within a city or county that may be in a TIF development area cannot exceed 20 percent of the total value of taxable real property within the jurisdiction(s) establishing the TIF development area.

## **Two Types of Local Development Areas**

There are two types of local tax development areas that can be established under HB549. HB549 provides detailed requirements for the establishment of a development area, including public hearing requirements, ordinance requirements, and parameters for agreements establishing the development area and pledging financial support. Support at the local level can be provided through the entire development area, or on a project by project basis. The two types of local development areas are as follows:

**Local Only Development Areas** – The local only TIF development area may be established by a local government on vacant land. The local government may pledge up to 100 percent of incremental property taxes and occupational license taxes for up to 20 years.

**Blighted Urban Redevelopment Areas** – These development areas may be established by a city or county in an area that meets two of seven specified blight/deterioration conditions established in HB549, such as abandonment or deterioration of structures, presence of environmentally contaminated land, and deterioration of public infrastructure. The local government may pledge up to 100 percent of incremental property taxes and occupational license taxes for up to 20 or 30 years. Projects in this type of development area are eligible for state participation if they meet the requirements.

## **State Participation Programs**

There are three state participation programs available. State participation is based on specifically identified projects within a development area, and incremental revenues are available from the actual footprint of the project. In other words, increments from tax revenues not actually part of the project footprint cannot be pledged to support a project. Footprint is defined as the actual perimeter of a discrete, identified project within a development area within which capital investments are made.

## **Tax Increment Financing Commission and the Division of Tax Increment Financing**

HB549 establishes the Tax Increment Financing Commission to review all applications for state participation. The members are: The Secretaries of Finance, Economic Development and Commerce, the State Budget Director, the chairperson of the KEDFA Board, and the deans of the business schools at UK and U of L.

HB549 also establishes a division within the Department of Revenue to provide staffing services to the commission, and to handle the administrative tasks associated with the application and review process

### **The Application Process and Monitoring Process**

Local governments interested in state participation must submit an application to the Division of Tax Increment Financing, which will conduct an initial review. Some programs require an independent consultant's report as well.

All projects for which state participation is provided must be reviewed and approved by the TIF Commission.

Approved projects are monitored by the Division of Tax Increment Financing.

The Commission is required to report annually to the Legislative Research Commission and the Governor.

### **Program Details**

The details of the state participation programs are as follows:

#### **Commonwealth Participation Program for Real Property Ad Valorem Tax Revenues**

- The project must represent new economic activity in the Commonwealth;
- The minimum capital investment is \$10 million;
- Not more than 20 percent of the approved project costs or 20 percent of the finished square footage shall be devoted to retail;

- Up to 100 percent of the state real property incremental tax revenue may be pledged from the footprint of the project;
- The amount of state revenues pledged shall not exceed 100 percent of approved public infrastructure costs; and
- Amounts can be pledged for a maximum of 20 years.

### **The Signature Project Program**

This program includes two components depending on when the project grant agreement is executed – Significant differences between the components are detailed at the end of this section:

#### **Projects with project grant agreements executed prior to 1/1/08 are subject to the following:**

- Requires a minimum capital investment of \$200,000,000;
- Must represent new economic activity in the Commonwealth;
- Application of local development provisions apply except no development plan or public hearing is required and some provisions of ordinance requirements do not apply;
- No consultant's report required and no certification of net positive impact required;
- Must be approved by the Commission and monitored by the office;
- State taxes that may be pledged include real property ad valorem taxes, individual and corporate income taxes, the limited liability entity tax, and sales taxes;
- May recover up to 100 percent of approved public infrastructure costs less sales taxes paid, signature project costs less sales taxes paid, and financing costs related to public infrastructure costs over a period of up to 30 years;
- In cities of the first class, may use a portion of the local transient room tax;
- Up to 80 percent of state incremental revenues may be pledged from the footprint of the project; and

- Qualifies for a sales tax refund on the purchase of construction materials that do not qualify as an approved public infrastructure cost or an approved signature project cost.

**Projects with project grant agreement executed on or after 1/1/08 are subject to the following:**

- Requires a minimum capital investment of \$200,000,000;
- Not more than 20 percent of the approved project costs or 20 percent of the finished square footage shall be devoted to retail;
- The project must result in a net positive economic impact to the Commonwealth, as certified by the consultant's report;
- State taxes that may be pledged include real property ad valorem taxes, individual and corporate income taxes, the limited liability entity tax, and sales taxes;
- Up to 80 percent of incremental state revenues may be pledged from the footprint of the project;
- May recover up to 100 percent of approved public infrastructure costs less sales taxes paid, signature project costs less sales taxes paid, and financing costs related public infrastructure costs over a period of up to 30 years;
- Qualifies for a sales tax refund on the purchase of construction materials that do not qualify as an approved public infrastructure cost or an approved signature project cost.

**Significant Differences Between Components:**

- Projects with grant agreements entered into prior to 1/1/08 do not have to meet all of the local requirements for establishing a development area, projects with grant agreements after that date do.
- Projects with grant agreements entered into prior to 1/1/08 do not need an independent consultant's report, projects with grant agreements after that date do.
- Projects with grant agreements entered into prior to 1/1/08 in cities of the first class may use the local transient room tax to support the project, projects with grant agreements after that date may not.

## **The Commonwealth Participation Program for Mixed Use Redevelopment in Blighted Urban Areas**

Defines mixed use as including at least two of the following: retail, residential, office, restaurant, or hospitality – to qualify as a use, the use must comprise at least 20 percent of the total finished square footage or 20 percent of the total capital investment.

To qualify a project must:

Be located in an area with at least three of the blight/deterioration conditions listed in Section 3 of HB549;

Be a mixed use project;

Represent new economic activity in the Commonwealth;

Result in a minimum capital investment of at least \$20 million but not over \$200 million; and

Result in a net positive impact to the Commonwealth.

May recover up to 100 percent of approved public infrastructure costs, and costs related to land preparation, demolition and clearance over up to 20 years.

**Effective Date** – HB549 included an emergency clause so the provisions of the Act became effective upon the Governor’s signature.