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SUMMARY OF ECONOMIC DEVELOPMENT TOOLS:

TAX INCREMENT FINANCING
SALES TAX REBATE/DEVELOPMENT AGREEMENTS
TRANSPORTATION DEVELOPMENT DISTRICTS
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NEIGHBORHOOD IMPROVEMENT DISTRICTS
PROPERTY TAX ABATEMENT UNDER CHAPTER 353 RSMO
PROPERTY TAX ABATEMENT UNDER CHAPTER 100 RSMO

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The following materials were prepared by the public finance law firm of Gilmore & Bell, P.C.

Gilmore & Bell is one of the leading public finance law firms in the United States. The firm specializes in public finance transactions, serving as bond counsel or underwriters' counsel in a wide variety of tax-exempt and taxable financings and providing tax and arbitrage rebate services in connection with tax-exempt financings. The firm also provides advice to cities, counties and states regarding economic development incentives, and handles commercial and corporate finance transactions and securities law matters. Gilmore & Bell has 48 attorneys and four offices, located in St. Louis and Kansas City, Missouri, Wichita, Kansas and Lincoln, Nebraska.

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TAX INCREMENT FINANCING IN MISSOURI

I. GENERAL

Municipalities can only spend public funds for public purposes. If the costs to be funded are public improvements – such as roads, traffic signals or utilities – then the municipality has a variety of options as to how to finance those public improvements. If the costs to be funded are not public improvements – such as land acquisition costs or site development costs – then public funds can be used to finance those costs only if the governing body of the municipality finds that the site is a “blighted area” or a “conservation area,” as defined under Missouri law. Tax increment financing is a method to encourage redevelopment of these areas.

The Missouri TIF law authorizes cities and counties to adopt a redevelopment plan that provides for the redevelopment of a designated area, and to use TIF to fund a portion of the project costs.

The theory of tax increment financing is that, by encouraging redevelopment projects, the value of real property in a redevelopment area should increase. When a TIF plan is adopted, the assessed value of real property in the redevelopment area is frozen for tax purposes at the current base level prior to construction of improvements. The owner of the property continues to pay property taxes at this base level. As the property is improved, the assessed value of real property in the redevelopment area increases above the base level. By applying the tax rate of all taxing districts having taxing power within the redevelopment area to the increase in assessed valuation of the improved property over the base level, a “tax increment” is produced. The tax increments, referred to as “payments in lieu of taxes,” are paid by the owner of the property in the same manner as regular property taxes. The payments in lieu of taxes are transferred by the collecting agency to the treasurer of the municipality and deposited in a special allocation fund. In addition, the county and city transfer 50% of all incremental sales and utility tax revenues to the treasurer of the municipality for deposit into the special allocation fund. All or a portion of the moneys in the fund can then be used to pay directly for redevelopment project costs or to retire bonds or other obligations issued to pay such costs.

The net effect of tax increment financing is to permit a developer to use a portion of property taxes that otherwise would be paid on the completed project to repay all or a portion of the development costs, thereby reducing the net annual debt service on the completed project (and thus increasing the rate of return on the project). In this manner, future tax increases are not abated, but rather are used to fund costs of the project.

II. PROCEDURES FOR ADOPTING TIF

The TIF Act

The TIF Act permits municipalities to undertake different redevelopment projects within a redevelopment area pursuant to the same redevelopment plan. If a redevelopment plan has multiple redevelopment projects, the municipality may designate different “redevelopment projects” and adopt tax increment financing at different times for each redevelopment project. This structure enables municipalities and developers to phase in projects and to derive additional benefits from the payments in lieu of taxes created by the redevelopment projects.

Before a municipality may implement tax increment financing, (1) the municipality must create a TIF commission as provided in the TIF Act, (2) a redevelopment plan, including a description of the redevelopment area and the redevelopment projects therein, must be prepared, (3) the TIF commission must hold a public hearing and make a recommendation to the municipality pertaining to the redevelopment plan, the redevelopment projects and the designation of the redevelopment area, and (4) the municipality must adopt an ordinance approving the redevelopment plan, the redevelopment projects and the designation of the redevelopment area as discussed below. Once the ordinance is adopted, tax increment financing may be implemented for one or more redevelopment projects within a redevelopment area. Because of various notice and hearing requirements, it will take at least 90 days (and more commonly 120 days or longer) to establish a TIF commission and adopt a TIF plan.

Effective January 1, 2008, if a TIF commission makes a recommendation in opposition to a proposed redevelopment plan, redevelopment project, or designation of a redevelopment area, or amendments thereto, the governing body of the municipality may only approve such plan, project, designation or amendment upon a two-thirds majority vote.

Also effective January 1, 2008, municipalities in St. Louis, St. Charles and Jefferson Counties must obtain the permission of a county TIF commission prior to the approval of a redevelopment project by the municipality's governing body. It is unclear whether the county TIF commission replaces the municipal TIF commission – and therefore holds the required public hearing for the project – or whether the county TIF commission is *in addition to* the municipal TIF commission. The better argument, we believe, is that the county TIF commission replaces the municipal TIF commission; future legislation may be required to resolve the uncertainty.

Role of the TIF Commission

Before adopting tax increment financing, a municipality must create a TIF commission by ordinance of its governing body. The composition of the TIF Commission depends on (1) whether a city or a county is undertaking the redevelopment project, and (2) the location of the city or county undertaking the redevelopment project, as described in the following chart:

Entity Creating TIF Commission

Number of members appointed by:	City (outside St. Louis County)	City (inside St. Louis County)	County (other than St. Louis County)	St. Louis County	St. Louis City
City or county creating the Commission	6	6	6	6	6
School districts	2	2	2	2	2
County in which located	2	3	0	3*	0
Other taxing districts	1	1	1	1	1
Total members	11	12	9	12	9

* These members are appointed by three cities that have TIF districts in the county.

The TIF commission conducts the public hearings required under the TIF Act, and makes recommendations to the governing body of the municipality concerning the adoption of redevelopment plans or redevelopment projects and the designation of redevelopment areas. The redevelopment plans, redevelopment projects and the designation of the redevelopment area must receive final approval of the governing body of the municipality.

As discussed above, effective January 1, 2008, it appears that municipalities in St. Louis, St. Charles and Jefferson Counties will no longer submit proposed redevelopment plans and projects to a city TIF commission for review, but instead will submit proposed redevelopment plans and projects to a county TIF commission. This county TIF commission will have 12 total members consisting of six members appointed by the county executive, three members appointed by cities in the county that have tax increment financing districts in a manner agreed upon by the applicable cities, two members selected by the school districts located in the county in a manner agreed upon by the applicable school districts, and one member selected by all other ad valorem taxing districts in a manner in which all such districts agree.

Designation of Redevelopment Area

The “redevelopment area” must contain property that may be classified as a “blighted area,” a “conservation area” or an “economic development area” (described below), or any combination thereof. The entire redevelopment area need not meet the criteria of one of these three categories, but must include only “those parcels of real property and improvements thereon directly and substantially benefitted by the proposed redevelopment project improvements.” Thus, a larger redevelopment area that includes property that is increasing in value can enhance the feasibility of a TIF project, provided the larger area, on the whole, is a blighted, conservation or economic development area and is “substantially benefitted” by the redevelopment project.

The TIF Act defines a blighted area, a conservation area and an economic development area as follows:

“Blighted area” is defined as

an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

“Conservation area” is defined as

any improved area within the boundaries of a redevelopment area located within the territorial limits of a municipality in which fifty percent or more of the structures in the area have an age of thirty-five years or more. Such an area is not yet a blighted area but is detrimental to the public health, safety, morals, or welfare and may become a blighted area because of any one or more of the following factors: dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning.

“Economic development area” is defined as

any area or portion of an area located within the territorial limits of a municipality, which does not meet the requirements of [a blighted area or a conservation area], and in which the governing body of the municipality finds that redevelopment will not be solely used for development of commercial businesses which unfairly compete in the local economy and is in the public interest because it will: (1) discourage commerce, industry or manufacturing from moving their operations to another state; or (2) result in increased employment in the municipality; or (3) result in preservation or enhancement of the tax base of the municipality.

Two provisions of House Bill 1944, which was adopted by the Missouri General Assembly in 2006 and which amends Missouri’s condemnation laws, affect the TIF Act. First, farmland that is declared blighted cannot be acquired by eminent domain. Second, blight must be evaluated on a parcel-by-parcel basis, if any property in the redevelopment area will be acquired through (or under the threat of) condemnation.

An amendment to the TIF Act in 2007 prohibits new tax increment financing projects in any “greenfield area” within St. Louis, St. Charles, Jefferson and Franklin Counties. A “greenfield area” is defined as “any vacant, unimproved, or agricultural property that is located wholly outside the incorporated limits of a city, town, or village, or that is substantially surrounded by contiguous properties with agricultural zoning classifications or uses unless said property was annexed into the incorporated limits of a city, town, or village ten years prior to the adoption of the ordinance approving the redevelopment plan for such greenfield area.”

Other legislation in 2007 prohibits new tax increment financing projects in "Hunting Heritage Protection Areas." Such areas consist of all land within the 100 year flood plain of the Missouri and Mississippi rivers, as designated by FEMA, but excluding (1) areas with a population of at least 50,000 persons and designated as an "urbanized area" by the United States Secretary of Commerce, (2) any land ever used, operated or owned by an entity regulated by the Federal Energy Regulatory Commission, (3) any land used for the operation of a physical port of commerce, (4) any land within Kansas City or St. Louis City, and (5) any land located within one half mile of any interstate highway. There are also several exceptions to the general prohibition against new tax increment financing projects including (1) the ability to expand existing tax increment financing projects located within a Hunting Heritage Protection Area, subject to certain limitations, (2) redevelopment projects for the purposes of flood and drainage protection, and (3) redevelopment projects for the purposes of constructing or operating renewable fuel facilities.

Although the TIF Act provides for redevelopment projects in an "economic development area," certain questions remain regarding the constitutionality of TIF financing in such an area that may require a court case to resolve. On October 5, 1992, a TIF project in Pettis County was ruled unconstitutional because, among other factors, the redevelopment area for the project was designated as an "economic development area." *Pettis County R-XII (Dresden) v. County of Pettis*, No. CV492-129CC (Pettis Co., Mo.Cir.Ct. Oct. 5, 1992). It is unclear whether there are any instances under which a redevelopment project may be undertaken in an economic development area.

Preparation of Redevelopment Plan

Before proceeding with a redevelopment project, the municipality must approve a redevelopment plan that designates the redevelopment area, describes the redevelopment project and sets forth a comprehensive program for redevelopment. The TIF Act requires the following information to be included in the redevelopment plan:

1. Estimated redevelopment project costs;
2. The anticipated sources of funds to pay the costs;
3. Evidence of commitments to finance the project costs;
4. The anticipated type and term of the sources of funds to pay costs;
5. The most recent equalized assessed valuation of the property within the redevelopment area that is to be subjected to payments in lieu of taxes and economic activity taxes;
6. An estimate of the equalized assessed valuation after redevelopment; and
7. The general use of the land in the redevelopment area.

Additional information not required by statute may be included in the plan, such as the total acreage in the redevelopment area and the total payments in lieu of taxes and economic activity taxes estimated to be generated over the period the plan is in effect.

Public Hearing Regarding Redevelopment Plan

Before adopting tax increment financing, the TIF commission must hold a public hearing on the redevelopment plan and redevelopment project and the proposed redevelopment area. Notice of the hearing must be published and must be mailed to affected taxing districts and property owners. The TIF

commission is required to vote on any proposed redevelopment plan, redevelopment area and redevelopment project within 30 days after the public hearing and to make recommendations.

Adoption of Ordinances by Municipality

The redevelopment plan will become effective upon adoption of an ordinance by the municipality that approves the redevelopment plan and the redevelopment project and designates the redevelopment area. The TIF Act does not specify in detail what information must be included in the ordinance approving the redevelopment plan. The TIF Act does state, however, that no redevelopment plan may be adopted without findings that:

- a. The redevelopment area on the whole is a blighted area, a conservation area or an economic development area, including a detailed description of the factors that qualify the redevelopment area.
- b. The redevelopment area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing (this is sometimes referred to as the “but-for” test, as discussed above, and must be supported by an affidavit of the developer submitted with the redevelopment plan).
- c. The redevelopment plan conforms to the comprehensive plan for the development of the municipality as a whole.
- d. The estimated dates, which shall not be more than 23 years from the adoption of the ordinance approving a redevelopment project within a redevelopment area, of completion of any redevelopment project and retirement of obligations incurred to finance redevelopment project costs have been stated.
- e. A plan has been developed for relocation assistance for businesses and residences. The relocation plan must comply with the provisions of Sections 523.200 to 523.215 of the Revised Statutes of Missouri, as amended.
- f. A cost-benefit analysis has been prepared showing the economic impact of the plan on each taxing district that is at least partially within the boundaries of the redevelopment area.
- g. The redevelopment plan does not include the initial development or redevelopment of any gambling establishment.

III. CAPTURE/USE OF TIF REVENUES

Determination of TIF Revenues

After the ordinance is passed, the county assessor must determine the total equalized assessed value of all taxable real property within the redevelopment project area. Thereafter, the total equalized assessed valuation of taxable real property in the redevelopment project area in excess of the initial

equalized assessed valuation is computed by the county assessor for each year that tax increment financing is in effect. The payments in lieu of taxes are made by property owners in the redevelopment area on the increase in current equalized assessed valuation of each taxable parcel of real property over and above the initial equalized assessed valuation of each such parcel, and such payments are deposited into the special allocation fund.

In addition, 50% of the increase in total revenues of incremental sales and utility taxes (referred to as "economic activity taxes") are captured and deposited into the special allocation fund. Under the TIF Act, economic activity taxes do not include taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees, special assessments and personal property taxes. Any economic development sales tax imposed pursuant to Section 67.1305 of the Revised Statutes of Missouri is not captured by tax increment financing unless recommended by the economic activity tax board and approved by the governing body imposing the tax. Any city or county which levies a children's service sales tax pursuant to Section 67.1775 of the Revised Statutes of Missouri and approves a redevelopment plan or project after August 28, 2007 must reimburse the amount of the children's services sales tax captured and deposited into the special allocation fund to the community children's service fund established in conjunction with the imposition of the children's services sales tax.

Issuance of Bonds or Other Obligations

Either the municipality or the TIF commission may issue bonds or other obligations under the TIF Act which are payable from moneys in the special allocation fund or other funds specifically pledged. The TIF Act provides that voter approval of TIF bonds is not required. The bonds or other obligations must mature within 23 years, may bear any interest rate and may be sold at public or private sale as determined by the municipality or TIF commission. The bonds or other obligations are not a general obligation of the municipality and, accordingly, do not count toward the municipality's constitutional debt limitation.

Reporting/Hearing Requirements

The governing body of the municipality must submit to the Missouri Department of Economic Development an annual report concerning the status of each redevelopment plan and project. The municipality must also publish in a newspaper of general circulation in the county a statement showing the payments in lieu of taxes received and expended in that year, the status of the redevelopment plan and projects, the amount of outstanding bonded indebtedness and any additional information the municipality deems necessary.

Every five years, the governing body of the municipality must hold a public hearing to determine if the redevelopment project is making satisfactory progress under the proposed time schedule contained in the redevelopment plan. Notice of the public hearing must be given in a newspaper of general circulation in the redevelopment area once each week for four weeks immediately prior to the hearing.

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SALES TAX REBATE/DEVELOPMENT AGREEMENTS

I. INTRODUCTION

Another alternative to TIF financing is for a municipality to enter into an agreement (commonly referred to as a “sales tax rebate agreement” or “development agreement”) with a property owner, whereby the owner of a retail establishment agrees to fund the costs of certain public improvements. The municipality agrees to reimburse the owner for the cost of those improvements, with interest at an agreed-upon taxable interest rate, from the incremental sales taxes generated by the project. The owner generally agrees to be paid solely from those incremental sales taxes, and not from any other funds of the municipality.

II. STATUTORY AUTHORITY

Section 70.220 of the Revised Statutes of Missouri (the “Cooperation Law”) authorizes any municipality or other political subdivision to contract with any other political subdivision, private person or firm for the “planning, development, construction, acquisition or operation of any public improvement or facility.” The political subdivision may authorize the contract by ordinance or resolution.

III. TYPICAL STRUCTURE OF TRANSACTION

Many retail developments require the installation of public improvements (such as roads, traffic signals and utilities) to accommodate the development. Under the typical agreement, the developer agrees to advance the costs of the public improvements. The political subdivision agrees to reimburse the developer for such costs, with interest, over a specified period of time. The agreement usually provides that only a portion of the incremental (*i.e.*, new) sales tax revenues generated from the development will be used to reimburse the cost of the public improvements. This results in immediate new revenue to the municipality, while also providing a source of repayment for the public improvements.

The Missouri Constitution generally requires voter approval if a political subdivision pledges tax revenue to the repayment of indebtedness that lasts for more than one year. Therefore, sales tax rebate agreements specifically provide that the political subdivision’s obligation is from year-to-year only, and is subject to annual appropriation by the governing body.

Because the developer usually assumes responsibility for initial construction of the public improvements, it’s important that the agreement provide for payment of prevailing wages, payment and performance bonds, and indemnification of the governing body.

Undertaking a sales tax rebate agreement is a fairly simple process, since the governing body is obligating only its funds – not the funds of any other political subdivision. No public hearing or consultation with other political subdivisions is required.

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TRANSPORTATION DEVELOPMENT DISTRICTS

I. INTRODUCTION

Purpose

A transportation development district may be created pursuant to Sections 238.200 to 238.275 of the Revised Statutes of Missouri, as amended (the “TDD Act”) to fund, promote, plan, design, construct, improve, maintain and operate one or more projects or to assist in such activity. A district is a separate political subdivision of the state. “*Project*” includes any bridge, street, road, highway, access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail, or other mass transit and any similar or related improvement or infrastructure.

Projects, Submission of Plans

Before construction or funding of any project, the district must submit the proposed project to the Missouri Highways and Transportation Commission (the “commission”) for its prior approval. If the commission finds that the project will improve or is a necessary or desirable extension of the state highways and transportation system, the commission may preliminarily approve the project subject to the district providing plans and specifications for the project and making any revisions in the plans and specifications required by the commission and the district and commission entering into a mutually satisfactory agreement regarding development and future maintenance of the project. After such preliminary approval, the district may impose and collect such taxes and assessments as may be included in the commission’s preliminary approval. After the commission approves the final construction plans and specifications, the district must obtain prior commission approval of any modification of such plans or specifications.

If the proposed project is not intended to be merged into the state highways and transportation system, the district shall also submit the proposed project and proposed plans and specifications to the local transportation authority that will become the owner of the project for its prior approval. “*Local transportation authority*” is a county, city, town, village, county highway commission, special road district, interstate compact agency, or any local public authority or political subdivision having jurisdiction over any bridge, street, highway, dock, wharf, ferry, lake or river port, airport, railroad, light rail or other transit improvement or service.

In those instances where a local transportation authority is required to approve a project and the commission determines that it has no direct interest in that project, the commission may decline to consider the project. Approval of the project then vests exclusively with the local transportation authority subject to the district making any revisions in the plans and specifications required by the local transportation authority and the district and the local transportation authority entering into a mutually satisfactory agreement regarding development and future maintenance of the project. After the local transportation authority approves the final construction plans and specifications, the district must obtain prior approval of the local transportation authority before modifying such plans or specifications.

II. FUNDING METHODS

Sales Tax

Any district may impose a sales tax in increments of one-eighth of one percent up to a maximum of one percent on all retail sales made in the transportation development district that are subject to taxation under Missouri law, with certain exceptions (including the sale of motor vehicles, trailers, boats and outboard motors). The sales tax must be approved by approval of a majority of the “qualified voters” within the district. The “qualified voters” are (1) the registered voters within the district, and (2) the property owners within the district (who shall receive one vote per acre). Any registered voter who also owns property must elect whether to vote as a registered voter or a property owner. Notwithstanding the foregoing, the owners of all of the property in the district may implement the sales tax by unanimous petition in lieu of holding an election. The sales tax rate must be uniform throughout the district.

Special Assessments

The district may also, with majority voter approval, make one or more special assessments for project improvements that specially benefit the properties within the district. A district may establish different classes or subclasses of real property within the district for the purpose of levying different rates of assessments.

Property Tax

The district may also, with approval by at least four-sevenths of the voters, impose a property tax in an amount not to exceed the annual rate of ten cents on the hundred dollars assessed valuation. The property tax must be uniform throughout the district.

Tolls

If approved by a majority of the qualified voters voting on the question in the district, the district may charge and collect tolls or fees for the use of a project.

Bonds

The District may issue bonds, notes and other obligations for not more than 40 years, and may secure any of such obligations by mortgage, pledge, assignment or deed of trust of any or all of the property and income of the district. The district cannot mortgage, pledge or give a deed of trust on any real property or interests that it obtained by eminent domain.

III. FORMATION

Creation of District

A district may be created by (1) petition of at least fifty registered voters within the proposed district, or (2) if there are no registered voters within the district, the owners of all of the real property located within the proposed district. In addition, two or more local transportation authorities may adopt

resolutions calling for the joint establishment of a district and then file a petition requesting the creation of a district. With certain limited exceptions, the property in the district must be contiguous.

The petition is filed in the circuit court of the county in which a majority of the district is located. Among other information, the petition must set forth:

- (1) The name and address of each respondent, which must include the commission and each affected local transportation authority within the proposed district;
- (2) A specific description of the proposed district boundaries including a map illustrating the boundaries;
- (3) A general description of each project proposed to be undertaken by the district, including a description of the approximate location of each project;
- (4) The estimated project costs and anticipated revenues to be collected from the project;
- (5) The number of members of the board of directors of the proposed district, which shall be not less than five or more than fifteen; and
- (6) A proposal for funding the district.

Hearing

The court hears the case without a jury. If the court determines the petition is not legally defective and the proposed district and method of funding are neither illegal nor unconstitutional, the court shall enter its judgment to that effect.

If the petition was filed by registered voters or by a governing body, the court shall then certify the questions regarding district creation, project development and proposed funding for voter approval. If the petition was filed by the owners of record of all of the real property located within the proposed district, the court shall declare the district organized and certify the funding methods stated in the petition for qualified voter approval. If a petition is filed pursuant to the resolutions of two or more local transportation authorities calling for the joint establishment of a district, the court shall then certify the single question regarding district creation, project development and proposed funding for voter approval.

Election

If the court certifies the petition for voter approval, a majority vote is required to approve the formation of the district.

If (1) the petition was filed pursuant to the resolutions of two or more local transportation authorities calling for the joint establishment of a district and was certified for voter approval, (2) the district desires to impose a sales tax as the only proposed funding mechanism and (3) the proposition to create the district and authorize the sales tax has received majority voter approval, the circuit court shall declare the district organized and the sales tax to be in effect.

If the district desires to impose a funding mechanism other than a sales tax, the proposed funding mechanism requires separate voter approval at a subsequent election.

As noted previously, “*qualified electors*,” “*qualified voters*” or “*voters*” means (1) the registered voters within the district, and (2) the property owners within the district (who shall receive one vote per acre). Any registered voter who also owns property must elect whether to vote as a registered voter or a property owner. .

Board of Directors

Since the district is a separate political subdivision, it has its own board of directors that serves as the governing body of the district.

Unless the district is formed at the request of two or more local transportation authorities, directors are elected by the qualified voters within the district (i.e., registered voters or property owners, as the case may be).

If two or more local transportation authorities requested formation of the district, the board of directors consists of (1) the presiding officer and one person designated by the governing body of each local transportation authority (if the district is comprised of two or three local transportation authorities), or (2) the presiding officer of each local transportation authority (if the district is comprised of four or more local transportation authorities).

IV. MISCELLANEOUS

Condemnation

The District may condemn land for a project in the name of the state of Missouri, upon prior approval by the commission, or the local transportation authority as appropriate, as to the necessity for the taking of the description of the parcel and the interest taken in that parcel.

Project Revisions

At any time during the existence of a district, the board may submit to the voters of the district a proposition to increase or decrease the number of projects that it is authorized to complete.

If the board proposes to discontinue a project, it must first obtain approval from the commission if the proposed project is intended to be merged into the state highways and transportation system or approval from the local transportation authority if the proposed project is intended to be merged into a local transportation system under the local authority’s jurisdiction.

The board may modify the project previously approved by the district voters, if the modification is approved by the commission and, where appropriate, a local transportation authority.

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Audit Required

The state auditor is required to audit each district at least every three years, and may audit more frequently if the state auditor deems appropriate. The costs of this audit shall be paid by the district. Most districts that have issued bonds are required by the bond underwriter to obtain an annual audit.

Projects, Transfer to Commission or Authority

Within six months after development and initial maintenance costs of its completed project have been paid, the district shall pursuant to contract transfer ownership and control of the project to the commission or a local transportation authority which shall be responsible for all future maintenance costs pursuant to contract. Such transfer may occur sooner with the consent of the recipient.

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COMMUNITY IMPROVEMENT DISTRICTS

I. INTRODUCTION

What is a Community Improvement District?

A community improvement district is either a political subdivision with the power to impose a sales tax, a special assessment or a real property tax, or a nonprofit corporation with the power to impose special assessments. The CID is created by a city or county following submission of a petition by the property owners within the proposed district.

A community improvement district is a separate legal entity distinct and apart from the municipality or county that creates the district. In many respects, a CID is similar to a TDD, except that the CID can finance a much broader array of improvements and can also undertake various public services.

Authority

Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the “Community Improvement District Act”) authorize the creation of community improvement districts.

Kinds of Infrastructure Improvements

A variety of public improvements can be financed with a community improvement district. Projects may include, but are not limited to,

1. Pedestrian or shopping malls and plazas.
2. Parks, lawns, trees and any other landscape.
3. Convention centers, arenas, aquariums, aviaries and meeting facilities.
4. Sidewalks, streets, alleys, bridges, ramps tunnels, overpasses and underpasses, traffic signs and signals, utilities, drainage, water, storm and sewer systems and other site improvements.
5. Parking lots, garages or other facilities.
6. Music, news and child-care facilities.
7. Any other useful, necessary or desired improvement.

In addition, within a “blighted area,” the district may pay costs of demolishing, renovating and rehabilitating structures.

Public Services

A community improvement district may provide a variety of public services, including but not limited to:

1. With the municipality's consent, prohibiting or restricting vehicular and pedestrian traffic and vendors on streets.
2. Operating or contracting for the provision of music, news, child-care or parking facilities, and buses, mini-buses or other modes of transportation.
3. Leasing space for sidewalk café tables and chairs.
4. Providing or contracting for the provision of security personnel, equipment or facilities for the protection of property and persons.
5. Providing or contracting for cleaning, maintenance and other services to public and private property.
6. Promoting tourism, recreational or cultural activities or special events.
7. Promoting business activity, development and retention.
8. Providing refuse collection and disposal services.
9. Contracting for or conducting economic, planning, marketing or other studies.

II. FORMATION PROCESS

Petition Requesting Formation

A community improvement district is formed by petition of the property owners. The petition must be signed by:

1. Property owners collectively owning at least 50 percent of the assessed value of the real property within the proposed district; and
2. More than 50 percent per capita of all owners of real property within the proposed district.

The petition must include a wide variety of information, including:

1. A five-year plan describing the purposes of the proposed district, the services it will provide, the improvements it will make and an estimate of costs of those services and improvements.
2. Organizational and governance information, including:

- a. Whether the district will be a political subdivision or a nonprofit corporation.
 - b. If a political subdivision, the manner in which the board of directors will be elected and the number of directors on the initial board.
3. The maximum rates of real property taxes and special assessments that may be imposed.
 4. The limitations, if any, on the borrowing capacity and revenue generation of the district.

Remaining Steps to Form the District

After the petition is submitted, the governing body of the municipality will proceed with the following actions:

1. Hold a public hearing regarding the formation of the district. Notice of the hearing must be published once a week for two consecutive weeks before the public hearing, and must be mailed at least 15 days prior to the public hearing. The notice must include, among other items, the following information: (a) date, time and place of hearing; (b) boundaries of the district, (c) statement that a copy of the petition is available for review at the clerk's office and (d) statement that all interested persons will be given an opportunity to be heard at the hearing.
2. Establish the district by order or ordinance.

III. GOVERNANCE

Political Subdivision

The petition specifies whether directors will be elected by the "qualified voters" or appointed by the municipality. A "qualified voter" must either own real property within the district or be a registered voter within the district. Appointments are made by the chief elected officer with the consent of the governing body.

The board shall consist of at least 5 but not more than 30 directors. Each director must (a) own real property or a business within the district (or be the legally authorized representative of the owner) or (b) be a registered voter residing within the district. If there are less than 5 owners of real property located within the district, the board may be comprised of up to 5 legally authorized representatives of any of the owners of real property located within the district.

Nonprofit Corporation

The directors are elected in the same manner as directors of other nonprofit corporations, under chapter 355 of the Revised Statutes of Missouri.

IV. FUNDING OF IMPROVEMENTS

Special Assessments

Any community improvement district, whether a political subdivision or nonprofit corporation, may impose special assessments, if approved by petition signed by:

1. Owners collectively owning real property representing more than 50 percent of the assessed value of real property within the district; and
2. More than 50 percent per capita of the owners of all real property within the district.

Real Property Taxes

A community improvement district that is a political subdivision can impose a real property tax if approved by a majority of the “qualified voters.” A “qualified voter” is:

1. Registered voter residing within the district; or
2. If there are no registered voters residing within the district, the owners of real property within the district.

Unlike transportation development districts, there is no limit on the amount of real property taxes that may be imposed by a CID.

Sales Tax

A community improvement district that is a political subdivision can impose a sales tax if approved by a majority of the “qualified voters,” as defined above. The tax may be imposed in increments of one-eighth of one percent, up to a maximum of one percent.

Other Sources

1. Fees, rents and charges for district property or services.
2. Grants, gifts and donations.

Bonds

The District may issue bonds, notes and other obligations for not more than 20 years, and may secure any of such obligations by mortgage, pledge, assignment or deed of trust of any or all of the property of the district.

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NEIGHBORHOOD IMPROVEMENT DISTRICTS

I. INTRODUCTION

What is a Neighborhood Improvement District?

A neighborhood improvement district is an area benefited by a public improvement and assessed to pay for that improvement. It is created by an election held or petition circulated within the proposed district. It is ***not*** a separate legal entity.

Authority

Article III, Section 38(c) of the Missouri Constitution and Sections 67.453 to 67.475 of the Revised Statutes of Missouri (the “Neighborhood Improvement District Act”) authorize the creation of neighborhood improvement districts.

Kinds of Projects

Only **public** facilities, improvements or reimprovements can be financed with a neighborhood improvement district. The improvement must confer a benefit on property within the district, but the improvement is not required to be located in the district. Projects may include, but are not limited to:

1. Acquisition of property.
2. Improvement of streets, gutters, curbs, sidewalks, crosswalks, driveway entrances and structures, drainage works incidental thereto and service connections from sewer, water, gas and other utility mains, conduits or pipes.
3. Improvement of storm and sanitary sewer systems.
4. Improvement of street lights and street lighting systems.
5. Improvement of waterworks systems.
6. Improvement of parks, playgrounds and recreational systems.
7. Landscaping streets or other public facilities.
8. Improvement of flood control works.
9. Improvement of pedestrian and vehicle bridges, overpasses and tunnels.
10. Improvement of retaining walls and area walls on public ways.
11. Improvement of property for off-street parking.
12. Acquisition and improvement of other public facilities or improvements.

13. Improvements for public safety.

II. FORMATION PROCESS

A neighborhood improvement district may be created either by election or by petition of property owners.

By Election

A neighborhood improvement district must be approved by the percentage of voter approval of electors within the proposed district voting thereon required for general obligation bonds (four-sevenths or two-thirds). The resolution or ordinance calling the election and notice of election must include the following information:

1. Project name.
2. General nature of proposed improvement.
3. Estimated cost. *The estimated cost should include all costs, including financing costs. It does not include interest on the general obligation bonds.*
4. Boundaries of proposed district. *The boundaries of the area to be assessed may be described by metes and bounds, streets or other sufficiently specific description.*
5. Proposed method of assessment, including any provision for the annual assessment of maintenance costs for the improvement in each year in each year during the term of the bonds issued for the improvement and after the bonds issued for the original improvement are paid in full. *The cost of the improvements must be apportioned against the **property** in the district in accordance with the benefits accruing to the property by reason of the improvement and may be assessed equally per front foot, per square foot or any other reasonable assessment plan.*
6. Statement that final cost won't exceed the estimated cost by more than twenty-five percent (notice of election only).

By Petition

The petition signed by the owners of record of at least two-thirds by area of all real property located within the proposed district is submitted to the governing body. The State Auditor requires a certification of the acreage or square footage in the district and the acreage or square footage owned by the signers of the petition. The petition must include the following information:

1. Project name.
2. General nature of proposed improvement.

3. Estimated cost.
4. Boundaries of proposed district.
5. Proposed method of assessment, including a provision for the annual assessment of maintenance costs for the improvement in each year during the term of the bonds issued for the improvement and after the bonds issued for the original improvement are paid in full.
6. Number of years over which the assessments for the improvement can be paid.
7. Notice that names of signers may not be withdrawn later than seven days after petition filed.

The petition must be signed by all owners of record of a parcel of property for that parcel to be counted. Each owner of record of real property located in the proposed district is allowed one signature. Any person, corporation, or limited liability partnership owning more than one parcel of land located in such proposed district shall be allowed only one signature on the petition. In the case of property owned by a corporation or partnership, evidence of the authority of the person signing on behalf of such entity should be presented with the petition. An affidavit of the person or persons circulating the petition should also be submitted with the petition.

Remaining Steps to Form the District

After the election is held or petition is submitted, the governing body will proceed with the following actions:

1. Order preparation of plans and specifications.
2. Prepare a preliminary assessment roll.
3. Hold a public hearing regarding the proposed project. Notice of the hearing must be published not more than 20 days and not less than 10 days before the hearing, and must include the following information: (a) project name; (b) date, time and place of hearing. (c) general nature of improvements; (d) revised estimated cost (or, if available, final cost); (e) boundaries of district; and (f) statement that written and oral objections will be considered at the hearing. Notice must also be mailed to owners of record or property within district.
4. Governing Body orders improvements to be made.
5. Issuance of temporary notes, if needed.
6. Construction of the project.
7. Computation of final costs and assessments.
8. Assessment of final costs.

9. Mailing of notice of assessments and opportunity to pay up front to property owners.

III. FINANCING OF IMPROVEMENTS

Bonds issued in connection with neighborhood improvement districts are a form of general obligation bonds. The bonds are payable as to both principal and interest from the assessments and, if not so paid, from current income and revenue and revenues and surplus funds of the city or county that formed the district. The city or county is not authorized to impose any new or increased ad valorem property tax to pay principal of or interest on the bonds without voter approval. If the city or county uses funds on hand to pay debt service, the issuer can reimburse itself from assessments at a later date.

The bonds are general obligation bonds, and count against the issuer's legal debt limit at the time that the governing body has found the formation of the district advisable. Until bonds are actually issued, 125% of the project cost is counted against the debt limit. NID bonds can only be issued in an amount of up to 10% of the assessed valuation of the issuer. The maturity of the bonds is limited to 20 years.

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PROPERTY TAX ABATEMENT UNDER CHAPTER 353 RSMO

I. INTRODUCTION

Under Chapter 353 of the Revised Statutes of Missouri, real property tax abatement is available within “blighted areas.” An Urban Redevelopment Corporation is created under the general corporations laws of Missouri and, once created, it has the power to operate one or more redevelopment projects pursuant to a city-approved or county-approved (if St. Louis County or Jackson County) redevelopment plan.

Under this program, an eligible city or county may approve a redevelopment plan that provides for tax abatement for up to 25 years, thus encouraging the redevelopment of the blighted area. To be eligible for the abatement, the Urban Redevelopment Corporation must take title to the property to be redeveloped. During the first 10 years of tax abatement, (1) 100% of the incremental increase in real property taxes on the land are abated, (2) 100% of the real property taxes on all improvements are abated, and (3) the property owner continues to pay real property taxes on the land in the amount of such taxes in the year before the redevelopment corporation takes title.

During the next 15 years, 50% of the incremental real property taxes on all land and all improvements are abated. Payments in lieu of taxes (“PILOTS”) may be imposed on the Urban Redevelopment Corporation by contract with the city or county, as applicable, to achieve an effective tax abatement that is less than the abatement established by statute. PILOTS are paid on an annual basis to replace all or part of the real estate taxes that are abated. PILOTS will be allocated to each taxing district according to their proportionate share of ad valorem property taxes. The Urban Redevelopment Corporation may take title to lots, tracts or parcels of property within the redevelopment area in phases, in order to maximize the tax abatement during a phased redevelopment project.

II. PROCEDURES FOR APPROVING TAX ABATEMENT

The following is a summary of the basic steps for the approval of a development plan:

Preparation of Tax Impact Statement

The statute requires the governing body to hold a public hearing regarding any proposed development plan. Before the public hearing, the governing body must furnish to the political subdivisions whose boundaries include any portion of the property to be affected by tax abatement (1) notice of the scheduled public hearing and (2) a written statement of the impact on ad valorem taxes such tax abatement will have on the political subdivisions.

The tax impact statement must include, at a minimum, an estimate of the amount of ad valorem tax revenues of each political subdivision that will be affected by the proposed tax abatement.

Preparation of Development Plan

The proposed developer usually will assume responsibility for preparation of the development plan. This document identifies the proposed redevelopment area, the redevelopment projects to be undertaken, the program to be carried out to remove the blighting influences within the area, and the estimated project costs. The plan will include or incorporate by reference the characteristics that qualify the area as “blighted” under Missouri law.

The law defines a blighted area as “that portion of the city within which the legislative authority of such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes.”

Public Hearing

Before approving a development plan, the governing body of the city or county must hold a public hearing. The governing body must adopt an ordinance establishing the procedures for giving notice of the public hearing. Notice of the hearing must be given to each affected taxing district affected by the development plan.

Preparation of Redevelopment Agreement

The Redevelopment Agreement describes the Urban Redevelopment Corporation’s obligations to carry out the development plan. Among the provisions that typically are included in the Redevelopment Agreement are (1) procedures for acquiring property, including prerequisites to the use of condemnation; (2) the period for which tax abatement will be provided; (3) the time period within which the redevelopment corporation can carry out the project; and (4) procedures for the corporation to transfer title to property in the area.

Several provisions of House Bill 1944, which was adopted by the Missouri General Assembly in 2006 and which amends Missouri’s condemnation laws, affect condemnation under Chapter 353. First, an Urban Redevelopment Corporation cannot acquire property through condemnation, unless the corporation entered into a redevelopment agreement before December 31, 2006. Second, farmland that is declared blighted cannot be acquired by eminent domain. Third, blight must be evaluated on a parcel-by-parcel basis, if any property in the redevelopment area will be acquired through (or under the threat of) condemnation.

Adoption of Ordinance by Governing Body

Following the public hearing, the governing body can approve a development plan and Redevelopment Agreement by adoption of an ordinance. Among other matters, the ordinance must make findings that the area described in the development plan is “blighted” under Missouri law, that a relocation plan has been developed for displaced persons, and that the Redevelopment Agreement establishes the time within which property in the area must be acquired.

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PROPERTY TAX ABATEMENT UNDER CHAPTER 100 RSMO

I. INTRODUCTION

General

Cities, counties, towns and villages in Missouri are authorized, pursuant to Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 to 100.200 of the Revised Statutes of Missouri (the “Act”) to issue industrial development bonds (“IDBs”) to finance projects for private corporations, partnerships and individuals. There are two primary reasons to issue IDBs under the Act. First, if the bonds are tax-exempt, it may be possible to issue the bonds at lower interest rates than those obtained through conventional financing. Second, even if the bonds are not tax-exempt, ad valorem taxes on bond-financed property may be abated so long as the bonds are outstanding. Such tax abatement may result in a significant financial benefit to a company. *This memo focuses only on the issuance of taxable industrial development bonds, issued for the purposes of the abatement of ad valorem taxes.*

Types of Projects

The Act permits any city, county, town or village (referred to herein as a “Municipality”) to issue bonds to finance the costs of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, services facilities which provide interstate commerce and industrial plants. Article VI, Section 27(b) of the Missouri Constitution also authorizes such bonds to be issued for other types of commercial facilities. In connection with such projects, the bond proceeds may be used to finance land, buildings, fixtures and machinery.

Revenue Bonds

Revenue bonds issued pursuant to the Act do not require voter approval and are payable solely from revenues received from the project. The Municipality applies the proceeds from the sale of the bonds to purchase, construct, improve or equip a warehouse, distribution, commercial or industrial facility. In exchange, the company promises to make payments that are sufficient to pay the principal and interest on the bonds as they become due. Thus, the Municipality merely acts as a conduit for the financing.

II. TAXATION OF BOND-FINANCED PROPERTY

Under Article X, Section 6 of the Missouri Constitution and Section 137.100 of the Missouri Revised Statutes, all property of any political subdivision is exempt from taxation. In a typical IDB transaction, the Municipality holds fee title to the project and leases the project to the company. Although the Missouri Supreme Court has held that the leasehold interest is taxable, it is taxable only to the extent that the economic value of the lease is less than the actual market value of the lease. See *Iron County v. State Tax Commission*, 437 S.W.2d 665 (Mo. 1968)(*en banc*) and *St. Louis County v. State Tax Commission*, 406 S.W.2d 644 (Mo. 1966)(*en banc*). If the rental payments under the lease agreement equal the actual debt service payments on the bonds, the leasehold interest should have no “bonus value”

and the bond-financed property should be exempt from ad valorem taxation and personal property taxation so long as the bonds are outstanding.

The Municipality and the company may determine that partial tax abatement -- but not full tax abatement -- is desirable. For instance, if bonds are issued to finance both real and personal property, but the Municipality determines that tax abatement on the personal property is not appropriate, the company may agree to make "payments in lieu of taxes" to the city or county. The amount of payments in lieu of taxes is negotiable to any amount. The payments in lieu of taxes are payable by December 31 of each year, and are distributed to the Municipality and to each political subdivision in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law.

III. STRUCTURE OF THE TRANSACTION

Issuance and Sale of Bonds

The Municipality issues its bonds pursuant to a trust indenture entered into between the Municipality and a bank or trust company acting as trustee. IDBs, like issues of conventional corporate securities, are sold by two basic methods -- public offerings or private placements. If the company has access to the regional or national securities markets, it may retain an investment banker as underwriter and sell the bonds publicly. The size and financial condition of the company are the primary factors that determine the company's ability to utilize a public offering. As an alternative to a public offering, the company may wish to place the bonds with a sophisticated purchaser. A private placement is very similar to a long-term bank loan. If bonds are being issued at a taxable interest rate for the sole purpose of receiving tax abatement, it is common for the company or the company's commercial lender to purchase the bonds. The bond proceeds are deposited with the trustee bank in a separate trust account to be used to purchase and construct the project.

Conveyance of Property to Municipality and Lease-Back to Company

Concurrently with the closing of the bonds, the company will convey to the Municipality title to the site on which the industrial development project will be located. (The Municipality must be the legal owner of the property while the bonds are outstanding in order for the property to be eligible for tax abatement.) At the same time, the Municipality will lease the project site, together with all improvements thereon (including the project), back to the Company pursuant to a lease agreement. The lease agreement will require the company acting on behalf of the Municipality, to use the proceeds of the bonds to purchase and construct the project. The company will be unconditionally obligated to make payments to the trustee in amounts that will be sufficient to pay principal and interest on the bonds as they become due.

Under the lease agreement, the company typically: (a) unconditionally agrees to make payments sufficient to pay the principal of and interest on the bonds as they become due; (b) agrees, at its own expense, to maintain the project, pay all taxes and assessments with respect to the project and maintain adequate insurance; (c) has the right, at its own expense, to make certain additions, modifications or improvements to the project; (d) may assign its interests under the agreement or sublease the project while remaining responsible for payments under the agreement; (e) covenants to maintain its corporate

existence during the term of the bond issue; and (f) agrees to indemnify the Municipality for any liability the Municipality might incur as a result of its participation in the transaction.

Payments in Lieu of Taxes

If the Municipality and the company determine that partial tax abatement is desirable, the Municipality and the company will enter into an agreement providing for the company to make “payments in lieu of taxes” to the Municipality and other taxing entities. The amount of payments in lieu of taxes is negotiable.

IV. PROCEDURE FOR ISSUING BONDS

The following is a summary of the basic steps required for the issuance of taxable bonds under the Act:

Approval of the Project

Upon a determination by the Municipality to proceed with the financing, the Municipality normally adopts a resolution (referred to as a “resolution of intent” or “inducement resolution”) stating the Municipality’s willingness and intent to issue IDBs for the project. Thereafter, the Municipality must provide notice to each taxing district of the Municipality’s intent to approve a “plan for industrial development” for the project. The plan must identify the primary terms of the proposed transaction, and must include a cost-benefit analysis that shows the impact of the proposed tax abatement on each taxing district.

Preparation of Legal Documents

Gilmore & Bell prepares the basic legal documents necessary for the bond issue, as described in “Structure of the Transaction” above. These documents will be reviewed by and supplemented with information and comments received from the parties to the financing, including the Municipality, the company, the trustee bank, any investment banker and their respective counsel.

Approval of Documents and Issuance of Bonds

After an investment banker or other purchaser (which may be the company) has agreed to purchase the bonds, the final details of the bond issue are determined and the basic documents will be finalized. The Municipality and the company will each adopt resolutions approving the legal documents and authorizing the issuance of the bonds at the specified interest rates and terms.

Preparation of Closing Documents

In addition to the basic legal documents discussed above, numerous other “closing documents” are necessary for the closing of a bond issue. Such documents include certificates relating to the existence of authority to execute and deliver documents and the absence of material litigation, corporate resolutions, opinions of counsel and evidence of payment for and receipt of the bonds. Gilmore & Bell will assist in the preparation and collection of the necessary closing documents.

Pre-Closing

A pre-closing will often be held in order to ensure that all documents are in proper form and have been properly executed prior to the closing.

Closing

The last step in the transaction is the closing itself, at which the Municipality delivers the bonds to the purchaser in exchange for payment of the purchase price of the bonds. The bond proceeds are paid over to the trustee bank for deposit in the acquisition or construction fund, to be disbursed in accordance with the provisions of the trust indenture to pay the costs of the project. At the closing, Gilmore & Bell will deliver to the bond purchasers its opinion to the effect that the bonds have been validly issued under applicable state law and, if applicable, that the interest on the bonds is exempt from state and federal income taxation.

V. ADVANTAGES OF IDB FINANCING

From the Municipality's standpoint, IDB financing is a useful tool to induce responsible new industries to locate in the area, as well as encouraging companies already in the area to remain, by assisting them in improving their present facilities or in building new ones. The end result is often a combination of increased job opportunities, existing job retention and large-scale capital investment.

From the company's standpoint, the principal advantage of IDB financing depends on the purpose for which the bonds are being issued. If the bonds are tax-exempt, the cost of funds provided by IDBs generally is significantly below that of other alternatives because the interest paid to holders of such bonds is exempt from federal and state income taxation. If the bonds are taxable, the company can receive significant financial incentives in the form of tax abatement on the bond-financed property.

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