

## **IC 36-7-26**

### Chapter 26. Economic Development Project Districts

#### **IC 36-7-26-1**

##### **Application of chapter**

Sec. 1. This chapter applies to the following:

- (1) A city having a population of more than seventy-five thousand (75,000) but less than ninety thousand (90,000).
- (2) A city having a population of more than one hundred five thousand (105,000) but less than one hundred twenty thousand (120,000).
- (3) A city having a population of more than one hundred fifty thousand (150,000) but less than five hundred thousand (500,000).
- (4) A city having a population of more than one hundred twenty thousand (120,000) but less than one hundred fifty thousand (150,000).

*As added by P.L.35-1990, SEC.63. Amended by P.L.12-1992, SEC.172; P.L.185-2001, SEC.6 and P.L.291-2001, SEC.200; P.L.170-2002, SEC.160; P.L.177-2002, SEC.14 and P.L.178-2002, SEC.120.*

#### **IC 36-7-26-2**

##### **Legislative findings and declarations; construction**

Sec. 2. (a) Present economic conditions in certain areas of certain cities are stagnant or deteriorating.

(b) Present economic conditions in such areas are beyond remedy and control by existing regulatory processes because of the substantial public financial commitments necessary to encourage significant increases in economic activities in such areas.

(c) Encouraging economic development in these areas will:

- (1) attract new businesses and encourage existing business to remain or expand;
- (2) increase temporary and permanent employment opportunities and private sector investment;
- (3) protect and increase state and local tax bases; and
- (4) encourage overall economic growth in Indiana.

(d) Redevelopment and stimulation of economic development benefit the health and welfare of the people of Indiana, are public uses and purposes for which the public money may be spent, and are of public utility and benefit.

(e) Economic development in such areas can be accomplished only by a coordinated effort of local and state governments.

(f) This chapter shall be liberally construed to carry out the purposes of this chapter and to provide cities with maximum flexibility to accomplish those purposes.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-3**

##### **"Adjustment factor" defined**

Sec. 3. As used in this chapter, "adjustment factor" means the amount, stated as a percentage, that the board determines under section 22 of this chapter should be applied in determining the district's net increment. However, the adjustment factor may not exceed eighty percent (80%).

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-4**

##### **"Base period amount" defined**

Sec. 4. As used in this chapter, "base period amount" means the aggregate amount of state gross retail and use taxes remitted under IC 6-2.5 by the businesses operating in the district during the full state fiscal year that precedes the date on which the commission confirmed the resolution designating the district.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-5**

##### **"Board" defined**

Sec. 5. As used in this chapter, "board" refers to the state board of finance created in IC 4-9.1-1.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-6**

##### **"Commission" defined**

Sec. 6. As used in this chapter, "commission" refers to a redevelopment commission established under IC 36-7-14.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-7**

##### **"Department" defined**

Sec. 7. As used in this chapter, "department" refers to the department of state revenue.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-8**

##### **"District" defined**

Sec. 8. As used in this chapter, "district" refers to an economic development project district established under this chapter.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-9**

##### **"Fund" defined**

Sec. 9. As used in this chapter, "fund" refers to the sales tax increment financing fund established in section 23 of this chapter.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-10**

##### **"Gross increment" defined**

Sec. 10. As used in this chapter, "gross increment" means the aggregate amount of state gross retail and use taxes that are remitted

under IC 6-2.5 by businesses operating in the district, as determined by the department under section 23 of this chapter, minus the base period amount.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-11**

##### **"Local public improvement" defined**

Sec. 11. As used in this chapter, "local public improvement" means any redevelopment project or purpose of a commission or any city under this chapter or IC 36-7-14.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-12**

##### **"Net increment" defined**

Sec. 12. As used in this chapter, "net increment" means, for a particular state fiscal year, the product of:

(1) the gross increment for the state fiscal year ending in the year of the determination; multiplied by

(2) the adjustment factor.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-13**

##### **Power and duties of commission, department, and board**

Sec. 13. In addition to the powers and duties set forth in any other statute, a commission, the department, and the board have the powers and duties set forth in this chapter.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-14**

##### **Compilation of data; requirements for proposed districts**

Sec. 14. (a) Whenever a commission determines that the redevelopment and economic development of an area situated within the commission's jurisdiction may require the establishment of a district, the commission shall cause to be assembled data sufficient to make the determinations required under section 15 of this chapter, including the following:

(1) Maps and plats showing the boundaries of the proposed district.

(2) A complete list of street names and the range of street numbers of each street situated in the proposed district.

(3) A plan for the redevelopment and economic development of the proposed district. The plan must describe the local public improvements necessary or appropriate for the redevelopment or economic development.

(b) For a city described in section 1(2) or 1(3) of this chapter, the proposed district must contain a commercial retail facility with at least five hundred thousand (500,000) square feet, and any distributions from the fund must be used in the area described in subsection (a) or in areas that directly benefit the area described in subsection (a).

(c) For a city described in section 1(4) of this chapter, the proposed district may not contain any territory outside the boundaries of a redevelopment project area established within the central business district of the city before 1985.

*As added by P.L.35-1990, SEC.63. Amended by P.L.185-2001, SEC.7 and P.L.291-2001, SEC.201; P.L.185-2005, SEC.51.*

#### **IC 36-7-26-15**

##### **Resolution declaring area as district; adoption**

Sec. 15. After compilation of the data required by section 14 of this chapter, the commission may adopt a resolution declaring the area described under section 14 of this chapter as a district. The commission may adopt the resolution only after finding that the completion of the redevelopment and economic development of the district will do all of the following:

- (1) Attract new business enterprises to the district or retain or expand existing business enterprises in the district.
- (2) Benefit the public health and welfare and be of public utility and benefit.
- (3) Protect and increase state and local tax bases or revenues.
- (4) Result in a substantial increase in temporary and permanent employment opportunities and private sector investment within the district.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-16**

##### **Submission of resolution for approval; requirements; publication of notice of adoption; content**

Sec. 16. (a) Upon adoption of a resolution designating a district under section 15 of this chapter, the commission shall submit the resolution to the board for approval. In submitting the resolution to the board, the commission shall deliver to the board:

- (1) the data required under section 14 of this chapter;
- (2) the information concerning the proposed redevelopment and economic development of the proposed district; and
- (3) the proposed utilization of the revenues to be received under section 23 of this chapter.

This information may be modified from time to time after the initial submission. The commission shall provide to the board any additional information that the board may request from time to time.

(b) Upon adoption of a resolution designating a district under section 15 of this chapter, and upon approval of the resolution by the board under subsection (a), the commission shall publish (in accordance with IC 5-3-1) notice of the adoption and purport of the resolution and of the hearing to be held. The notice must provide a general description of the boundaries of the district and state that information concerning the district can be inspected at the commission's office. The notice must also contain a date when the commission will hold a hearing to receive and hear remonstrances and other testimony from persons interested in or affected by the

establishment of the district. All affected persons, including all persons or entities owning property or doing business in the district, shall be considered notified of the pendency of the hearing and of subsequent acts, hearings, adjournments, and resolutions of the commission by the notice given under this section.

*As added by P.L.35-1990, SEC.63.*

### **IC 36-7-26-17**

#### **Hearing**

Sec. 17. At the hearing, which may be adjourned from time to time, the commission shall hear all persons interested in the proceedings and shall consider all written remonstrances that have been filed with the commission.

*As added by P.L.35-1990, SEC.63.*

### **IC 36-7-26-18**

#### **Final action on resolution**

Sec. 18. After considering the evidence presented at the hearing, the commission shall take final action confirming, modifying and confirming, or rescinding the resolution. The action taken by the commission is final, except that an appeal may be taken under section 19 of this chapter.

*As added by P.L.35-1990, SEC.63.*

### **IC 36-7-26-19**

#### **Appeal; dismissal; bond; burden of proof**

Sec. 19. (a) A person who filed a written remonstrance with the commission under section 17 of this chapter and is aggrieved by the final action taken, may within ten (10) days after that final action, file an appeal in the office of the clerk of the circuit or superior court with a copy of the resolution of the commission and the person's remonstrance against that resolution.

(b) If an appeal is filed, the commission may petition that the appeal be dismissed unless the remonstrator posts a bond with a surety approved by the court payable to the commission for the payment of all damages and costs that may accrue by reason of the filing of the lawsuit if the commission prevails. A hearing on a petition to dismiss an appeal shall be conducted in the same manner as a hearing on a temporary injunction under IC 34-26. If at the hearing the court determines that the remonstrator cannot establish facts that would entitle the remonstrator to a temporary injunction, the court shall set the amount of the bond to be filed by the remonstrator in an amount found by the judge to cover all damages and costs that may accrue to the commission because of the appeal if the commission prevails. If no bond is filed by the remonstrator with sureties approved by the court within ten (10) days after the court's order is entered, the suit shall be dismissed, and no court has further jurisdiction of the appeal or any other lawsuit involving any issue that was or could have been raised in the appeal.

(c) The burden of proof in the appeal is on the remonstrator.

(d) An appeal under this section shall be promptly heard by the court without a jury. All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of the filing of the appeal. Notwithstanding any other law, the court shall decide the appeal based on the record and evidence before the commission, not by trial de novo, and may sustain the remonstrance only if the court finds that the actions of the commission in adopting the resolution were arbitrary and capricious.

(e) The court may confirm the final action of the commission or sustain the remonstrances. The final judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions. An appeal to the court of appeals or supreme court has priority over all other civil appeals.

(f) Either the remonstrator or the commission may appeal the court order to the Indiana supreme court within the ten (10) day period by notice of appeal on a statement of errors in the same manner as is provided in a petition for mandate or prohibition. The supreme court may stay the lower court order pending its own decision, may set a bond to be filed by the remonstrator, may modify the order of the lower court, or may enter the court's order as the final order in a case.

*As added by P.L.35-1990, SEC.63. Amended by P.L.1-1998, SEC.211.*

#### **IC 36-7-26-20**

##### **Approval of district by ordinance**

Sec. 20. The determination of the commission to create a district under this chapter, after approval by the board, must be approved by ordinance of the legislative body of the city.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-21**

##### **Delivery of copy of resolution to department; list of street names and numbers**

Sec. 21. After the approval of the creation of the district under section 20 of this chapter, the commission shall transmit to the board for delivery to the department the following:

- (1) A certified copy of the resolution designating the district, as confirmed by the commission.
- (2) A complete list of street names and the range of street numbers of each street situated within the district.

*As added by P.L.35-1990, SEC.63.*

#### **IC 36-7-26-22**

##### **Base period amount; adjustment factor; determination; operation of business outside district; certification of taxes remitted**

Sec. 22. (a) Within sixty (60) days after receipt from the commission of the information transmitted under section 21 of this chapter the board shall do the following:

(1) Request that the department determine the base period amount. The department shall certify the base period amount to the board and the board shall transmit the certification to the commission.

(2) Determine the adjustment factor. The adjustment factor must account for the portion of the incremental state gross retail and use tax revenues attributable to investment in the district and resulting from the redevelopment and economic development project. The adjustment factor may not be decreased after the factor is determined by the board.

(b) If a business that operates or did operate in the district also has or had one (1) or more other places of business operating in Indiana but outside the district, the business shall, in the manner and for the periods of time requested by the department, certify to the department the amount of taxes remitted by the business under IC 6-2.5 for the business's places of operation that are or were in the district.

*As added by P.L.35-1990, SEC.63.*

### **IC 36-7-26-23**

#### **Net increment for preceding fiscal year; sales tax increment financing fund disclosure of information**

Sec. 23. (a) Before the first business day in October of each year, the board shall require the department to calculate the net increment for the preceding state fiscal year. The department shall transmit to the board a statement as to the net increment in sufficient time to permit the board to review the calculation and permit the transfers required by this section to be made on a timely basis.

(b) There is established a sales tax increment financing fund to be administered by the treasurer of state. The fund is comprised of two (2) accounts called the net increment account and the credit account.

(c) On the first business day in October of each year, that portion of the net increment calculated under subsection (a) that is needed:

(1) to pay debt service on the bonds issued under section 24 of this chapter or to pay lease rentals under section 24 of this chapter; and

(2) to establish and maintain a debt service reserve established by the commission or by a lessor that provides local public improvements to the commission;

shall be transferred to and deposited in the fund and credited to the net increment account. Money credited to the net increment account is pledged to the purposes described in subdivisions (1) and (2), subject to the other provisions of this chapter.

(d) On the first business day of October in each year, the remainder of:

(1) eighty percent (80%) of the gross increment; minus

(2) the amount credited to the net increment account on the same date;

shall be transferred and credited to the credit account.

(e) The remainder of:

(1) the gross increment; minus  
(2) the amounts credited to the net increment account and the credit account;  
shall be deposited by the auditor of state as other gross retail and use taxes are deposited.

(f) A city described in section 1(2), 1(3), or 1(4) of this chapter may receive not more than fifty percent (50%) of the net increment each year. During the time a district exists in a city described in section 1(3) or 1(4) of this chapter, not more than a total of one million dollars (\$1,000,000) of net increment may be paid to the city described in section 1(3) or 1(4) of this chapter. During each year that a district exists in a city described in section 1(2) of this chapter, not more than one million dollars (\$1,000,000) of net increment may be paid to the city described in section 1(2) of this chapter.

(g) The auditor of state shall disburse all money in the fund that is credited to the net increment account to the commission in equal semiannual installments on November 30 and May 31 of each year. *As added by P.L.35-1990, SEC.63. Amended by P.L.185-2001, SEC.8 and P.L.291-2001, SEC.202; P.L.177-2002, SEC.15 and P.L.178-2002, SEC.121.*

#### **IC 36-7-26-24**

##### **Bonds; issuance; lease rental payments; remitted funds; distributions**

Sec. 24. (a) The commission may issue bonds, payable in whole or in part, from money distributed from the fund to the commission, to finance a local public improvement under IC 36-7-14-25.1 or may make lease rental payments for a local public improvement under IC 36-7-14-25.2 and IC 36-7-14-25.3. The term of any bonds issued under this section may not exceed twenty (20) years, nor may the term of any lease agreement entered into under this section exceed twenty (20) years. The commission shall transmit to the board a transcript of the proceedings with respect to the issuance of the bonds or the execution and delivery of a lease agreement as contemplated by this section. The transcript must include a debt service or lease rental schedule setting forth all payments required in connection with the bonds or the lease rentals.

(b) On January 15 of each year, the commission shall remit to the treasurer of state the money disbursed from the fund that is credited to the net increment account that exceeds the amount needed to pay debt service or lease rentals and to establish and maintain a debt service reserve under this chapter in the prior year and before May 31 of that year. Amounts remitted under this subsection shall be deposited by the auditor of state as other gross retail and use taxes are deposited.

(c) The commission in a city described in section 1(2) of this chapter may distribute money from the fund only for the following:

- (1) Road, interchange, and right-of-way improvements.
- (2) Acquisition costs of a commercial retail facility and for real property acquisition costs in furtherance of the road,

interchange, and right-of-way improvements.

(3) Demolition of commercial property and any related expenses incurred before or after the demolition of the commercial property.

(4) For physical improvements or alterations of property that enhance the commercial viability of the district.

(d) The commission in a city described in section 1(3) of this chapter may distribute money from the fund only for the following purposes:

(1) For road, interchange, and right-of-way improvements and for real property acquisition costs in furtherance of the road, interchange, and right-of-way improvements.

(2) For the demolition of commercial property and any related expenses incurred before or after the demolition of the commercial property.

(e) The commission in a city described in section 1(4) of this chapter may distribute money from the fund only for the following purposes:

(1) For:

(A) the acquisition, demolition, and renovation of property; and

(B) site preparation and financing;

related to the development of housing in the district.

(2) For physical improvements or alterations of property that enhance the commercial viability of the district.

*As added by P.L.35-1990, SEC.63. Amended by P.L.185-2001, SEC.9; P.L.291-2001, SEC.203; P.L.1-2002, SEC.161; P.L.177-2002, SEC.16 and P.L.178-2002, SEC.122.*

### **IC 36-7-26-25**

#### **Maximization of use of tax increment financing by city; property tax abatements**

Sec. 25. The board may not approve a resolution under section 16 of this chapter until the board has satisfied itself that the city in which the proposed district will be established has maximized the use of tax increment financing under IC 36-7-14 or IC 36-7-14.5 to finance public improvements within or serving the proposed district. The city may not grant property tax abatements to the taxpayers within the proposed district or a district, except that the board may approve a resolution under section 16 of this chapter in the proposed district or a district in which real property tax abatement not to exceed three (3) years has been granted.

*As added by P.L.35-1990, SEC.63. Amended by P.L.146-2008, SEC.769.*

### **IC 36-7-26-26**

#### **Credit account; use of funds**

Sec. 26. To the extent prescribed by the board, and subject to the terms and conditions established by the board, any money credited to the credit account may be used by the commission, and, if desired

by the board, irrevocably pledged by the board, to further secure bonds or a lease agreement issued or entered into under this chapter. Further security includes, the following:

- (1) Holding money in the credit account and pledging sums to payment of debt service on bonds issued under or lease rentals payable under this chapter, or maintenance of debt service reserves.
- (2) Transferring money from the credit account to the net increment account or, if desired by the board, to the commission to enable the commission to finance local public improvements.
- (3) Payment of bond insurance premiums or other credit enhancement fees and expenses.

*As added by P.L.35-1990, SEC.63.*

### **IC 36-7-26-27**

#### **Repeal or amendment of chapter; adverse effect on bond owners**

Sec. 27. The general assembly covenants that this chapter will not be repealed or amended in a manner that will adversely affect the owner of bonds issued under this chapter.

*As added by P.L.35-1990, SEC.63.*