

**TAX INCREMENT FINANCING FOR
AFFORDABLE HOUSING**

1998 GENERAL SESSION

STATE OF UTAH

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AN ACT RELATING TO SPECIAL DISTRICTS; ALLOWING A REDEVELOPMENT AGENCY TO ALLOCATE A PERCENTAGE OF TAX INCREMENT FINANCING FUNDS UNDER REDEVELOPMENT PLANS ADOPTED IN THE FUTURE TO PROVIDE AFFORDABLE HOUSING; ALLOWING AN AGENCY TAX INCREMENT FOR A LONGER PERIOD IF IT ALLOCATES A PERCENTAGE FOR HOUSING; PROVIDING FOR AN ADJUSTMENT TO AN AGENCY'S BASE YEAR TAXABLE VALUE UNDER CERTAIN CIRCUMSTANCES; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

9-4-704, as last amended by Chapter 150, Laws of Utah 1997

17A-2-1247.5, as last amended by Chapters 80 and 249, Laws of Utah 1996

ENACTS:

17A-2-1264, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **9-4-704** is amended to read:

9-4-704. Distribution of fund moneys.

(1) The executive director shall:

(a) make grants and loans from the fund for any of the activities authorized by Section 9-4-705, as recommended by the board;

(b) establish the criteria by which loans and grants will be made; and

(c) determine the order in which projects will be funded.

(2) The executive director shall distribute any federal moneys contained in the fund according to the procedures, conditions, and restrictions placed upon the use of those moneys by the federal government.

(3) (a) The executive director shall distribute any funds received pursuant to Section 17A-2-1264 to pay the costs of providing income targeted housing within the community that created the redevelopment agency under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act.

(b) As used in Subsection (3)(a):

(i) "Community" has the meaning as defined in Subsection 17A-2-1202(5).

(ii) "Income targeted housing" has the meaning as defined in Subsection 17A-2-1264(1)(g).

~~[(3) The]~~ (4) Except federal money and money received under Section 17A-2-1264, the executive director shall distribute all other moneys from the fund according to the following requirements:

(a) Not less than 30% of all fund moneys shall be distributed to rural areas of the state.

(b) At least 50% of the moneys in the fund shall be distributed as loans to be repaid to the fund by the entity receiving them.

(i) (A) Of the fund moneys distributed as loans, at least 50% shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(B) The remaining loan moneys shall be distributed to benefit persons whose annual income is at or below 80% of the median family income for the state.

(ii) The executive director or his designee shall lend moneys in accordance with this Subsection ~~[(3)]~~ (4) at a rate based upon the borrower's ability to pay.

(c) Any fund moneys not distributed as loans shall be distributed as grants.

(i) Ninety-five percent of the fund moneys distributed as grants shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(ii) The remaining 5% of the fund moneys may be used by the executive director to obtain federal matching funds or for other uses consistent with the intent of this part, including the payment of reasonable loan processing fees, but may not be used to offset department or board administrative

expenses.

~~[(4)]~~ (5) The executive director may:

- (a) enact rules to establish procedures for the grant and loan process by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and
- (b) service or contract, pursuant to Title 63, Chapter 56, Utah Procurement Code, for the servicing of loans made by the fund.

Section 2. Section **17A-2-1247.5** is amended to read:

17A-2-1247.5. Tax increment financing -- Project area budget approval.

(1) This section applies to projects for which a preliminary plan has been ~~[prepared after April 1, 1993, and for which any of the following have occurred]~~ adopted on or after July 1, 1993~~[: the completion of the agency blight study, and the good faith commencement of the hearing by the agency under Section 17A-2-1221].~~

(2) (a) A taxing agency committee shall be created for each redevelopment or economic development project. The committee membership shall be selected as follows:

- (i) two representatives appointed by the school district in the project area;
- (ii) two representatives appointed by resolution of the county commission or county council for the county in which the project area is located;
- (iii) two representatives appointed by resolution of the city or town's legislative body in which the project area is located if the project is located within a city or town;
- (iv) a representative approved by the State School Board; and
- (v) one representative who shall represent all of the remaining governing bodies of the other local taxing agencies that levy taxes upon the property within the proposed project area. The representative shall be selected by resolution of each of the governing bodies of those taxing agencies within 30 days after the notice provided in Subsection 17A-2-1256(3).

(b) If the project is located within a city or town, a quorum of a taxing agency committee consists of five members. If the project is not located within a city or town, a quorum consists of four members.

(c) A taxing agency committee formed in accordance with this section has the authority to:

(i) represent all taxing entities in a project area and cast votes that will be binding on the governing boards of all taxing entities in a project area;

(ii) negotiate with the agency concerning the redevelopment plan;

(iii) approve or disapprove project area budgets under Subsection (3); and

(iv) approve an exception to the limits on the value and size of project areas imposed by Section 17A-2-1210, or the time and amount of tax increment financing under this section.

(3) (a) ~~[An]~~ (i) If the project area budget does not allocate 20% of the tax increment for housing as provided in Subsection 17A-2-1264(2)(a):

(A) an agency ~~[must obtain]~~ may not collect any tax increment for a project area until after the agency obtains the majority consent of a quorum of the taxing agency committee for the project area budget ~~[before an agency may collect any tax increment for a project area]~~; and

(B) a project area budget adopted under Subsection (3)(a)(i)(A) may be amended if the agency obtains the majority consent of a quorum of the taxing agency committee.

(ii) If the project area budget allocates 20% of the tax increment for housing as provided in Subsection 17A-2-1264(2)(a):

(A) an agency may not collect tax increment from all or part of a project area until after:

(I) the Olene Walker Housing Trust Fund Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund, has certified the project area budget as complying with the requirements of Section 17A-2-1264; and

(II) the agency's governing body has approved and adopted the project area budget by a 2/3 vote; and

(B) a project area budget adopted under Subsection (3)(a)(ii)(A) may be amended if:

(I) the Olene Walker Housing Trust Fund Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund, certifies the amendment as complying with the requirements of Section 17A-2-1264; and

(II) the agency's governing body approves and adopts the amendment by a 2/3 vote.

(b) ~~[Except as provided in Subsection (3)(c), the project area budget may be amended at the request of the agency by obtaining the majority consent of a quorum of the taxing agency~~

committee.] Within 30 days after the approval and adoption of a project area budget, each agency shall file a copy of the budget with the county auditor, the State Tax Commission, the state auditor, and each property taxing entity affected by the agency's collection of tax increment under the project area budget.

(c) (i) Beginning on January 1, 1997, before [a taxing agency committee approves] an amendment to a project area budget is approved, the agency shall advertise and hold one public hearing on the proposed change in the project area budget.

(ii) The public hearing under Subsection (3)(c)(i) shall be conducted according to the procedures and requirements of Subsection 17A-2-1222(2), except that if the amended budget allocates a greater proportion of tax increment to a project area than was allocated to the project area under the previous budget, the advertisement shall state the percentage allocated under the previous budget and the percentage allocated under the amended budget.

(d) If an amendment is [~~proposed and the taxing agency committee does not consent to the amendment~~] not approved, the agency [~~will~~] shall continue to operate under the previously approved, unamended project area budget.

(4) (a) An agency may collect tax increment from all or a part of a project area. The tax increment shall be paid to the agency in the same manner and at the same time as payments of taxes to other taxing agencies to pay the principal of and interest on loans, moneys advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, to finance or refinance, in whole or in part, the redevelopment or economic development project [~~according to the limits established by majority consent of the taxing agency committee~~] and the housing projects and programs under Sections 17A-2-1263 and 17A-2-1264.

(b) [~~The~~] (i) An agency may elect [~~one of the following alternatives for tax increment collection~~] to be paid:

(A) if 20% of the project area budget is not allocated for housing as provided in Subsection 17A-2-1264(2)(a):

[(i)] (I) 100% of annual tax increment [~~to be paid to the agency~~] for [~~a period of twelve~~] 12 years [~~commencing from the first tax year an agency accepts tax increment from a project area~~]; or

~~[(ii)]~~ (II) 75% of annual tax increment ~~[to be paid to the agency]~~ for ~~[a period of twenty]~~ 20 years ~~[commencing from the first tax year an agency accepts tax increment from a project area]; or~~

(B) if 20% of the project area budget is allocated for housing as provided in Subsection 17A-2-1264(2)(a):

(I) 100% of annual tax increment for 15 years; or

(II) 75% of annual tax increment for 24 years.

(ii) Tax increment paid to an agency under this Subsection (4)(b) shall be paid for the applicable length of time beginning the first tax year the agency accepts tax increment from a project area.

(c) An agency may receive a greater percentage of tax increment or receive tax increment for a longer period of time than that specified in ~~[this]~~ Subsection (4)(b) if the agency obtains the majority consent of the taxing agency committee.

(5) (a) The redevelopment plan shall ~~[contain a provision that provides]~~ provide that the portion of the taxes, if any, due to an increase in the tax rate by a taxing agency after the date the project area budget is approved by the taxing agency committee may not be allocated to and when collected paid into a special fund of the redevelopment agency according to the provisions of Subsection (4) unless the taxing agency committee approves the inclusion of the increase in the tax rate at the time the project area budget is approved. If approval of the inclusion of the increase in the tax rate is not obtained, the portion of the taxes attributable to the increase in the rate shall be distributed by the county to the taxing agency imposing the tax rate increase in the same manner as other property taxes.

(b) ~~[In each year in which there are increases or decreases in the tax rate of a taxing agency as described in Subsection (5)(a) as a result of (i) statutes enacted by the Legislature, a judicial decision, or an order from the State Tax Commission to a county to adjust or factor its assessment rate pursuant to Subsection 59-2-704(2), (ii) changes in exemptions provided in Utah Constitution Article XIII, Section 2, or Section 59-2-103, and (iii) any increase or decrease in the percentage of fair market value, as defined under Section 59-2-102, the]~~ The amount of the tax rate to be used in determining tax increment shall be increased or decreased by the amount of ~~[the increases]~~ an

increase or [decreases] decrease as a result of [the applicable action described in (i), (ii), or (iii)]:

(i) a statute enacted by the Legislature, a judicial decision, or an order from the State Tax Commission to a county to adjust or factor its assessment rate under Subsection 59-2-704(2);

(ii) a change in exemption provided in Utah Constitution Article XIII, Section 2, or Section 59-2-103;

(iii) an increase or decrease in the percentage of fair market value, as defined under Section 59-2-102; or

(iv) a decrease in the certified tax rate under Subsection 59-2-924(2)(c) or (2)(d)(i).

(c) (i) Notwithstanding the increase or decrease resulting from Subsection (5)(b), the amount of money allocated to, and when collected paid to the agency each year for payment of bonds or other indebtedness may not be less than would have been allocated to and when collected paid to the agency each year if there had been no increase or decrease under Subsection (5)(b).

(ii) For a decrease resulting from Subsection (5)(b)(iv), the taxable value for the base year under Subsection 17-2-1247(2)(a) or 17A-2-1202(2), as the case may be, shall be reduced for any year to the extent necessary, including below zero, to provide an agency with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:

(A) in that year there is a decrease in the certified tax rate under Subsection 59-2-924(2)(c) or (2)(d)(i);

(B) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and

(C) the decrease results in a reduction of the amount to be paid to the agency under Section 17A-2-1247 or 17A-2-1247.5.

(6) (a) For redevelopment plans first adopted before May 4, 1993, beginning January 1, 1994, all of the taxes levied and collected upon the taxable property in the redevelopment project under Section 59-2-906.1 which are not pledged to support bond indebtedness and other contractual obligations are exempt from the provisions of Subsection (4).

(b) For redevelopment plans first adopted after May 3, 1993, beginning January 1, 1994, all

of the taxes levied and collected upon the taxable property in the redevelopment project under Section 59-2-906.1 are exempt from the provisions of Subsection (4).

Section 3. Section **17A-2-1264** is enacted to read:

17A-2-1264. Affordable housing funds under redevelopment plans adopted on or after July 1, 1998.

(1) As used in this section:

(a) "Affordable housing" has the meaning as defined under Subsection 17A-2-1263(6).

(b) "Annual income" has the meaning as defined under regulations of the U.S. Department of Housing and Urban Development, 24 CFR, Part 813, as amended or as superseded by replacement regulations.

(c) "Board" means the Olene Walker Housing Trust Fund Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund.

(d) "Fair share ratio" means the ratio derived by:

(i) for a city or town, comparing the percentage of all housing units within the city or town that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units; or

(ii) for the unincorporated part of a county, comparing the percentage of all housing units within the unincorporated county that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units.

(e) "Family" has the meaning as defined under regulations of the U.S. Department of Housing and Urban Development, 24 CFR, Part 813, as amended or as superseded by replacement regulations.

(f) "Housing funds" means the funds allocated in the project area budget under Subsection (2)(a) for the purposes provided in Subsection (3).

(g) "Income targeted housing" means housing to be owned or occupied by a family whose annual income is at or below 80% of the median annual income for the county in which the housing is located.

(h) "Unincorporated" means not within a city or town.

(2) (a) A project area budget for a redevelopment plan that is adopted on or after July 1, 1998, may allocate 20% of the tax increment funds payable to the agency over the life of the redevelopment plan for use as provided in Subsection (3).

(b) Before an agency may adopt a project area budget that allocates 20% of tax increment funds under Subsection (2)(a), the board shall certify the project area budget to be in compliance with the requirements of this section.

(c) (i) If an agency fails to provide housing funds in accordance with the certified project area budget, the board may bring legal action to compel the agency to provide the housing funds.

(ii) In an action under Subsection (2)(c)(i), the court:

(A) shall award the board a reasonable attorney's fee, unless the court finds that the action was frivolous; and

(B) may not award the agency its attorney's fees, unless the court finds that the action was frivolous.

(3) (a) Each agency shall use all housing funds allocated under Subsection (2)(a) to:

(i) pay part or all of the cost of land or construction of income targeted housing within the community that created the agency, if practicable in a mixed income development or area;

(ii) pay part or all of the cost of rehabilitation of income targeted housing within the community that created the agency;

(iii) pay part or all of the cost of land or installation, construction, or rehabilitation of any building, facility, structure, or other housing improvement, including infrastructure improvements, related to housing located in a redevelopment project area where blight has been found to exist;

(iv) replace housing units lost as a result of the redevelopment or economic development;

(v) make payments on or establish a reserve fund for bonds:

(A) issued by the agency, the community, or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which are used within the community for the purposes stated in Subsections (3)(a)(i), (ii), (iii), or (iv); or

(vi) if the community's fair share ratio at the time of the first adoption of the project area budget is at least 1.1 to 1.0, make payments on bonds:

(A) that were previously issued by the agency, the community, or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which were used within the community for the purposes stated in Subsections (3)(a)(i), (ii), (iii), or (iv).

(b) As an alternative to the requirements of Subsection (3)(a), an agency may pay all housing funds to:

(i) the community for use as provided under Subsection (3)(a);

(ii) the housing authority that provides income targeted housing within the community for use in providing income targeted housing within the community; or

(iii) the Olene Walker Housing Trust Fund, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund, for use in providing income targeted housing within the community.

(4) The agency or community shall hold the housing funds, together with all interest earned by the housing funds and all payments or repayments for loans, advances, or grants from the housing funds, in a separately designated account until the funds are used pursuant to this section.

(5) In using housing funds under Subsection (3)(a), an agency may lend, grant, or contribute housing funds to a person, public body, housing authority, private entity or business, or nonprofit organization for use as provided in Subsection (3)(a).

(6) An agency may:

(a) issue bonds from time to time to finance a housing undertaking under this section, including the payment of principal and interest upon advances for surveys and plans or preliminary loans; and

(b) issue refunding bonds for the payment or retirement of bonds under Subsection (6)(a) previously issued by the agency.

(7) Expenditures or obligations incurred by an agency under this section shall constitute an indebtedness incurred by the agency.

