

1 **TAX INCREMENT FINANCING FOR**
2 **AFFORDABLE HOUSING**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Gene Davis**

6 AN ACT RELATING TO SPECIAL DISTRICTS; PROVIDING THAT A PERCENTAGE OF
7 TAX INCREMENT FINANCING FUNDS UNDER REDEVELOPMENT PLANS ADOPTED
8 IN THE FUTURE BE USED TO PROVIDE AFFORDABLE HOUSING; AND MAKING
9 TECHNICAL CHANGES.

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

11 AMENDS:

12 **9-4-704**, as last amended by Chapter 150, Laws of Utah 1997

13 **17A-2-1247.5**, as last amended by Chapters 80 and 249, Laws of Utah 1996

14 ENACTS:

15 **17A-2-1264**, Utah Code Annotated 1953

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

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

18 **9-4-704. Distribution of fund moneys.**

19 (1) The executive director shall:

20 (a) make grants and loans from the fund for any of the activities authorized by Section
21 9-4-705, as recommended by the board;

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

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

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

27 (3) (a) The executive director shall distribute any funds received pursuant to Section

1 17A-2-1264 to pay the costs of providing income targeted housing within the community that
2 created the redevelopment agency under Title 17A, Chapter 2, Part 12, Utah Neighborhood
3 Development Act.

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

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

6 (ii) "Income targeted housing" has the meaning as defined in Subsection
7 17A-2-1264(1)(g).

8 [~~3~~] (4) The executive director shall distribute all other moneys from the fund according
9 to the following requirements:

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

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

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

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

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

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

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

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

26 [~~4~~] (5) The executive director may:

27 (a) enact rules to establish procedures for the grant and loan process by following the
28 procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

29 (b) service or contract, pursuant to Title 63, Chapter 56, Utah Procurement Code, for the
30 servicing of loans made by the fund.

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

1 **17A-2-1247.5. Tax increment financing -- Project area budget approval.**

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

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

8 (i) two representatives appointed by the school district in the project area;

9 (ii) two representatives appointed by resolution of the county commission or county
10 council for the county in which the project area is located;

11 (iii) two representatives appointed by resolution of the city or town's legislative body in
12 which the project area is located if the project is located within a city or town;

13 (iv) a representative approved by the State School Board; and

14 (v) one representative who shall represent all of the remaining governing bodies of the
15 other local taxing agencies that levy taxes upon the property within the proposed project area. The
16 representative shall be selected by resolution of each of the governing bodies of those taxing
17 agencies within 30 days after the notice provided in Subsection 17A-2-1256(3).

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

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

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

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

26 (iii) approve or disapprove project area budgets; and

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

29 (3) (a) An agency must obtain the majority consent of a quorum of the taxing agency
30 committee for the project area budget before an agency may collect any tax increment for a project
31 area.

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

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

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

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

15 (4) (a) An agency may collect tax increment from all or a part of a project area. The tax
16 increment shall be paid to the agency in the same manner and at the same time as payments of
17 taxes to other taxing agencies to pay the principal of and interest on loans, moneys advanced to,
18 or indebtedness, whether funded, refunded, assumed, or otherwise, to finance or refinance, in
19 whole or in part, the redevelopment or economic development project according to the limits
20 established by majority consent of the taxing agency committee.

21 (b) The agency may elect one of the following alternatives for tax increment collection:

22 (i) 100% of annual tax increment remaining after application of Section 17A-2-1264 to
23 be paid to the agency for a period of [~~twelve~~] 12 years commencing from the first tax year an
24 agency accepts tax increment from a project area; or

25 (ii) 75% of annual tax increment remaining after application of Section 17A-2-1264 to be
26 paid to the agency for a period of [~~twenty~~] 20 years commencing from the first tax year an agency
27 accepts tax increment from a project area.

28 (c) [~~An~~] Subject to Section 17A-2-1264, an agency may receive a greater percentage of
29 tax increment or receive tax increment for a longer period of time than that specified in this
30 [~~subsection~~] Subsection (4) if the agency obtains the majority consent of the taxing agency
31 committee.

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

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

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

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

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

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

28 (6) (a) For redevelopment plans first adopted before May 4, 1993, beginning January 1,
29 1994, all of the taxes levied and collected upon the taxable property in the redevelopment project
30 under Section 59-2-906.1 which are not pledged to support bond indebtedness and other
31 contractual obligations are exempt from the provisions of Subsection (4).

1 (b) For redevelopment plans first adopted after May 3, 1993, beginning January 1, 1994,
2 all of the taxes levied and collected upon the taxable property in the redevelopment project under
3 Section 59-2-906.1 are exempt from the provisions of Subsection (4).

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

5 **17A-2-1264. Affordable housing funds under redevelopment plans adopted on or**
6 **after July 1, 1998.**

7 (1) As used in this section:

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

9 (b) "Annual income" has the meaning as defined under regulations of the U.S. Department
10 of Housing and Urban Development, 24 CFR, Part 813.

11 (c) "Board" means the Olene Walker Housing Trust Fund Board, established under Title
12 9, Chapter 4, Part 7, Olene Walker Housing Trust Fund.

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

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

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

21 (e) "Family" has the meaning as defined under regulations of the U.S. Department of
22 Housing and Urban Development, 24 CFR, Part 813.

23 (f) "Housing funds" means the funds required to be allocated in the project area budget
24 under Subsection (2) or the substitute funds provided by the community under Subsection
25 (2)(b)(i)(B).

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

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

30 (2) Each project area budget for a redevelopment plan that is adopted on or after July 1,
31 1998, shall allocate 20% of the tax increment funds payable to the agency over the life of the

1 redevelopment plan as provided in Subsection (3):

2 (a) if the total amount of tax increment in the project area budget for the life of the
3 redevelopment plan exceeds \$1,000,000; and

4 (b) unless:

5 (i) (A) the community's fair share ratio at the time the project area budget is adopted
6 exceeds 1.1 to 1; or

7 (B) the community provides substitute funding for income targeted housing from another
8 source equal to at least 20% of the tax increment funds payable to the agency over the life of the
9 redevelopment plan and receives approval for the substitute funding from the board;

10 (ii) for an economic development project, fewer than 20% of the jobs expected to be
11 created by the project pay wages less than 150% of the minimum wage; and

12 (iii) the redevelopment plan does not provide for the removal of affordable housing from
13 the project area.

14 (3) The agency shall use all housing funds required under Subsection (2) and the
15 community shall use all housing funds provided under Subsection (2)(b)(i)(B) to:

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

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

20 (c) make payments on or establish a reserve fund for tax exempt housing bonds issued
21 under Title 11, Chapter 25, Residential Rehabilitation Act;

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

26 (e) replace housing units lost as a result of the redevelopment or economic development.

27 (4) (a) If the community fails to provide substitute funding for income targeted housing
28 under Subsection (2)(b)(i)(B) after the board has approved the substitute funding, the board may
29 bring legal action to compel the community to provide the substitute funding.

30 (b) In an action under Subsection (4)(a), the court:

31 (i) shall award the board a reasonable attorney's fee, unless the court finds that the action

1 was frivolous; and

2 (ii) may not award the community its attorney's fees, unless the court finds that the action
3 was frivolous.

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

8 (6) The agency may meet the requirements of this section by paying the housing funds to:

9 (a) the community for use by the community's legislative body in providing income
10 targeted housing within the community;

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

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

16 (7) Subject to board approval, a community may provide substitute funding under
17 Subsection (2)(b)(i)(B) by paying the housing funds to:

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

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

23 (8) An agency may lend, grant, or contribute housing funds to a person, public body,
24 housing authority, private entity or business, or nonprofit organization for use in providing income
25 targeted housing.

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

Legislative Review Note
as of 12-12-97 1:13 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel