

units, with the exception of school districts, may join in the Section 312.211 abatement subject under the same procedural rules as apply to a regular abatement.⁵³⁹ Also, the terms of such an abatement are subject to the same general rules as are the terms of a regular tax abatement.⁵⁴⁰ Those terms must include a recapture provision, list the proposed improvements to the property, and provide access to the property so that city employees may ensure compliance, among others.⁵⁴¹ Counties may initiate a Section 312.211 abatement in the same areas where they may initiate a regular tax abatement.⁵⁴²

Tax Increment Financing

Tax increment financing is a tool that local governments can use to publicly finance needed structural improvements and enhanced infrastructure within a defined area. These improvements usually are undertaken to promote the viability of existing businesses and to attract new commercial enterprises to the area. The statutes governing tax increment financing are located in Chapter 311 of the Texas Tax Code.

The cost of improvements to the area is repaid by the contribution of future tax revenues by each taxing unit that levies taxes against the property. Specifically, each taxing unit can choose to dedicate all, a portion, or none of the tax revenue that is attributable to the increase in property values due to the improvements within the reinvestment zone. The additional tax revenue that is received from the affected properties is referred to as the tax increment. Each taxing unit determines what percentage of its tax increment, if any, it will commit to repayment of the cost of financing the public improvements.

Tax increment financing may be initiated only by a city or county.⁵⁴³ If a property is located outside of the city limits (within the city's extraterritorial jurisdiction or beyond), it is not eligible for tax increment financing unless annexed into the city. Once a city or county has begun the process of establishing a tax increment financing reinvestment zone, counties, school districts and special districts are allowed to consider participating in the tax increment financing agreement.⁵⁴⁴

⁵³⁹ *Id.* § 312.206(a).

⁵⁴⁰ *Id.* § 312.211(g).

⁵⁴¹ *Id.* § 312.205(a).

⁵⁴² *Id.* § 312.402 (Vernon Supp. 2005).

⁵⁴³ *Id.* § 311.003 (counties were allowed to form zones under Tex. H.B. 2120, 79th Leg., R.S. (2005)).

⁵⁴⁴ *Id.* § 311.013(f).

Initiating the Process

There are two ways that tax increment financing can be initiated. First, it can be started by petition of the affected property owners.⁵⁴⁵ The petition must be submitted by owners of property that constitute at least 50% of the appraised property value within the proposed zone. There are a number of special rules regarding zones that are created by petition. If the zone is created in this manner, the city or county should refer to Chapter 311 of the Tax Code regarding the applicable requirements and provisions.

Tax increment financing may also be initiated by the city or county's governing body without the need for a petition.⁵⁴⁶ If not initiated by petition, an area may be considered for tax increment financing only if it meets at least one of the following three criteria:⁵⁴⁷

- 1) The area's present condition must substantially impair the city or county's growth, retard the provision of housing, or constitute an economic or social liability to the public health, safety, morals, or welfare. Further, this condition must exist because of the presence of one or more of the following conditions: a substantial number of substandard or deteriorating structures, inadequate sidewalks or street layout, faulty lot layouts, unsanitary or unsafe conditions, a tax or special assessment delinquency that exceeds the fair market value of the land, defective or unusual conditions of title, conditions that endanger life or property by fire or other cause, or, if the city has a population of 100,000 or more, structures (which are not single-family residences) in which less than 10 percent of the square footage has been used for commercial, industrial, or residential purposes during the preceding 12 years;
- 2) The area is predominantly open and, because of obsolete platting, deteriorating structures or other factors, it substantially impairs the growth of the local government; or
- 3) The area is in or adjacent to a "Federally assisted new community" as defined under Tax Code Section 311.005(b).

Within developed areas of the city or county, the criterion usually cited to justify a reinvestment zone is that the area's present condition substantially impairs the local government's growth because of a substantial number of substandard or deteriorating structures. If the area is not developed, the city or county often cites the criterion that the area is predominantly open, and that it substantially impairs the growth of the city or county because of obsolete platting, deteriorating structures or other factors.

⁵⁴⁵ *Id.* §§ 311.005(a)(5), 311.007(b).

⁵⁴⁶ *Id.* § 311.003.

⁵⁴⁷ *Id.* § 311.005(a)(1) - (3).

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A decision by a local government that an area meets the first or second criteria to become a reinvestment zone will be given much deference by a reviewing court should that decision be challenged by a private lawsuit. Unless the decision is arbitrary or capricious, willful and unreasoning, taken without consideration and in disregard of the facts and circumstances, it will be upheld.⁵⁴⁸

The Tax Code places several further restrictions on the creation of a reinvestment zone for tax increment financing:⁵⁴⁹

- No more than 10% of the property within the reinvestment zone (excluding publicly-owned property) may be used for residential purposes.⁵⁵⁰ This requirement, however, does not apply if the district is created pursuant to a petition of the landowners.⁵⁵¹
- A reinvestment zone may not contain property that cumulatively would exceed 15% of the total appraised property value within the city and its industrial districts.⁵⁵²
- A city may not create a reinvestment zone or change the boundaries of an existing zone if the zone would contain more than 15% of the total appraised value of real property taxable by a county or school district.⁵⁵³

Subject to the above limitations, the boundaries of an existing tax increment financing zone may be reduced or enlarged by ordinance or resolution of the governing body that created the zone. Any such change is conducted according to the requirements of Section 311.007 of the Tax Code. If the boundaries of a tax increment reinvestment zone are enlarged, a school district is not required to pay into the tax increment fund any of the district's tax increment produced from property located in the added area.⁵⁵⁴ However, the school district may voluntarily enter into an agreement with the city that created the zone to contribute all or part of the district's tax increment from such an area. The district may enter into such an agreement at any time before or after the reinvestment zone is created or enlarged. The agreement may include conditions for payment of the tax increment into the fund and must specify the portion of the tax increment to be paid into the fund and the years for which the tax increment is to be paid into the fund.

⁵⁴⁸ See *Hardwicke v. City of Lubbock*, 150 S.W.3d 708, 716-17 (Tex. App.—Amarillo 2004, no pet.)

⁵⁴⁹ TEX. TAX CODE ANN. § 311.006 (Vernon 2002).

⁵⁵⁰ *Id.* § 311.006(a)(1).

⁵⁵¹ *Id.* § 311.006(e).

⁵⁵² *Id.* § 311.006(a)(2).

⁵⁵³ *Id.* § 311.006(c).

⁵⁵⁴ *Id.* § 311.013(k) (Vernon Supp. 2005).

If an area qualifies for tax increment financing, the process involves ten steps. The ten steps are as follows:

Step One: The governing body must prepare a preliminary reinvestment zone financing plan.⁵⁵⁵

A copy of the plan must be sent to each local government that levies taxes on real property within the zone. The Tax Code does not specify what the preliminary financing plan must contain. However, it may be prudent to include each of the items that are required for the final financing plan discussed under Step Seven of this article.

Step Two: The local government creating the zone must provide a 60-day written notice of its intent to designate a reinvestment zone and of the hearing on the proposed zone to the other taxing units that levy property taxes within the area.⁵⁵⁶

The notice must contain a description of the proposed boundaries of the zone, the tentative plans for the zone's development, and an estimate of the general impact of the zone on property values and tax revenues. The governing body of the affected taxing units may agree to waive the 60-day notice requirement. A taxing unit that receives the city or county's 60-day notice may ask the local government for additional information. The city or county's governing body is under a duty to provide any such information to the "extent practicable."⁵⁵⁷

Step Three: Once the local government creating the zone has provided its 60-day notice of a proposed zone, the other affected taxing units within 15 days must designate a representative to meet with the local government creating the zone to discuss the project and financing plans.⁵⁵⁸

With advance notice, the city or county creating the zone may call a meeting or meetings of these representatives. The meetings may be called at least 15 days after the 60-day notice of the proposed zone. The meetings may include discussions of the following items:

- The boundaries of the development within the zone;
- Development in the zone;
- The tax increment that each taxing unit will contribute to the tax increment fund;
- Any proposed retention of a portion of its tax increment by a taxing unit;

⁵⁵⁵ *Id.* § 311.003(b).

⁵⁵⁶ *Id.* § 311.003(e).

⁵⁵⁷ *Id.* § 311.003(f).

⁵⁵⁸ *Id.* § 311.003(g).

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- The exclusion of particular parcels of property from the zone;
- The board of directors for the zone; and
- Tax collection within the zone.

On the motion of the local government creating the zone, any other relevant matter may also be discussed. All such meetings must be conducted as open meetings as provided under the Open Meetings Act.⁵⁵⁹

Step Four: In addition to meeting with the other taxing unit representatives, the local government creating the zone must provide a formal presentation to the governing body of each taxing unit that levies real property taxes within the proposed zone.⁵⁶⁰

The formal presentation must cover some of the items that were included in the earlier 60-day notice to the taxing units. Specifically, the presentation must indicate the proposed boundaries of the zone, the tentative plans for development of the zone, and an estimate of the general impact of the zone on property values and tax revenues. Notice of these presentations must be given to all taxing units that tax property within the zone. The presentations should be conducted as open meetings. The city or county creating the zone may hold a joint presentation for all of the affected taxing units with the consent of the involved taxing units.

The proposed plan for the zone may include expenditures for any of a number of costs as outlined in the definition of the term “project cost” in Tax Code Section 311.002(1). For example, potential expenditures could include the costs of acquisition, construction or improvement and other costs to enhance or develop new and existing public buildings and other public improvements. The statute indicates that the term “project costs” includes expenditures for acquisition, alteration or construction of:

- public improvements;
- new buildings, structures and fixtures;
- existing structures;
- utilities, water and sewer facilities, flood and drainage facilities;
- streets and street lights;

⁵⁵⁹ TEX. GOV'T CODE ANN. ch. 551 (Vernon 2004 & Supp. 2005)

⁵⁶⁰ TEX. TAX CODE ANN. § 311.003(f) (Vernon Supp. 2005).

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- pedestrian malls, walkways or parking facilities; or
- parks and educational facilities.

Project costs may also include the cost of professional services and administrative expenses in connection with implementation of a project plan.

Cities and counties are additionally permitted to take most actions that are necessary to carry out tax increment financing.⁵⁶¹ They may acquire real property through purchase or condemnation, enter into necessary agreements, and construct or enhance public works facilities and other public improvements. They may also make needed improvements to blighted properties. Tax Code Section 311.008(c) provides that these powers prevail over any law or municipal charter to the contrary. The use of tax increment financing for improvements to certain educational facilities is prohibited unless those facilities are located in a reinvestment zone created on or before September 1, 1999.⁵⁶²

Step Five: After the local government creating the zone has made its formal presentations to the other taxing units, it must hold a public hearing on the creation of the reinvestment zone.⁵⁶³

The public hearing must be preceded by at least seven days' published notice in a newspaper of general circulation in the city or county creating the zone. At the hearing, the governing body of the city or county must evaluate the proposed benefits of the zone. Any interested person is permitted to speak at the hearing and voice objection to the inclusion of property within a proposed zone. Property within the zone that is owned or leased by a member of the governing body of the city or by a member of a zoning or planning board or commission of the city is not eligible for tax increment financing or tax abatement.⁵⁶⁴ However, if the property owner's property is subject to a tax increment financing agreement when the owner becomes a member of the governing body or of the zoning or planning commission, the property owner would not lose the benefit of the tax increment financing agreement due to the person's new membership on the governing body, board or commission.⁵⁶⁵

⁵⁶¹ *Id.* § 311.008.

⁵⁶² *Id.* § 311.008(b)(4).

⁵⁶³ *Id.* § 311.003(c).

⁵⁶⁴ *Id.* § 312.204(d).

⁵⁶⁵ *Id.*

Step Six: After the public hearing, the governing body of the city or county may, by ordinance or order, designate a contiguous area as a reinvestment zone for tax increment financing purposes.⁵⁶⁶

The ordinance must be adopted by a simple majority vote of the governing body at an open meeting. Home rule cities may have a higher voting contingent required by the city charter. The adopted ordinance should include a finding that development of the area would not occur in the foreseeable future solely through private investment. Tax Code Section 311.004 also contains a number of other mandatory provisions for the reinvestment zone ordinance. These provisions include:⁵⁶⁷

- a description of the boundaries of the zone with sufficient detail to identify the territory within the zone. The ordinance, however, does not have to identify the specific parcels of real property;
- a designation of the board of directors for the zone and an indication of the number of directors of the board;⁵⁶⁸
- a provision that the zone will take effect immediately on passage of the ordinance;
- an indication of the date for termination of the zone;
- a name for the zone as provided under Tax Code Section 311.004(5);
- a provision establishing a tax increment fund for the zone;
- findings that the improvements within the zone will significantly enhance the value of the taxable property within the zone and will be of general benefit to the city or county, and that the area meets the criteria for designation of a reinvestment zone under Tax Code Section 311.005; and
- if designating a reinvestment zone pursuant to a petition of the property owners, the city or county must specify in its ordinance that the reinvestment zone is designated pursuant to Tax Code Section 311.005(a)(5).⁵⁶⁹

The size, composition and qualifications of the board of directors depend on whether the reinvestment zone was initiated by the city or county or by petition of the property owners.

⁵⁶⁶ *Id.* § 311.003(a).

⁵⁶⁷ *Id.* § 311.004(a)(1)-(7).

⁵⁶⁸ *See id.* § 311.0091 (Vernon 2002) (addresses cities with a population of 1.1 million or more that are located wholly or partially in a county with a population of less than 1.4 million).

⁵⁶⁹ *Id.* § 311.004(c) (Vernon Supp. 2005).

Zones Initiated by Governing Body

If the zone was created by the governing body on its own initiative, the board of directors consists of at least five and not more than 15 members, unless more than 15 members are required under Tax Code Section 311.009. The board is composed of one appointee from each taxing unit that levies taxes on real property in the zone. A taxing unit may waive its right to appoint a member. The remaining board members are appointed by the governing board of the city or county.⁵⁷⁰ The board members appointed by the governing board must be eligible to vote in the municipality or county, or be at least 18 years of age and own real property in the zone.⁵⁷¹

Zones Initiated by Petition of Property Owners

If the reinvestment zone was created pursuant to a petition of the property owners, the board of directors must consist of nine members.⁵⁷² The board is composed of one appointee from each school district or county that levies property taxes in the zone and has approved the payment of all or part of the tax increment. The remaining members are appointed by the governing body of the city or county. The members appointed by the governing board must be at least 18 years of age, and either own real property in the zone or be an employee or agent of a person who owns real property in the zone.⁵⁷³ Further, the local state senator and representative in whose districts the zone is located are each members of the board, or they may appoint a substitute to serve for them.

Each year, the governing board of the city or county creating the zone appoints one member of the board to serve as chairman. The chairman serves for a term of one year that begins on January 1 of the following year. The board of directors may also elect a vice-chair to preside in the absence of the chairman. The board may elect other officers as it considers appropriate. A vacancy on the board is filled by appointment of the governing body of the taxing unit that appointed the director.

State law specifies that a member of the board of directors of a tax increment financing reinvestment zone is not considered a public official.⁵⁷⁴ Because of this provision, the Attorney General has held that a city council member is not prohibited from simultaneously serving as a member of the board of directors of a tax increment reinvestment zone created by his or her municipality.⁵⁷⁵ In addition,

⁵⁷⁰ *Id.* § 311.009(a).

⁵⁷¹ *Id.* § 311.009(e)(1).

⁵⁷² *Id.* § 311.009(b).

⁵⁷³ *Id.* § 311.009(e)(2).

⁵⁷⁴ *Id.* § 311.009(g).

⁵⁷⁵ *Op. Tex. Att’y Gen. No. GA-169 (2004); see also Tex. H.B. 2684, § 15, 76th Leg., R.S. (1999)* (“Nothing in this Act is intended to prohibit a member of a governing body of a taxing unit that levies taxes on real property in the reinvestment zone from serving as a member of the board of directors of a reinvestment zone under the Tax Increment

state law clarifies that such a director may be appointed to serve on the board of directors of a local government corporation created under Subchapter D of Chapter 431 of the Texas Transportation Code.⁵⁷⁶

It should be noted that designation of an area as an enterprise zone under the Texas Enterprise Zone Act (Government Code Chapter 2303) would also constitute designation of the area as a reinvestment zone for tax increment financing purposes.⁵⁷⁷ Such a designation would eliminate further public hearing requirements other than those provided under the Enterprise Zone Act. Participants would still need to execute the tax increment “project” and “financing” plan according to the requirements contained in Chapter 311 of the Tax Code (outlined below).

Step Seven: After the city or county has adopted the ordinance or order creating the zone, the board of directors of the zone must prepare both a “project plan” and a reinvestment zone “financing plan.”⁵⁷⁸

The plans must be as consistent as possible with the preliminary plans developed by the city for the zone before the board was created. Specifically, the project plan must include:

- a map showing existing uses of real property within the zone and any proposed improvements;
- any proposed changes to zoning ordinances, the master plan of the city, building codes or other municipal ordinances or subdivision rules and regulations of the county;
- a list of estimated non-project costs; and
- a statement of the method for relocating persons who will be displaced as a result of implementation of the plan.

If a zone is created pursuant to petition in a county that has a population in excess of 3.3 million, there are certain special requirements of the project plan involving residential housing that must be observed.⁵⁷⁹

Financing Act (Chapter 311, Tax Code).”

⁵⁷⁶ TEX. TAX CODE ANN. § 311.009(g)(2) (Vernon Supp. 2005).

⁵⁷⁷ *Id.* § 311.0031 (Vernon 2002).

⁵⁷⁸ *Id.* § 311.011 (Vernon Supp. 2005).

⁵⁷⁹ *Id.* § 311.011(f).

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The reinvestment zone financing plan must contain the following nine items:

- 1) a detailed list of the estimated project costs of the zone, including administrative expenses;
- 2) a list of the kind, number and location of all proposed public works or public improvements within the zone;
- 3) an economic feasibility study;
- 4) the estimated amount of bonded indebtedness to be incurred;
- 5) the timing for incurring costs or monetary obligations;
- 6) the methods for financing all estimated project costs and the expected sources of revenues, including the percentage of tax increment to be derived from the property taxes of each taxing unit that levies taxes on real property within the zone;
- 7) the current total appraised value of taxable real property in the zone;
- 8) the estimated captured appraised value of the zone during each year of its existence; and
- 9) the duration of the zone. As provided under Tax Code Section 311.017, a tax increment financing reinvestment zone terminates on the earlier of 1) the termination date designated in the original or amended ordinance creating the zone; or 2) the date on which all project costs, tax increment bonds and interest on those bonds are paid in full. The Attorney General has ruled that a home-rule city may not extend a reinvestment zone's termination date beyond the date provided in the ordinance designating the zone.⁵⁸⁰

The financing plan may provide that the city or county will issue tax increment bonds or notes, the proceeds of which are used to pay project costs for the reinvestment zone. Any such bonds or notes are payable solely from the tax increment fund and must mature within 20 years of the date of issue. Tax increment bonds are issued by ordinance of the city or order of the county without any additional approval required, other than that of the Public Finance Section of the Attorney General's Office. The characteristics and treatment of these obligations is covered in detail in Tax Code Section 311.015.

After both the project plan and the reinvestment zone financing plan are approved by the board of directors of the zone, the plans must also be approved by ordinance or order of the governing body.⁵⁸¹

⁵⁸⁰ Op. Tex. Att'y Gen. No. GA-276 (2004).

⁵⁸¹ TEX. TAX CODE ANN. § 311.011(d) (Vernon Supp. 2005).

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The ordinance or order must be adopted at an open meeting by a simple majority vote of the taxing unit's governing body, unless the city is a home rule city and a higher voting contingent is required by the city charter. The ordinance or order must find that the plans are feasible and conform to the master plan, if any, of the city or county.

At any time after the zone is adopted, the board of directors may adopt an amendment to the project plan as provided under Section 311.011 of the Tax Code. The amendment takes effect on approval of the change by ordinance or order of the city or county and in certain cases may require an additional public hearing. There are two circumstances under which an amendment to the project plan or the reinvestment zone financing plan will not apply to a school district participating in the zone without official approval by the school district: 1) if the amendment has the effect of directly or indirectly increasing the percentage or amount of the tax increment to be contributed by the school district; or 2) if the amendment requires or authorizes the city or county creating the zone to issue additional tax increment bonds or notes.⁵⁸²

Finally, once a city or county designates a tax increment financing reinvestment zone or approves a project plan or reinvestment zone financing plan, the city or county must deliver to the State Comptroller's Office a report containing: a general description of each reinvestment zone, a copy of each project plan or reinvestment zone financing plan adopted, and "any other information required by the comptroller" that helps in the administration of the central registry and tax refund for economic development (Tax Code, Chapter 111, subchapter F).⁵⁸³ The report must be submitted by April 1 of the year following the year the zone is designated or plan is approved.

Step Eight: After the project plan and the reinvestment zone are approved by the board of directors and by the city or county's governing body, the other taxing units with property within the zone contract with the city or county regarding the percentage of their increased tax revenues that will be dedicated to the tax increment fund.⁵⁸⁴

The tax increment fund is made up of the contributions by the respective taxing units of a portion of their increased tax revenues that are collected each year under the plan.⁵⁸⁵ In practice, taxing units have generally committed in early negotiations with the city or county as to what portion of the tax increment they will contribute to the tax increment fund for the zone.

For example, consider a city that as part of its tax increment project plan has agreed to put in improved sidewalks throughout the zone at a cost of \$20,000. If the property values in the district are projected to increase by 2% after the sidewalk improvements, each of the affected taxing units

⁵⁸² *Id.* § 311.011(g)(1)-(2).

⁵⁸³ *Id.* § 311.019(b)(1)-(3).

⁵⁸⁴ *Id.* § 311.013.

⁵⁸⁵ *Id.* § 311.012(a) (Vernon 2002) (defining the amount of a taxing unit's tax increment for a year to be the amount of property taxes levied and collected by the unit for that year on the captured appraised value of real property taxable by the unit and located in the reinvestment zone [emphasis added]).

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may choose to dedicate all, a portion of, or none of the property taxes that are due to the 2% increase in property values within the zone. The decision as to what percentage of the increased tax revenues to contribute to the tax increment fund is entirely discretionary with the governing bodies of each of the taxing units. (The city itself has the flexibility to determine what portion of the increment produced by the city must be paid into the increment fund after recent legislation).⁵⁸⁶ Any agreement to contribute must indicate the portion of the tax increment to be paid into the fund and the years for which the tax increment will be paid. The agreement may also include other conditions for payment of the tax increment. Only property taxes attributable to real property within the zone are eligible for contribution to the tax increment fund.⁵⁸⁷ Property taxes on personal property are not eligible for contribution into the tax increment plan. In 2005, the Legislature allowed cities to deposit the amount of sales tax attributable to reinvestment zone into the zone increment fund⁵⁸⁸, in an increment above the base amount of sales tax attributable to the zone in the year the zone was created.

Payment of the taxing unit's increment to the fund must be made by the 90th day after the delinquency date for the unit's property taxes. A delinquent payment incurs a penalty of 5% of the amount delinquent and accrues interest at an annual rate of 10%. It is important to note, however, that a taxing unit is not required to pay into the tax increment fund the portion of a tax increment that is attributable to delinquent taxes until those taxes are actually collected.⁵⁸⁹

In lieu of permitting a portion of its tax increment to be paid into the tax increment fund, a taxing unit (other than a city) may elect to offer the owners of taxable real property in the zone an exemption from ad valorem taxation for any increase in the property value as provided under Tax Code Chapter 312.⁵⁹⁰ Alternatively, a taxing unit (other than a school district) may both offer a tax abatement to the property owners in the zone and enter into an agreement to contribute a tax increment into the fund.⁵⁹¹ In either case, any agreement to abate taxes on real property within a tax increment reinvestment zone must be approved both by the board of directors of the zone and by the governing body of each taxing unit that agrees to deposit any of its tax increment into the tax increment fund.

In any contract entered into by the tax increment zone's board of directors with regard to bonds or other obligations, the board may promise not to approve any such tax abatement agreement. If a taxing unit enters into a tax abatement agreement within a tax increment reinvestment zone, the taxes that are abated will not be considered in calculating the tax increment of the abating taxing unit or that taxing unit's deposit into the tax increment fund.

⁵⁸⁶ *Id.* §§ 311.013(b)(2), (l) (Vernon Supp. 2005); *see also id.* § 311.013(m) (for special rules for such reduction in the increment in certain populous counties. These sections were amended or added by Tex. S.B. 771, 79th Leg., R.S. (2005)).

⁵⁸⁷ *See id.* § 311.012 (Vernon 2002) ("tax increment," "captured appraised value," and "tax increment base" all defined with reference to the taxable real property within the reinvestment zone).

⁵⁸⁸ *Id.* § 311.0123 (Vernon Supp. 2005)(added by Tex. S.B. 1199, 79th Leg., R.S. (2005)).

⁵⁸⁹ *Id.* § 311.013(i).

⁵⁹⁰ *Id.* § 311.013(g).

⁵⁹¹ *Id.* § 311.0125.

The Governor's Office of Texas Economic Development and Tourism may recommend that a taxing unit enter into a tax abatement agreement. The board of directors of the zone and the taxing unit's governing body must consider any recommendations made by the Office of Texas Economic Development and Tourism.⁵⁹²

On the other hand, a taxing unit may decide to retain all of the tax increment for itself and not contribute to the tax increment fund. If such a decision is made and the reinvestment zone in question was created before June 19, 1999, the taxing unit must notify the board of directors of the zone in writing within 60 days of the city or county's approving the reinvestment zone financing plan. In any reinvestment zone created on or after June 19, 1999, there is no requirement that the taxing unit notify the board of directors of the zone that the unit does not wish to contribute.⁵⁹³ In such a case, the taxing unit would simply not enter into any agreement to contribute to the tax increment fund. Further, in a tax increment reinvestment zone created on or after June 19, 1999, a taxing unit may enter into an agreement to contribute to the tax increment fund at any time after the zone is created or enlarged. This is also true for any tax increment reinvestment zone that was created at any time pursuant to a petition under the authority of Tax Code Section 311.005(a)(5) and for the portion of a zone added at any time pursuant to petition under Tax Code Section 311.007(b).

Step Nine: Once the reinvestment zone is established, the board of directors must make recommendations to the governing body of the city or county on the implementation of the tax increment financing.⁵⁹⁴

By ordinance, resolution or order, the city or county may authorize the board of directors of the reinvestment zone to exercise any of the city or county's powers with respect to the administration, management or operation of the zone or the implementation of the project plan for the zone. However, the city or county may not authorize the board of directors to issue bonds, impose taxes or fees, exercise the power of eminent domain, or give final approval to the project plan. The board of directors may also exercise any of the powers granted to the city or county under Tax Code Section 311.008, except that the city or county must approve any acquisition of real property. Finally, the city or county, by ordinance or resolution or order, may choose to restrict any power granted to the board of directors by Chapter 311 of the Tax Code.

Either the board of directors or the city or county may enter into agreements that are necessary or convenient to implement the project plan and the reinvestment zone financing plan. Such agreements can pledge or provide for the use of revenue from the tax increment fund and/or provide for the regulation or restriction of land use. These agreements are not subject to the competitive bidding requirements in chapter 252 of the Local Government Code.⁵⁹⁵ The Legislature recently passed amendments that clarify that the board of directors has all the powers of a municipality under

⁵⁹² TEX. TAX CODE ANN. § 311.0125(e) (Vernon Supp. 2005).

⁵⁹³ *Id.* § 311.013.

⁵⁹⁴ *Id.* § 311.010(a).

⁵⁹⁵ *Id.* § 311.010(g) (added by Tex. S.B. 771, 79th Leg., R.S. (2005)).

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chapter 380 of the Local Government Code, including the power to make grants and loans from the increment fund for the purpose of developing the zone's economy, combating employment problems in the zone, and developing or expanding any zone business activity.⁵⁹⁶ The board may now also contract with the city to pay for city services in the zone out of the portion of the increment fund produced by the city, regardless of whether the services or their cost is identified in the project or financing plans.⁵⁹⁷

The board may use the increment fund for land and easement purchases outside the zone for rail or bus rapid transit projects under certain guidelines.⁵⁹⁸

Together, the city or county and the board of directors can also enter into a contract with a local government corporation (created under Texas Transportation Code Chapter 431) to manage the reinvestment zone or implement the project and financing plans.

In a tax increment reinvestment zone that was created pursuant to a petition under the authority of Tax Code Section 311.005(a)(5), the Tax Increment Financing (TIF) board may impose certain zoning restrictions over territory within the zone. Such restrictions are subject to the approval of the city council. See Section 311.010(c) of the Tax Code for further details on this issue.

The board must ensure that 1) bonds have been issued for the zone, 2) the city or county has acquired property in the zone pursuant to the project plan, and/or 3) construction of improvements has begun in the zone. If at least one of the above three items is not accomplished within the first three years of the zone's existence, the other taxing units are not required to continue payments into the tax increment fund.⁵⁹⁹

The board is also required to implement a plan to enhance the participation of "disadvantaged businesses" in the zone procurement process, as provided under Tax Code Section 311.0101. Finally, the board has other enumerated powers as described in Section 311.010 of the Tax Code.

Step Ten: The city or county must submit an annual report to the chief executive officer of each taxing unit that levies taxes on property within the zone.⁶⁰⁰

The report must be provided within 90 days of the end of the city's fiscal year. The report must include the following items:

- the amount and source of revenue in the tax increment fund established for the zone;

⁵⁹⁶ *Id.* § 311.010(h) (added by Tex. S.B. 771, 79th Leg., R.S. (2005)).

⁵⁹⁷ *Id.* § 311.010(i) (added by Tex. S.B. 771, 79th Leg., R.S. (2005)).

⁵⁹⁸ *Id.* § 311.01005 (added by Tex. H.B. 2653, 79th Leg., R.S. (2005)).

⁵⁹⁹ *Id.* § 311.013(d).

⁶⁰⁰ *Id.* § 311.016(a).

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- the amount and purpose of expenditures from the fund;
- the amount of principal and interest due on outstanding bonded indebtedness;
- the tax increment base and current captured appraised value retained by the zone;
- the captured appraised value shared by the city or county and other taxing units;
- the total amount of tax increments received; and
- any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the city or county.

Annual Reporting and Central Registry

A copy of the above report must be sent to the Texas Comptroller's Office.⁶⁰¹ Cities and counties are required also to submit certain information to the Comptroller's Office. Section 311.019 of the Tax Code requires the Comptroller to maintain a central registry of:⁶⁰²

- reinvestment zones designated under chapter 311 of the Tax Code;
- project plans and reinvestment zone financing plans adopted pursuant to the Tax Increment Financing Act (chapter 311 of the Tax Code); and
- the annual reports submitted under section 311.016 of the Tax Code.

A city or county that designates a reinvestment zone or approves a project plan or reinvestment zone financing plan must deliver to the State Comptroller's Office a report containing the following information:⁶⁰³

- a general description of each reinvestment zone. This description must include the size of the zone, the types of property located in the zone, the duration of the zone, and the guidelines and criteria established for the zone under section 311.005 of the Tax Code;
- a copy of each project plan or reinvestment zone financing plan adopted; and

⁶⁰¹ *Id.* § 311.016(b).

⁶⁰² *Id.* § 311.019(a).

⁶⁰³ *Id.* § 311.019(b)(1)-(3).

- “any other information required by the comptroller” that helps in the administration of the central registry and tax refund for economic development (Tax Code Chapter 111, subchapter F).

The plan must be delivered before April 1 of the year following the year the zone is designated or the plan is approved. A city or county that amends or modifies a project plan or reinvestment zone financing plan must deliver a copy of the amendment or modifications to the comptroller before April 1 of the year following the year in which the plan was amended or modified.⁶⁰⁴

State Assistance

Cities and counties with concerns about the tax increment financing laws can seek assistance from the State. The State Comptroller will provide assistance regarding the administration of the Tax Increment Financing Act upon request of the governing body or the presiding officer.⁶⁰⁵ Further, the Governor’s Office of Texas Economic Development and Tourism⁶⁰⁶ and the Comptroller’s Office may provide technical assistance to a city or county regarding the designation of a tax increment financing reinvestment zone or the adoption and execution of project plans or reinvestment zone financing plans.⁶⁰⁷

School Districts

Until September 1, 1999, local school districts were able to reduce the value of taxable property reported to the state to reflect any value that was effectively “lost” due to tax increment financing participation by the district.⁶⁰⁸ The ability of the school district to deduct the value of the tax increment that it contributed prevented the school district from being negatively affected in terms of state school funding. However, the situation is different for tax increment reinvestment zones created after that date. It appears that the Comptroller will no longer reduce taxable property value for school districts to reflect tax increment financing losses for zones that are created on or after September 1, 1999. As a result, participation in tax increment financing by a school district in those zones will likely result in lower state aid to the school district, assuming all other factors are constant. However, there are certain exceptions that may apply. School districts should consult

⁶⁰⁴ *Id.* § 311.019(c).

⁶⁰⁵ *Id.* § 311.020(a).

⁶⁰⁶ TEX. GOV’T CODE ANN. § 481.002 (Vernon 2004).

⁶⁰⁷ TEX. TAX CODE ANN. § 311.020(b)(1)-(2) (Vernon Supp. 2005).

⁶⁰⁸ In tax increment financing, value is not actually “lost.” Rather, some of the land’s increase in value is classified as “captured appraised value” so that an amount of taxes can be forwarded to the tax increment financing board. Such taxes are, in effect, lost to the school district because they must be contributed to the tax increment fund and cannot be used for school programs.

directly with the Comptroller's Office about how participation in a particular tax increment financing agreement would impact the district's funding from the State of Texas.⁶⁰⁹

There is some debate about what the effect of the law will be in cases where a school district is involved in a tax increment financing agreement that was created before September 1, 1999, but that is still in effect after that date. Any school district that might be in this situation will want to visit with the Comptroller's Office about the possible effects of this law on the amount of state aid to be received by the district. Before a local government implements tax increment financing, it should also visit with its local financial advisor to determine the potential effect on the entity's state aid, and the effect on the entity's financial and bond rating.

Additionally, as of September 1, 2001, some cities may enter into tax increment financing agreements with school districts for certain limited purposes.⁶¹⁰ Cities with a population of less than 120,000 that have territory in three counties may enter into new tax increment financing agreements or may amend existing agreements with a school district located wholly or partially within the reinvestment zone. However, the agreement must be for the dedication of revenue from the tax increment fund to the school district for the purpose of acquiring, constructing or reconstructing an educational facility located inside or outside the tax increment financing reinvestment zone.⁶¹¹

Texas Economic Development Act

The Texas Economic Development Act (the Act) is another economic development tool used to attract new industries and commercial enterprises. Chapter 313 of the Tax Code applies to school districts. The Act authorizes certain property tax incentives for economic development. School districts have the ability to provide property tax relief by limiting appraised property values and by providing tax credits to eligible corporations and limited liability companies. The Act requires an eligible entity to make large investments that create jobs within the state. Further, corporations and limited liability companies eligible for a limitation of appraised values must use the property for particular manufacturing, research and development, a clean coal project as defined by section 5.001 of the Water Code, a gasification project for a coal and biomass mixture, or renewable energy electric generation activities.⁶¹²

This legislation was passed on the basis of several legislative findings: (1) many states had enacted aggressive economic development laws designed to attract large employers, create jobs and strengthen their economies; (2) the State of Texas had slipped in its national ranking each year between 1993 and 2000 in terms of attracting major new manufacturing facilities to this state; (3)

⁶⁰⁹ See TEX. GOV'T CODE ANN. §§ 403.302 (d)-(g), 403.303(a) (affected entities should consider the effects of these sections as they relate to school finance.)

⁶¹⁰ TEX. TAX CODE ANN. § 311.0085 (Vernon 2002).

⁶¹¹ *Id.* § 311.0085(c) .

⁶¹² TEX. TAX CODE ANN. § 313.024(b)(1)-(5) (Vernon Supp. 2005).