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State Capitol
Des Moines, IA 50319

October 2012

URBAN RENEWAL AND TAX INCREMENT FINANCING

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Urban Renewal and Tax Increment Financing

I. Preface

This Legislative Guide provides an overview of Iowa's urban renewal law, includes an overview of Iowa's tax increment financing (TIF) law, and provides a history of the evolution of the urban renewal statute. Unless otherwise noted, references in this Legislative Guide to the Iowa Code are to the 2013 Iowa Code.

II. Introduction

Iowa law allows municipalities[1] to establish urban renewal areas to finance public improvements such as streets, sewers, sidewalks, and other infrastructure[2] related to residential, commercial, or industrial development; to redevelop slum or blighted areas; to fund private economic development;[3] and to finance construction of low and moderate income housing.[4] The primary source of funding for urban renewal projects in Iowa is tax increment financing. Tax increment financing is a method whereby a portion of the property taxes levied within a tax increment financing district (urban renewal area) are reallocated to the municipality that is undertaking the urban renewal project. Certain property tax levies are exempt from reallocation to the municipality.[5] These exceptions, and tax increment financing in general, are discussed in more detail in this guide.

Forty-nine states and the District of Columbia authorize the use of tax increment financing.[6] In Iowa, the urban renewal law contained in Code chapter 403 was first enacted in 1957.[7] The use of tax increment financing was first approved by constitutional amendment in 1950 in California for use by redevelopment agencies. Iowa followed suit in 1969 when the General Assembly amended the urban renewal law to add Code section 403.19, which authorized municipalities to collect and expend incremental property tax revenues to finance urban renewal projects.[8]

III. Authorization to Conduct Urban Renewal

The enabling legislation in 1957 defined "municipality" as "any city or town in the state."[9] In 1991, that definition was expanded to include counties. However, the legislation provided that counties could use urban renewal and tax increment financing for industrial property only.[10] In 1994, counties' urban renewal authority was expanded to include taxes levied on all taxable property if the county had, by joint agreement with a city, established

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[1] For purposes of Iowa's Urban Renewal Law, "municipality" is defined to include both cities and counties in the state. Iowa Code § 403.17(16).

[2] But see 2012 Iowa Acts ch. 1124, § 13 (codified at Iowa Code § 403.5(2)) (imposing procedural requirements for using taxes resulting from a division of revenue for specified, public improvements, including but not limited to a police station, fire station, administration building, swimming pool, library, recreational building, city hall, or other public building that is exempt from taxation).

[3] But see 2012 Iowa Acts ch. 1124, § 19 (codified at Iowa Code § 403.19(9)) (imposing restrictions on the use of moneys deposited in a municipality's special fund for the relocation of a commercial or industrial enterprise not presently located within the municipality).

[4] See Iowa Code §§ 403.3, 403.6, and 403.17(25).

[5] See Iowa Code § 403.19(2).

[6] Arizona is currently the only state without a state statute authorizing the use of tax increment financing. Tennessee Advisory Commission on Intergovernmental Relations, Tax Increment Financing (March 2007), *available at* http://www.tn.gov/tacir/PDF_FILES/Taxes/Tax%20Increment%20Financing.pdf (last visited September 5, 2012).

[7] 1957 Iowa Acts ch. 197.

[8] 1969 Iowa Acts ch. 237, § 2.

[9] 1957 Iowa Acts ch. 197, § 17.

[10] 1991 Iowa Acts ch. 214, §§ 1-4.

an urban renewal area within the boundaries of the city or within two miles of the city.[11] The law was again amended in 1996 to remove the restriction on counties to use urban renewal and tax increment financing for industrial property only, so that currently, counties possess the same urban renewal powers as cities.[12]

Under current law the area of operation of a city, for purposes of urban renewal, is the area within the corporate limits of the city and, with the consent of the county, the area within two miles of the city. However, the area of operation does not include the area within two miles of a city if that two-mile area includes the territorial boundaries of another city, unless that other city, by resolution, declares a need to be included in the city's area of operation. For counties, the area of operation is the area outside the corporate limits of cities except those areas within two miles of the corporate limits of a city unless the city agrees to allow the county to establish an urban renewal area in that two-mile area. Also, a county may establish an urban renewal area within the corporate boundaries of a city, but only by joint agreement with that city.[13]

IV. Establishment of an Urban Renewal Area

A. Adoption of Resolution Establishing Urban Renewal Area

To establish an urban renewal area, a municipality must first adopt a resolution of necessity which outlines the reasons that an area is appropriate for designation as an urban renewal area. The resolution must make a finding that the proposed urban renewal area (with specified boundaries) is a slum area, a blighted area, or an economic development area[14] and that rehabilitation, conservation, redevelopment, or development of the area is necessary for the public health, safety, or welfare of the residents of the municipality.[15] It is well settled that Iowa Code chapter 403 gives municipalities broad powers to carry out the purposes of the urban renewal law.[16] This includes determining the facts necessary to resolve that an area is a slum, blighted, or economic development area. Iowa Code chapter 403 does not limit the size of an urban renewal area, nor does it require that land included in an urban renewal area be contiguous.[17] However, once determined to be a blighted area, a slum area, or an economic development area by a municipality, an urban renewal area may not be redetermined by the municipality throughout the duration of the urban renewal area.[18]

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[11] 1994 Iowa Acts ch. 1182, § 12.

[12] 1996 Iowa Acts ch. 1204, § 23.

[13] Iowa Code § 403.17(4).

[14] "Economic development areas" were added in 1985. See 1985 Iowa Acts ch. 66, §§ 1-3 and §§ 6, 7, and 9. That legislation defined an economic development area as "an area of a municipality designated by the local governing body as appropriate for commercial and industrial enterprises."

[15] Iowa Code § 403.4(2).

[16] Iowa Code § 403.6 provides that a municipality is vested with "all the powers necessary or convenient to carry out and effectuate the purposes and provisions of [chapter 403] . . . ." See also Webster Realty Co. v. City of Fort Dodge, 174 N.W.2d 413, 417 (Iowa 1970); Dilley v. City of Des Moines, 247 N.W.2d 187, 190 (Iowa 1976).

[17] The Iowa Supreme Court ruled that two noncontiguous areas and a connecting highway corridor may be consolidated and designated as one urban renewal area. The Iowa Supreme Court further noted that, in general, cities may combine urban renewal areas without needing to have any contiguous property between the areas. See Fults v. City of Coralville, 666 N.W.2d 548, 553-54 (Iowa 2003).

[18] 2012 Iowa Acts ch. 1124, §14 (codified at Iowa Code § 403.5(5)(d)).

B. Preparation and Approval of Urban Renewal Plan

1. Proposed Plan

After the resolution establishing the urban renewal area is adopted, the municipality must prepare an urban renewal plan outlining the objectives to be accomplished within the proposed urban renewal area.[19] "Urban renewal plan" is defined in Iowa Code section 403.17, subsection 24, and includes in that definition a requirement that if the plan proposes use of tax increment financing, the plan shall include "a list of the current general obligation debt of the municipality, the current constitutional debt limit of the municipality, and the proposed amount of indebtedness to be incurred, including loans, advances, indebtedness, or bonds which qualify for payment from the special fund referred to in Iowa Code section 403.19, subsection 2."[20] The proposed urban renewal plan is then transmitted to the planning commission of the municipality for review. The planning commission must review the plan and determine if the plan is consistent with the general plan for the development of the municipality as a whole.[21] The commission may make recommendations to change the proposed urban renewal plan. If no comments are received within 30 days, the municipality may proceed with the approval process for the proposed urban renewal plan.[22]

2. Notice and Consultation

Prior to its approval of an urban renewal plan, the municipality must send notice of the proposed plan by regular mail to affected taxing entities.[23] "Affected taxing entity" is defined as "a city, county, or school district which levied or certified for levy a property tax on any portion of the taxable property located within the urban renewal area in the fiscal year beginning prior to the calendar year in which a proposed urban renewal plan is submitted to the local governing body for approval."[24] The notice of the proposed plan must also include notice of a consultation to be held between the municipality and the affected taxing entities. If the proposed urban renewal plan or proposed urban renewal project within the urban renewal area includes the use of taxes resulting from a division of revenue under Iowa Code section 403.19 for a public building, including but not limited to a police station, fire station, administration building, swimming pool, hospital, library, recreational building, city hall, or other public building that is exempt from taxation, the municipality must include with the proposed plan notification an analysis of alternative development options and funding for the urban renewal area or urban renewal project and the reasons such options would be less feasible than the proposed urban renewal plan or proposed urban renewal project.[25] A representative of an affected taxing entity may recommend, in writing, modifications to the proposed plan relating to the division of revenue (i.e., tax

[19] Iowa Code § 403.5.

[20] Iowa Code § 403.17(24)(c). The "special fund" is the fund into which tax increment revenues are deposited.

[21] "General plan" is not defined in Iowa Code chapter 403, but in most cases it is probably the municipality's comprehensive plan adopted pursuant to Code chapter 335 for counties or Code chapter 414 for cities.

[22] Iowa Code § 403.5(2)(a).

[23] Iowa Code § 403.5(2)(b)(1).

[24] Iowa Code § 403.17(1).

[25] 2012 Iowa Acts ch. 1124, §13 (codified at Iowa Code § 403.5(2)(b)(1)).

increment financing) to be implemented under the plan. The written recommendations for modification must be submitted to the municipality no later than seven days after the consultation. The municipality must respond, in writing, to any proposed modifications no later than seven days before the public hearing on the proposed plan is held.[26]

3. Hearings and Approval

After consultation with the affected taxing entities, public hearings are held on the proposed urban renewal plan for the urban renewal area.[27] Notification of the public hearing is by publication in a newspaper of general circulation in the area of operation of the municipality. After the public hearing, the municipality may adopt a resolution approving the urban renewal plan.[28] Subject to the procedural requirements required for adoption of a plan and following the approval of specified real property purchasers and lessees, after an urban renewal plan is approved, it may be amended or modified at any time. The municipality must also notify and consult with affected taxing entities and conduct hearings in the same manner as for adoption of the plan if the amendment or modification involves refunding bonds or refinancing that would result in an increase in debt service or if the amendment or modification provides for the issuance of bonds or other indebtedness to be paid primarily with tax increment revenues or if such amendment or modification provides for the inclusion and approval of an urban renewal project that was not approved as part of the original urban renewal plan.[29] However, the review and recommendation process conducted by the municipality's planning commission is not required when amending or modifying an adopted urban renewal plan.[30]

V. Limitations on Urban Renewal Plans and Areas

A. Durational Limitations

Until 1994, no limits were placed on the length of time an urban renewal area could be in existence. That is still the case for urban renewal areas created based on a finding that an area is a slum or blighted area. In 1994, the law was amended to provide that economic development urban renewal areas are limited in duration to 20 years from the year that revenue is first divided (i.e., from the year that tax increment revenues are first collected and paid to the municipality).[31]

B. Geographical Limitations

The only geographical limitations on urban renewal areas relate to agricultural land. A slum urban renewal area or blighted urban renewal area cannot include real property assessed as agricultural property for purposes of property taxation.[32] This limitation was enacted in 1994 and applied to urban renewal plans establishing slum or blighted urban

[26] Iowa Code § 403.5(2)(b)(2).
[27] Iowa Code § 403.5(3).
[28] Iowa Code § 403.5(4).
[29] Iowa Code § 403.5(5). "Urban renewal project" is defined in Iowa Code § 403.17(25).
[30] 2012 Iowa Acts ch. 1124, § 14 (codified at Iowa Code § 403.5(5)(c)).
[31] 1994 Iowa Acts ch. 1182, § 8, amending the definition of "economic development area" now found in Iowa Code § 403.17(10).
[32] Iowa Code § 403.17(5) and (22).

renewal areas approved on or after January 1, 1995.[33] In 1989, the definition of "economic development area" was amended to provide that the area cannot include land which is part of a century farm.[34] In 1996, the definition was amended again to provide that an economic development area could include land that was part of a century farm if the owner of the land agrees to its inclusion.[35] Finally, in 1999, the definition of "economic development area" was amended to provide that an economic development area cannot include agricultural land without the consent of the owner of the land.[36]

VI. Urban Renewal Powers

A. General, Planning, and Improvement Powers

Municipalities have a great deal of authority to effect the rehabilitation, conservation, redevelopment, or development of an urban renewal area. A municipality has the power to undertake and carry out urban renewal projects in its area of operation and to make and execute contracts and other instruments necessary for the exercise of its power in an urban renewal area.[37] A municipality has broad planning powers in relation to urban renewal areas, including the power to plan for the compulsory or voluntary repair, rehabilitation, demolition, or removal of buildings and improvements within its area of operation and to zone or rezone any part of the municipality or to make exceptions from building regulations in furtherance of an urban renewal project.[38] It has the power to furnish, repair, or construct public improvements related to an urban renewal project, including streets, roads, utilities, parks, and playgrounds.[39] However, Iowa Code section 403.5, subsection 2, provides that if the proposed urban renewal plan or proposed urban renewal project within the urban renewal area includes the use of taxes resulting from a division of revenue for specified public improvements, including but not limited to a police station, fire station, administration building, swimming pool, library, recreational building, city hall, or other public building that is exempt from taxation, a municipality must include with the proposed plan notification an analysis of alternative development options and funding for the urban renewal area or urban renewal project and the reasons such options would be less feasible than the proposed urban renewal plan or proposed urban renewal project.[40] A municipality

[33] 1994 Iowa Acts ch. 1182, §§ 8 and 15.

[34] 1989 Iowa Acts ch. 299, § 4.

[35] 1996 Iowa Acts ch. 1050, § 1. The Act also defined "century farm" as "a farm in which at least forty acres of such farm has been held in continuous ownership by the same family for one hundred years or more." See Iowa Code § 403.17(10).

[36] 1999 Iowa Acts ch. 171, § 38. This change was part of a larger bill whose general subject was eminent domain and condemnation proceedings. The Act also defined "agricultural land" in Iowa Code § 403.17, subsection 3, as follows: "[r]eal property owned by a person in tracts of ten acres or more and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, and that has been used for the production of agricultural commodities during three out of the past five years. Such use of property includes, but is not limited to, the raising, harvesting, handling, drying, or storage of crops used for feed, food, seed, or fiber; the care or feeding of livestock; the handling or transportation of crops or livestock; the storage, treatment, or disposal of livestock manure; and the application of fertilizers, soil conditioners, pesticides, and herbicides on crops. Agricultural land includes land on which is located farm residences or outbuildings used for agricultural purposes and land on which is located facilities, structures, or equipment for agricultural purposes. Agricultural land includes land taken out of agricultural production for purposes of environmental protection or preservation."

[37] Iowa Code § 403.6(1).

[38] Iowa Code § 403.6(6) and (8).

[39] Iowa Code § 403.6(2).

[40] See 2012 Iowa Acts ch. 1124, § 13 (codified at Iowa Code § 403.5(2)(b)(1)).

also has authority to close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places in an urban renewal area.[41]

In 2012, restrictions were imposed on the use of moneys deposited in a municipality's special fund for the relocation of a commercial or industrial enterprise not presently located within the municipality.[42] Iowa Code section 403.19, subsection 9, prohibits such moneys from being expended for or otherwise used in connection with an urban renewal project approved on or after July 1, 2012, that includes such a relocation, unless the relocation is specifically or generally approved in a written agreement between the local governing body of the municipality where the commercial or industrial enterprise is currently located and the local governing body of the municipality where the enterprise is proposing to relocate or unless the local governing body of the municipality where the commercial or industrial enterprise is proposing to relocate finds that the use of deposits into the special fund for an urban renewal project that includes such a relocation is in the public interest. A local governing body's finding that an urban renewal project that includes a commercial or industrial enterprise relocation is in the public interest must include written verification from the commercial or industrial enterprise that the enterprise is actively considering moving all or a part of its operations to a location outside the state and a specific finding that such an out-of-state move would result in a significant reduction in either the enterprise's total employment in the state or in the total amount of wages earned by employees of the enterprise in the state.

B. Appraisal and Moving and Rental Payment Powers

A municipality has the power to enter into any building or property located in an urban renewal area in order to make inspections, surveys, and appraisals; to insure or provide for insurance on real or personal property or on operations of the municipality against any risks or hazards relating to an urban renewal project; and to relocate persons and businesses displaced by an urban renewal project and to make relocation payments to those persons and businesses for moving expenses and losses of property if reimbursement or compensation is not otherwise made.[43] A municipality has further authority to supplement, for no more than five years, the rental payments of a family that has been displaced by an urban renewal project if the family does not have sufficient means to pay rent at its new location.[44]

C. Real Property Powers – Condemnation

A municipality has the power to condemn real property that it deems necessary for or in connection with an urban renewal project;[45] to sell and convey real property in furtherance of an urban renewal project; and to mortgage, pledge, or otherwise encumber or dispose of any real property located in an urban renewal area.[46] With respect to exercise of its condemnation powers within an urban renewal area, a municipality is

[41] Iowa Code § 403.6(9).
[42] 2012 Iowa Acts ch. 1124, § 19.
[43] Iowa Code § 403.6(3) and (7).
[44] Iowa Code § 403.6(14).
[45] Iowa Code § 403.7.
[46] Iowa Code § 403.6(3) and (13).

required to follow the general provisions in Iowa Code chapters 6A and 6B relating to eminent domain authority and condemnation of property, including the requirement that the taking be for a public use, public purpose, or public improvement as those terms are defined in Iowa Code section 6A.22.[47] However, a municipality is prohibited from condemning agricultural land included within an economic development area unless the owner of the land consents to condemnation or unless the land is necessary or useful for the operation of a city utility, city franchise, or combined utility system.[48] In a condemnation proceeding for purposes of an urban renewal project, if a municipality proposes to take a part of a lot or parcel of real property, the municipality is required to take the remaining part of the lot or parcel if requested by the owner.[49]

D. Financing Powers

A municipality has the power to levy taxes and assessments and to appropriate funds and make expenditures that are necessary for urban renewal purposes.[50] For purposes of urban renewal, a municipality is authorized to borrow money and to apply for advances, loans, grants, contributions, and other forms of financial assistance from the federal government, the state, the county, or any other public or private body and to provide security and enter into and carry out contracts in connection with receiving such financial assistance.[51] The authority to receive financial assistance includes the authority to advance matching funds as a condition of obtaining a grant of money.[52] A municipality is authorized to invest urban renewal project funds held in reserves or sinking funds and other project funds not required for immediate disbursement. However, the investments are limited to property or securities in which a state bank may legally invest funds subject to its control.[53]

E. Property Assessment Powers

A municipality may provide in its urban renewal plan for the exclusion from taxation of value added to real estate during construction for up to two years or until construction of the facility is more than 80 percent completed as of the most recent date of assessment for property tax purposes, whichever occurs first.[54] A municipality has the authority to enter into an agreement with a developer of taxable property in an urban renewal area to provide that, upon completion of all improvements, the property shall be assessed at not less than a minimum actual value. Such a minimum assessment agreement does not prevent the assessor from determining a higher actual value, nor does it prevent an owner from seeking reduction of the actual value as long as the reduction does not result in an actual value of less than the minimum actual value set by the agreement. The termination date

[47] Iowa Code §§ 403.5(4) and 403.7(1) and (2).
[48] Iowa Code § 403.7(1).
[49] Iowa Code § 403.7(3).
[50] Iowa Code § 403.6(8).
[51] Iowa Code § 403.6(5).
[52] Brady v. City of Dubuque, 495 N.W.2d 701, 707 (Iowa 1993).
[53] Iowa Code § 403.6(4).
[54] Iowa Code § 403.6(18).

for a minimum assessment agreement shall not be later than the date after which incremental property taxes are no longer paid to the special fund of the municipality.[55]

F. Land Transfer Powers

A municipality may sell, lease, or otherwise transfer real property or an interest in real property for purposes of urban renewal. A lessee or transferee of such property is obligated to use and develop the property in accordance with the urban renewal plan adopted by the municipality. The municipality shall not sell, lease, or otherwise transfer the property at less than its fair value for uses in accordance with the urban renewal plan.[56] When selling, leasing, or otherwise transferring real property, a municipality must follow competitive bidding procedures.[57] However, a municipality may sell, lease, or otherwise transfer real property at less than its fair market value and without complying with competitive bidding procedures if the property is being developed and the developer has entered into a minimum assessment agreement with the municipality and the minimum assessment indicates that there will be sufficient incremental taxes to pay any indebtedness or other costs the city has incurred with regard to the property within four tax years after the development is operational.[58] A municipality may also forego competitive bidding procedures if the real property transferred will be used for the purpose of developing an industrial building or facility, facilities for use as a center for export for international trade, or a home or regional office facility for a multistate business.[59]

VII. Financing Urban Renewal

A. Tax Increment Financing

1. Property Tax Division and Reallocation

An urban renewal plan may contain several projects to be undertaken in the urban renewal area. Urban renewal projects are typically financed by a division and reallocation of property taxes collected in the urban renewal area. This is commonly referred to as "tax increment financing." Under tax increment financing, the property taxes collected from the consolidated tax rate levied against the increase in taxable valuation over the base valuation of property in the urban renewal area are divided from the taxes collected against the base valuation of the property. Those divided property tax receipts are deposited in a special fund of the municipality and used to pay obligations incurred for urban renewal purposes. The consolidated tax rate is the sum of all property tax levies certified to the county to be collected as property taxes in the urban renewal area. In order to determine the portion of property tax receipts available to the urban renewal area and to the other tax-certifying bodies, the property valuation assessments are frozen in a particular assessment year. The increase in assessed value after that year is considered the incremental value, and revenues from

[55] Iowa Code § 403.6(19).
[56] Iowa Code § 403.8(1).
[57] Iowa Code § 403.8(2).
[58] Iowa Code § 403.8(3). Minimum assessment agreements are included within the powers of a municipality under Iowa Code § 403.6(18),(19).
[59] Iowa Code § 403.8(2)(b).

taxes collected on that portion of the value, i.e., the increment, are available to the municipality to fund urban renewal projects.[60]

The assessment year[61] which serves as the base year for creation of the valuation increment is determined in one of the following two ways:

Option 1. The base year for the increment is the assessment year preceding the first calendar year in which the municipality certifies urban renewal debt to the county auditor.[62]

Option 2. If the affected taxing entities agree, the base year for the increment is the assessment year beginning January 1 of the calendar year preceding the effective date of the ordinance establishing the urban renewal area.[63]

2. Hypothetical Example

For purposes of establishing a base year, consider the following example:

In 1995, a city approves an urban renewal plan for an urban renewal area within the corporate boundaries of the city and adopts an ordinance in 1995 creating the urban renewal area. In 1996, the city issues bonds to fund an urban renewal project. Principal and interest on the bonds are first payable in the fiscal year beginning July 1, 1998. According to statutory requirements, the city in December 1997 certifies to the county auditor the amount of indebtedness incurred for urban renewal purposes. Under Option 1 above, the base year for purposes of creating a valuation increment is the assessment year beginning January 1, 1996, i.e., the assessment year preceding the first calendar year in which the municipality certifies urban renewal debt to the county auditor. Under Option 2 above, the base year for purposes of creating a valuation increment is the assessment year beginning January 1, 1994, i.e., the calendar year preceding the effective date of the ordinance establishing the urban renewal area. Under either option, any increase in valuation in subsequent assessment years is incremental valuation.

Continuing with the hypothetical set of facts with the 1996 base year established under Option 1: For assessment year 1996, the assessed valuation of taxable property located in the urban renewal area is $10 million. For assessment year 1997, the assessed valuation of taxable property located in the urban renewal area is $10.5 million. The base amount of property valuation in the urban renewal area is $10 million, which is the valuation for the assessment year beginning January 1, 1996, i.e., the assessment year preceding the first calendar year in which urban renewal debt is certified to the county auditor. The incremental valuation is $500,000, or the increase in valuation between the 1996 assessment year and the 1997 assessment year. The amount of property taxes realized from the consolidated property tax rate applied against the amount of the base valuation is, when collected, distributed to all the tax-certifying bodies whose rates make up the consolidated rate. The amount of property taxes realized from the consolidated rate applied to the amount of valuation exceeding

[60] Iowa Code § 403.19.

[61] An assessment year begins January 1 and ends December 31. See Iowa Code § 441.46.

[62] Iowa Code § 403.19(1).

[63] Iowa Code § 403.19(1). This option for creation of the increment was added in 1994. See 1994 Iowa Acts ch. 1182, § 10.

the base valuation is disbursed to the urban renewal city for deposit in the special (urban renewal) fund. If for the 1998 assessment year the valuation climbs to $11 million, then the incremental valuation increases to $1 million.

3. Certification of Indebtedness From Special Fund

A municipality is required to certify to the county auditor by December 1 the amount of loans, advances, indebtedness, or bonds, including interest negotiated on such loans, advances, indebtedness, or bonds, payable from the special fund of the municipality.[64] This amount, which is required to include all amounts which qualify for payment from the special fund during the next fiscal year and amounts which qualify for payment from the special fund in subsequent fiscal years, need only be certified once to the county auditor unless loans, advances, indebtedness, or bonds are subsequently issued and are in addition to the amount already certified. Also, if the municipality takes action that results in a reduction of the amount of an urban renewal obligation already certified, the municipality shall certify the amount of the reduction to the county auditor.[65]

4. Exempt From Reallocation

Certain types of property taxes are exempt from division and reallocation and deposit in the special fund of a municipality. Taxes for the payment of principal and interest on bonds of each taxing district (tax-certifying body) must be collected and paid to the taxing district. In 2001, the law was amended to provide that property taxes for the regular and voter-approved physical plant and equipment levy of a school district must be collected and paid exclusively to the school district. However, if the municipality and the county auditor certify that the revenue is necessary to pay principal and interest on bonds issued prior to July 1, 2001, all or a portion of the physical plant and equipment levy must be paid to the municipality for deposit in the special fund.[66] In 2012, Iowa's tax increment financing law was amended to provide that property taxes for the instructional support program of a school district under Iowa Code section 257.19 and taxes related to joint county-city buildings imposed under Iowa Code section 346.27, subsection 22, must be collected and paid to the taxing district.[67] However, if the municipality and the county auditor certify that the taxes for the instructional support program of a school district are necessary to pay the principal and interest on bonds issued or other indebtedness incurred by the municipality to finance an urban renewal project and if such bonds or indebtedness were issued or incurred on or before April 24, 2012, those taxes shall be paid to the municipality.[68]

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[64] Under Iowa Code § 403.19, "indebtedness" includes but is not limited to written agreements whereby the municipality agrees to exempt, rebate, refund, or reimburse property taxes, provide a grant for property taxes paid, or make a direct payment of taxes, with moneys in the special fund, and bonds, notes, or other obligations that are secured by or subject to payment from moneys appropriated by the municipality from moneys in the special fund. 2012 Iowa Acts ch. 1124, § 18.

[65] Iowa Code § 403.19(6).

[66] Iowa Code § 403.19(2) and (8). See also 2001 Iowa Acts ch. 176, §§ 40, 41, and 47. Authorization for the physical plant and equipment levy is found in Iowa Code § 298.2.

[67] 2012 Iowa Acts ch. 1124, § 16.

[68] 2012 Iowa Acts ch. 1060, § 6 and 2012 Iowa Acts ch. 1124 §§ 16 and 21 (codified at Iowa Code § 403.19(2) and § 403.19(11)). The exclusions from divisions of revenue enacted in 2012 apply to property taxes due and payable in fiscal years beginning on or after July 1, 2013. 2012 Iowa Acts ch. 1060, § 7 and 2012 Iowa Acts ch. 1124 § 26.

5. Application of Assessment Limitation to Base Valuation

Iowa Code section 403.20 provides that the equivalent dollar amount of the percentage reductions in assessed valuations of property in an urban renewal area due to application of the assessment limitation in Iowa Code section 441.21 (often referred to as the "rollback") shall be deducted from the base valuation, rather than from the incremental valuation.[69] This provision was enacted in 1980,[70] presumably to protect and provide some stability to the amount of tax increment revenues projected for future years.

6. Authority Over Excess Incremental Revenues

Iowa Code section 403.19, subsection 6, specifies a municipality's certification procedure for tax increment revenues in an urban renewal area. However, a question has arisen whether a municipality is entitled to all tax increment revenues in an urban renewal area once taxes are first divided and for the life of the projects in the urban renewal area. Iowa Code section 403.19, subsection 2, provides that "[w]hen such loans, advances, indebtedness, and bonds, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such urban renewal area shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property." However, as stated earlier, Iowa Code section 403.6, subsection 4, allows a municipality to invest urban renewal project funds (which include tax increment revenues) held in reserves or sinking funds or not needed for immediate disbursement. This would imply that a municipality can receive tax increment revenues in excess of what is needed to pay indebtedness due during a fiscal year. Also, Iowa Code section 403.19, subsection 6, provides that, in any year, a municipality may certify a request to the county auditor on or before December 1 to increase the allocation of taxes to the tax-certifying bodies by decreasing the amount of incremental taxes to be paid to the municipality in the following fiscal year. This, too, implies that a municipality may receive tax increment revenues in excess of what is needed to pay indebtedness due during a fiscal year.

7. Administration of the Special Fund

Iowa Code section 403.19, subsection 10, provides that interest or earnings received on amounts deposited into the special fund and the net proceeds from the sale of assets purchased using amounts deposited into the special fund must be credited to the special fund and shall be used solely for authorized urban renewal purposes. In addition, moneys in the special fund may not be transferred to another fund of the municipality except for the payment of loans, advances, indebtedness, or bonds that qualify for payment from the special fund.[71]

Under Iowa Code section 24.21, when the necessity for maintaining the special fund of the municipality has ceased to exist, and a balance remains in the special fund, such balance remaining in the special fund is required to be allocated to and paid into

[69] Iowa Code § 441.21 provides that statewide aggregate property tax assessments of a class of property (commercial, industrial, residential, or agricultural) shall not increase by more than 4 percent per year. If the value of any class of property, on a statewide basis, increases by more than 4 percent that value is "rolled back" to a 4 percent increase.

[70] See 1980 Iowa Acts ch. 1128, § 2 (enacting Iowa Code § 403.20).

[71] 2012 Iowa Acts ch. 1124, § 20.

the funds for the respective taxing districts as taxes by or for the taxing district into which all other property taxes are paid.[72]

B. Urban Renewal Financing Mechanisms

Under its broad authority to finance urban renewal projects, a municipality may issue bonds or may take out loans, payable from tax increment revenues. A municipality may also use tax increment revenues on a pay-as-you-go, or self-financing, basis. A municipality may use incremental revenues to rebate, refund, or reimburse property taxes paid by a developer on property located in an urban renewal area. A municipality may also agree to exempt the property from the city property tax, provide a grant for property taxes paid, or make a direct payment of taxes.[73]

Iowa Code section 423B.10 also authorizes a city with a local sales and services tax imposed by the county to designate an amount of the increased tax revenues attributable to retail establishments in an urban renewal area to fund urban renewal projects in the area. 2012 Iowa Acts ch. 1124, however, prohibits a city from adopting an ordinance providing for such use of local sales and services tax revenue on or after July 1, 2012, unless each county where such urban renewal area is located approves the proposed use by resolution.

C. Bonding Authority and Constitutional Debt Limitations

1. Statutory Bonding Authority

A municipality has authority to issue bonds for urban renewal purposes under Iowa Code section 403.9 and Iowa Code section 403.12.[74] In *Webster Realty Company v. City of Fort Dodge,* the Iowa Supreme Court characterized bonds issued pursuant to Iowa Code section 403.9 as revenue bonds payable from "revenues and other funds of the municipality derived from or held in connection with the undertaking and carrying out of urban renewal projects..."[75] and bonds issued pursuant to Iowa Code section 403.12 as general obligation bonds secured by the general revenues (property taxes) of a municipality.[76] In 1969, Iowa Code section 403.9 was amended to provide that bonds issued pursuant to that section were also payable from tax increment property tax revenues deposited in the special fund created in Iowa Code section 403.19.[77]

2. Constitutional Debt Limitations

Iowa Code section 403.9 also provides that bonds issued under the authority of that section for purposes of urban renewal shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitations, presumably including Iowa Constitution, Article XI, section 3, which prohibits counties or other political or municipal corporations from becoming indebted in any manner to an aggregate

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[72] 2012 Iowa Acts ch. 1124, § 4.

[73] See definition of "indebtness" in Iowa Code § 403.19(6)(d). 2012 Iowa Acts ch 1124, § 18.

[74] Iowa Code section 403.9, subsection 1, states that bonds may be issued "to pay the costs of carrying out the purposes and provisions of this chapter [403]" while Iowa Code section 403.12, subsection 5, states that bonds may be issued "[f]or the purposes of this section, or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project of a municipality . . . ."

[75] See Iowa Code § 403.9(1).

[76] Webster Realty, 174 N.W.2d at 417.

[77] 1969 Iowa Acts ch. 237.

amount exceeding 5 percent of the value of taxable property within the corporation. However, the Iowa Supreme Court in *Richards v. City of Muscatine* ruled that urban renewal bonds issued pursuant to Code section 403.9 are indeed indebtedness subject to the constitutional limitation because the bonds are payable from the general revenues of the city and not from a special assessment or from the operating revenues of a municipal enterprise that generates income. The Iowa Supreme Court stated that, although incremental property tax revenues collected under Iowa Code section 403.19 and deposited in the special fund for urban renewal purposes were only a portion of a city's general revenues, they were general revenues all the same. Therefore, a bond issuance in which principal and interest on the bonds are payable from the special urban renewal fund in Iowa Code section 403.19, subsection 2, is indebtedness subject to the constitutional limitation.[78]

In 2003, the Iowa Supreme Court handed down its decision in *Fults v. City of Coralville*[79] ruling that urban renewal indebtedness subject to an annual appropriation provision is a contingent obligation that does not constitute debt for purposes of the constitutional limitation on indebtedness of a municipality. An annual appropriation provision (also known as a "nonappropriation clause") means that the indebtedness incurred by a municipality is subject to repayment only if the governing body of the municipality annually appropriates the funds necessary for repayment in the coming fiscal year and there is no legally enforceable obligation to continue repayments in the future. The Iowa Supreme Court stated that debt subject to the constitutional limitation is that which a municipality obligates itself to pay without further action on the part of the city. The Iowa Supreme Court stated that the repayment of debt that is not certain to take place is not subject to the constitutional debt limitation because the city cannot be held legally responsible for the debt for a year other than one in which funds for repayment have been appropriated. Therefore, the city's obligation is restricted to the fiscal year within which the city council appropriates money for repayment. It is that annual amount appropriated, therefore, that is included in the aggregate amount of debt when computing whether a municipality exceeds the constitutional limitation.

3. Taxation and Issuance of Bonds

Income and interest from bonds issued under Iowa Code section 403.9 are exempt from taxation.[80] Iowa Code section 403.9 also provides that a municipality may capitalize interest on urban renewal bonds for a period not to exceed three years from the date the bonds are issued. Iowa Code section 403.9 provides that urban renewal bonds issued under that section shall not be subject to the provisions of any other law relating to the authorization, issuance, or sale of bonds. The section was amended in 1996, though, to require publication notice of the proposed issuance and to require a public meeting before issuance of urban renewal bonds.[81] This is the

[78] Richards v. City of Muscatine, 237 N.W.2d 48, 64 (Iowa 1975). Although the Iowa Supreme Court only considered bonds issued under the authority of Iowa Code § 403.9, the same reasoning could apply to bonds issued under the authority of Iowa Code § 403.12(5), because those bonds are also payable from incremental property tax revenues.

[79] Fults v. City of Coralville, 666 N.W.2d at 557.

[80] Iowa Code § 403.9(2). See also Iowa Admin. Code 701-40.3(2).

[81] 1996 Iowa Acts ch. 1204, § 18. See Iowa Code § 403.9(3)(b).

procedure currently in place for issuance of revenue bonds by a county or a city and for issuance of general obligation bonds for an essential county or essential corporate purpose.[82]

The law was also amended in 1975 and 1994 to include urban renewal bonds in the definition of "essential corporate purpose" and "essential county purpose," respectively,[83] and provided that such bonds are subject to the right of petition for an election.[84] However, the language used in the definitions of "essential corporate purpose" and "essential county purpose" does not specifically identify bonds issued under the authority of Iowa Code section 403.9. Rather, the language refers generally to the "aiding of the planning, undertaking, and carrying out of urban renewal projects under the authority of Iowa Code chapter 403 and for the purposes set out in section 403.12." Only Iowa Code section 403.12 is specifically cited when referring to issuance of bonds in the definitions of "essential corporate purpose" and "essential county purpose." By contrast, the procedure outlined in Iowa Code section 403.9, which provides for notice and hearing before issuance of bonds, does not provide for an election by petition as in the definitions described above.[85]

D. Targeted Jobs Withholding Tax Credit

In 2006, Iowa Code section 403.19A was enacted, creating a pilot project whereby certain cities approved as pilot project cities could assist in funding projects in the cities' urban renewal areas by means of a targeted jobs credit from withholding.[86] Businesses seeking to locate in a pilot project city urban renewal area that are already located in the state must either create or retain[87] 10 new jobs or make at least $500,000 in capital investment within the applicable urban renewal area. Under 2009 amendments to Iowa Code section 403.19A, a pilot project city is prohibited from entering into a withholding agreement with an employer not already located in a pilot project city when another Iowa community is competing for the same project and both the pilot project city and the other Iowa community are seeking assistance from the Iowa Economic Development Authority.

The credit is 3 percent of the amount of gross wages paid to the employees of the targeted jobs by the business. The credit is paid to the pilot project city to be used to pay for debts incurred or assistance provided by the city for urban renewal projects related to

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[82] See Iowa Code §§ 331.464, 384.83, 331.443, and 384.25.

[83] 1975 Iowa Acts ch. 203, §§ 31 and 32, amending 1975 Iowa Code § 384.24 and 1994 Iowa Acts ch. 1182, § 5, amending 1993 Iowa Code Supplement § 331.441.

[84] In most cases, essential corporate purpose bonds and essential county purpose bonds are subject only to notice and hearing. See Iowa Code §§ 384.25 and 331.443. The petition requirement for cities is signatures of eligible electors of the city equal in number to 10 percent of the persons who voted at the last preceding regular city election, but not less than 10 persons. See Iowa Code § 362.4. The petition requirement for counties is signatures of eligible electors of the county equal in number to at least 10 percent of the votes cast in the county for president of the United States or governor at the preceding general election. See Iowa Code § 331.306.

[85] The language in the definition of essential corporate purpose for cities and essential county purpose for counties mirrors each other except for the internal references to city procedure under Iowa Code chapter 384 and county procedure under Iowa Code chapter 331. Following is the statutory language defining "essential county purpose" in Iowa Code section 331.441(2)(b)(14): "The aiding of the planning, undertaking, and carrying out of urban renewal projects under the authority of Code chapter 403 and for the purposes set out in § 403.12. However, bonds issued for this purpose are subject to the right of petition for an election as provided in section 331.442, subsection 5, without limitation on the amount of the bond issue or the population of the county, and the board shall include notice of the right of petition in the notice of proposed action required under section 331.443, subsection 2."

[86] See 2006 Iowa Acts ch. 1141.

[87] 2011 Iowa Acts ch. 131, §§ 126-129 (added retained jobs to the eligible jobs under the program).

the business in the urban renewal area. The withholding credit is available to each targeted job of the business in the area provided the job's wage is equal to at least the average county wage. A withholding agreement may be applicable for a period of up to 10 years but may not be entered into after June 30, 2013.[88] A pilot project city must arrange for matching local financial support of at least $1 for each $1 of withholding credit it receives. The match is to be used for the business project. If the employer ceases to meet the requirements of the withholding agreement, the agreement shall be terminated and any withholding tax credits for the benefit of the employer shall cease. However, in regard to the number of new jobs that are to be created or retained, if the employer has met the number of new jobs to be created or retained pursuant to the withholding agreement and subsequently the number of new jobs falls below the required level, the employer shall not be considered as not meeting the job requirement until 18 months after the date of the decrease in the number of new jobs created or retained.

The four pilot project cities are cities with three or more census tracts and include one located in a county that borders Nebraska, one located in a county that borders South Dakota, and two located in counties that border states other than Nebraska or South Dakota.[89] To be eligible to be designated as a pilot project city, a city must have applied by October 1, 2006. A pilot project city will lose its status if it does not enter into a withholding tax agreement within a year of being approved as a pilot project city.[90]

VIII. Low-income Assistance Requirements

In 1996, Iowa Code chapter 403 was amended to provide that property tax increment revenues could be used to pay for public improvements related to housing and residential development.[91] Prior to that amendment, the construction of housing for low and moderate income families was the only type of residential development allowed to be financed with property tax increment revenues. The same legislation enacted Iowa Code section 403.22, which provided that if tax increment revenues collected in an economic development urban renewal area were to be used to pay for public improvements related to housing and residential development, the project had to include assistance for low and moderate income family housing.[92] The amount of assistance for low and moderate income family housing is required to equal or exceed the percentage of the project cost equal to the percentage of low and moderate income persons in the county. If a municipality can show that it cannot undertake an urban renewal project if it has to meet the low-income housing assistance requirements, the required amount may be reduced if the reduced amount is agreed to by the Iowa Economic Development Authority. However, for municipalities with a population over 15,000, the reduced amount cannot be less than an amount equal to 10 percent of the original project cost.[93] In 1997, Iowa Code section 403.22 was amended to provide that a

[88] See 2009 Iowa Acts ch. 103, § 1 (changing the limitation on entering into a withholding agreement from June 30, 2010, to June 30, 2013).

[89] If two eligible cities located in a county with a population of less than 45,000 are approved, the two cities shall be considered one pilot project city. See 2007 Iowa Acts ch. 2, § 1, amending 2007 Iowa Code § 403.19A(2).

[90] Iowa Code § 403.19A(2)(b).

[91] 1996 Iowa Acts ch. 1204, §§ 13, 16, and 21.

[92] 1996 Iowa Acts ch. 1204, § 24. Iowa Code section 403.22(3) provides that sources for low and moderate income housing assistance may also include payments from developers or other private parties and any other sources which are legally available.

[93] Iowa Code § 403.22(1)(a).

municipality with a population of 5,000 or less is not required to provide low-income housing assistance if the municipality can show, based upon a housing needs assessment, that it has no low and moderate income housing need and the authority agrees with that assessment.[94]

The required assistance may be for low and moderate income housing located within or outside the urban renewal area. Besides acquisition of lots for, and construction of, low and moderate income housing, the assistance may be used to provide direct assistance to low and moderate income families living within the area of operation of the municipality or for deposit in a low and moderate income housing fund established by the municipality. Moneys in the fund may be used for these purposes and to provide matching funds for any state or federal moneys for low and moderate income housing.[95]

Iowa Code section 403.22 also provides that, for a municipality with a population of 15,000 or more, an urban renewal project whose purpose is to provide public improvements related to housing and residential development is limited to 10 years of incremental tax collections. A municipality with a population under 15,000 may extend the 10-year limitation for up to five years in order to adequately fund the urban renewal project if the municipality secures the approval of the governing bodies of all other affected taxing districts.[96]

IX. Urban Renewal Reporting

Under prior law, a municipality that had established an urban renewal area was required to report to the Department of Management and to the county auditor the total amount of urban renewal loans, advances, indebtedness, or bonds outstanding at the close of the most recently ended fiscal year that qualified for payment from the special fund into which incremental revenues were deposited. The report was due by December 1 of each odd-numbered year.[97] If the municipality did not file the required report by December 1 of each odd-numbered year, the county treasurer was instructed to immediately withhold disbursement of incremental taxes to the municipality until the report was filed.[98] This provision was repealed in 2007 and replaced with a requirement that a city or county budget, as applicable, include information on tax increment financing revenues and debt. This type of budget information was received by the Department of Management to be made available by electronic means.[99]

Iowa's urban renewal reporting requirements were amended again in 2012. 2012 Iowa Acts ch. 1124 removes the budget information requirement and requires cities and counties that had an urban renewal plan and area in effect at any time during the most recently ended fiscal year to file for each such urban renewal area a tax increment

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[94] Iowa Code § 403.22(1)(c).

[95] Iowa Code § 403.22(2).

[96] Iowa Code § 403.22(5).

[97] 2007 Iowa Code § 403.23(1). Prior to 2003, municipalities were required to report annually and the report was to contain more specific information, including, among other things, the establishment date of the urban renewal area, the base and incremental valuation of the urban renewal area, and the uses for the incremental funding. See Iowa Code § 403.23 (2003) and 2003 Iowa Acts ch. 178, § 18.

[98] 2007 Iowa Code § 403.23(3).

[99] 2007 Iowa Acts ch. 186, §§ 3, 4, and 28, amending 2007 Iowa Code § 331.434(1) and 2007 Iowa Code § 384.16(1), and repealing 2007 Iowa Code § 403.23. Local government budget information is available through the Department of Management's Internet site at http://www.dom.state.ia.us/local/public_access.html (last visited October 8, 2012).

financing report by December 1 following the end of such fiscal year. Each report must be approved by the affirmative vote of a majority of the county board of supervisors or the city council, as applicable, and must include specific information and data as of June 30 of the most recently ended fiscal year or the information for such fiscal year, as applicable. Information and data required to be included in the report consists of the type of urban renewal area, boundaries, description, and composition of the area, the urban renewal plan adopted for the area, a description of each expenditure during the fiscal year from the municipality's special fund, the amount of loans, advances, indebtedness, or bonds which qualify for payment from the special fund, the total amount of property taxes that were exempted, rebated, refunded, paid or reimbursed by the municipality during the fiscal year for property in the area, the balance of the municipality's special fund, the valuations of property within the area, and information relating to the amount and use of tax increment financing in the area.

By December 1, 2012, the Department of Management is required to make publicly available on an Internet site a searchable database of all the information contained in the tax increment financing reports. The Legislative Services Agency, in consultation with the Department of Management, is required to submit an annual report to the Governor and the General Assembly that summarizes and analyzes the information contained in the reports.

If a county or city fails to meet the filing requirements for an annual financial report or for the tax increment financing report, the Department of Management is prohibited from certifying the county's or city's property taxes back to the county auditor for the next fiscal year. This provision, however, does not apply to the reports required to be filed on or before December 1, 2012.

In addition, Iowa Code section 403.23, enacted in 2012,[100] requires each municipality that has established an urban renewal area that utilizes, or plans to utilize, revenues from the special fund to make an annual certification of compliance that includes such information or documentation deemed appropriate by the Auditor of State including but not limited to information required to be annually reported by counties and cities to the Department of Management. For any year in which the municipality is audited in accordance with Iowa Code section 11.6, such certification is to be audited as part of the municipality's audit.

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[100] 2012 Iowa Acts ch. 1124, § 22.