

By: Shapiro

S.B. No. 2338

A BILL TO BE ENTITLED

AN ACT

relating to the creation, operations and financing of tax increment
reinvestment zones.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 311.002(1), Tax Code is amended as
follows:

(1) "Project costs" means the expenditures made or
estimated to be made and monetary obligations incurred or estimated
to be incurred by the municipality or county establishing a
reinvestment zone that are listed in the project plan as costs of
public works or public improvements, programs, or other projects
~~in~~ benefitting the zone, plus other costs incidental to those
expenditures and obligations. "Project costs" include:

(A) capital costs, including the actual costs of
the acquisition and construction of public works, public
improvements, new buildings, structures, and fixtures; the actual
costs of the acquisition, demolition, alteration, remodeling,
repair, or reconstruction of existing buildings, structures, and
fixtures; the actual costs of the remediation of conditions that
contaminate public or private land or buildings, the preservation
of the facade of a private or public building, and the demolition of
public or private buildings; and the actual costs of the
acquisition of land and equipment and the clearing and grading of
land;

1 (B) financing costs, including all interest paid
2 to holders of evidences of indebtedness or other obligations issued
3 to pay for project costs and any premium paid over the principal
4 amount of the obligations because of the redemption of the
5 obligations before maturity;

6 (C) real property assembly costs;

7 (D) professional service costs, including those
8 incurred for architectural, planning, engineering, and legal
9 advice and services;

10 (E) imputed administrative costs, including
11 reasonable charges for the time spent by employees of the
12 municipality or county in connection with the implementation of a
13 project plan;

14 (F) relocation costs;

15 (G) organizational costs, including the costs of
16 conducting environmental impact studies or other studies, the cost
17 of publicizing the creation of the zone, and the cost of
18 implementing the project plan for the zone;

19 (H) interest before and during construction and
20 for one year after completion of construction, whether or not
21 capitalized;

22 (I) the cost of operating the reinvestment zone
23 and project facilities;

24 (J) the amount of any contributions made by the
25 municipality or county from general revenue for the implementation
26 of the project plan; ~~and~~

27 (K) a program described in Section 311.310(h) of

1 this chapter; and

2 (L) payments made at the discretion of the
3 governing body of the municipality or county that the governing
4 body finds necessary or convenient to the creation of the zone or to
5 the implementation of the project plans for the zone.

6 SECTION 2. Sections 311.003(a) and (b), Tax Code, are
7 amended as follows:

8 (a) The governing body of a municipality by ordinance or the
9 governing body of a county by order may designate a [~~contiguous~~]
10 geographic area in the jurisdiction of the municipality or county
11 to be a reinvestment zone to promote development or redevelopment
12 of the area if the governing body determines that development or
13 redevelopment would not occur solely through private investment in
14 the reasonably foreseeable future. The area need not be contiguous
15 if the governing body finds that the areas are substantially
16 related.

17 (b) Before adopting an ordinance or order providing for a
18 reinvestment zone, the governing body of the municipality or county
19 must prepare a preliminary reinvestment zone financing plan. [~~As~~
20 ~~soon as the plan is completed, a copy of the plan must be sent to the~~
21 ~~governing body of each taxing unit that levies taxes on real~~
22 ~~property in the proposed zone.]~~

23 SECTION 3. Section 311.005(a) is amended to read as
24 follows:

25 (a) To be designated as a reinvestment zone, an area must:

26 (1) substantially arrest or impair the sound growth of
27 the municipality or county creating the zone, retard the provision

1 of housing accommodations, or constitute an economic or social
2 liability and be a menace to the public health, safety, morals, or
3 welfare in its present condition and use because of the presence of:

4 (A) a substantial number of substandard, slum,
5 deteriorated, or deteriorating structures;

6 (B) the predominance of defective or inadequate
7 sidewalk or street layout;

8 (C) faulty lot layout in relation to size,
9 adequacy, accessibility, or usefulness;

10 (D) unsanitary or unsafe conditions;

11 (E) the deterioration of site or other
12 improvements;

13 (F) tax or special assessment delinquency
14 exceeding the fair value of the land;

15 (G) defective or unusual conditions of title;

16 (H) conditions that endanger life or property by
17 fire or other cause; or

18 (I) structures, other than single-family
19 residential structures, less than 10 percent of the square footage
20 of which has been used for commercial, industrial, or residential
21 purposes during the preceding 12 years, if the municipality has a
22 population of 100,000 or more;

23 (2) be predominantly open, undeveloped, or
24 underdeveloped and, because of obsolete platting, deterioration of
25 structures or site improvements, or other factors, substantially
26 impair or arrest the sound growth of the municipality or county;

27 (3) be in a federally assisted new community located

1 in the municipality or county or in an area immediately adjacent to
2 a federally assisted new community; or

3 (4) be an area described in a petition requesting that
4 the area be designated as a reinvestment zone, if the petition is
5 submitted to the governing body of the municipality or county by the
6 owners of property constituting at least 50 percent of the
7 appraised value of the property in the area according to the most
8 recent certified appraisal roll for the county in which the area is
9 located.

10 SECTION 4. Section 311.007, Tax Code, is amended as
11 follows:

12 § 311.007. CHANGING BOUNDARIES OR TERM OF EXISTING ZONE.

13 (a) [~~Subject to the limitations provided by Section 311.006, if~~
14 ~~applicable, the~~] The boundaries of an existing reinvestment zone
15 may be reduced or enlarged by ordinance or resolution of the
16 governing body of the municipality or by order or resolution of the
17 governing body of the county that created the zone.

18 (b) The governing body of the municipality or county ~~may~~
19 that created an existing reinvestment zone may by ordinance or
20 resolution extend the term of the zone after notice and hearing in
21 the same manner as provided for the creation of the zone; provided
22 that no other taxing entity shall be required to participate in the
23 zone for the extended term except by written agreement. [~~enlarge an~~
24 ~~existing reinvestment zone to include an area described in a~~
25 ~~petition requesting that the area be included in the zone if the~~
26 ~~petition is submitted to the governing body of the municipality or~~
27 ~~county by the owners of property constituting at least 50 percent of~~

1 ~~the appraised value of the property in the area according to the~~
2 ~~most recent certified appraisal roll for the county in which the~~
3 ~~area is located. The composition of the board of directors of the~~
4 ~~zone continues to be governed by Section 311.009(a) or (b),~~
5 ~~whichever applied to the zone immediately before the enlargement of~~
6 ~~the zone, except that the membership of the board must conform to~~
7 ~~the requirements of the applicable subsection of Section 311.009 as~~
8 ~~applied to the zone after its enlargement. The provision of Section~~
9 ~~311.006(b) relating to the amount of property used for residential~~
10 ~~purposes that may be included in the zone does not apply to the~~
11 ~~enlargement of a zone under this subsection.]~~

12 SECTION 5. Section 311.008(b)(2), Tax Code, is amended to
13 read as follows:

14 (2) acquire real property by purchase, condemnation,
15 or other means [~~to implement project plans~~] and sell real [~~that~~]
16 property, on the terms and conditions and in the manner it considers
17 advisable to implement the project plans;

18 SECTION 6. Section 311.009(a), (b), and (e), Tax Code, are
19 amended to read as follows:

20 (a) Except as provided by Subsection (b), the board of
21 directors of a reinvestment zone consists of at least five and not
22 more than 15 members, unless more than 15 members are required to
23 satisfy the requirements of this subsection. Each taxing unit
24 other than the municipality or county that created the zone that
25 levies taxes on real property in the zone may appoint one member of
26 the board if the taxing unit has approved the payment of all or part
27 of the tax increment produced by the unit into the tax increment

1 fund. A unit may waive its right to appoint a director. The
2 governing body of the municipality or county that created the zone
3 may appoint not more than 10 directors to the board; except that if
4 there are fewer than five directors appointed by taxing units other
5 than the municipality or county, the governing body of the
6 municipality or county may appoint more than 10 members as long as
7 the total membership of the board does not exceed 15.

8 (b) If the zone was designated under Section 311.005(a)(4),
9 the board of directors of the zone consists of nine members. Each
10 taxing unit [~~school district, county, or municipality,~~] other than
11 the municipality or county that created the zone, that levies taxes
12 on real property in the zone may appoint one member of the board if
13 the taxing unit [~~school district, county, or municipality~~] has
14 approved the payment of all or part of the tax increment produced by
15 the unit into the tax increment fund. The member of the state
16 senate in whose district the zone is located is a member of the
17 board, and the member of the state house of representatives in whose
18 district the zone is located is a member of the board, except that
19 either may designate another individual to serve in the member's
20 place at the pleasure of the member. If the zone is located in more
21 than one senate or house district, this subsection applies only to
22 the senator or representative in whose district a larger portion of
23 the zone is located than any other senate or house district, as
24 applicable. The remaining members of the board are appointed by the
25 governing body of the municipality or county that created the zone.

26 (e) To be eligible for appointment to the board by the
27 governing body of the municipality or county that created the zone,

1 an individual must:

2 (1) if the board is covered by Subsection (a):

3 (A) be a resident citizen of the State of Texas
4 ~~[qualified voter of the municipality or county, as applicable]~~; and
5 ~~[or]~~

6 (B) be at least 18 years of age ~~[and own real~~
7 ~~property in the zone, whether or not the individual resides in the~~
8 ~~municipality or county]~~; or

9 (2) if the board is covered by Subsection (b):

10 (A) be at least 18 years of age; and

11 (B) own real property in the zone or be an
12 employee, tenant, or agent of a person that owns real property in
13 the zone.

14 SECTION 7. Section 311.010(h), Tax Code, is amended to read
15 as follows:

16 (h) Subject to the approval of the governing body of the
17 municipality or county that created the zone, the board of
18 directors of a reinvestment zone, as necessary or convenient to
19 implement the project plan and reinvestment zone financing plan and
20 achieve their purposes, may establish and provide for the
21 administration of one or more programs for the public purposes of
22 developing and diversifying the economy of the zone, eliminating
23 unemployment and underemployment in the zone, and developing or
24 expanding transportation, business, and commercial activity in the
25 zone, including programs to make grants and loans ~~[from the tax~~
26 ~~increment fund of the zone in an aggregate amount not to exceed the~~
27 ~~amount of the tax increment produced by the municipality and paid~~

1 ~~into the tax increment fund for the zone]~~ for activities that
2 benefit the zone and stimulate business and commercial activity in
3 the zone. For purposes of this subsection, on approval of the
4 municipality or county, the board of directors of the zone has all
5 the powers of a municipality under Chapter 380, Local Government
6 Code. The approval required by this subsection may be granted in an
7 ordinance or order approving a project plan and reinvestment zone
8 financing plan or an amendment to a project plan and reinvestment
9 zone financing plan.

10 SECTION 8. Section 311.011, Tax Code, is amended by
11 amending subsections (a), (b), (c), (d), and (g) and adding a new
12 subsection (h) as follows:

13 § 311.011. PROJECT AND FINANCING PLANS. (a) The board of
14 directors of a reinvestment zone shall prepare and adopt a project
15 plan and a reinvestment zone financing plan for the zone and submit
16 the plans to the governing body of the municipality or county that
17 created the zone. ~~[The plans must be as consistent as possible with~~
18 ~~the preliminary plans developed for the zone before the creation of~~
19 ~~the board.]~~

20 (b) The project plan must include:

21 (1) a ~~[map showing]~~ description of existing uses and
22 conditions of real property in the zone and ~~[a map showing]~~ proposed
23 ~~[improvements to and proposed]~~ uses of that property;

24 (2) proposed changes of zoning ordinances, ~~[the master~~
25 ~~plan of the municipality,]~~ building codes, other municipal
26 ordinances, and subdivision rules and regulations, if any, of the
27 ~~municipality or the county~~, if applicable; and

1 (3) ~~[a list of estimated nonproject costs, and~~
2 ~~(4)]~~ a statement of a method of relocating persons to
3 be displaced, if any, as a result of implementing the plan.

4 (c) The reinvestment zone financing plan must include:

5 (1) a detailed list describing the estimated project
6 costs of the zone, including administrative expenses;

7 (2) a statement listing the proposed kind, number, and
8 location of all ~~[proposed]~~ public works or public improvements to
9 be financed by ~~[in]~~ the zone;

10 (3) a finding that the zone is economically feasible
11 ~~[an economic feasibility study];~~

12 (4) the estimated amount of bonded indebtedness to be
13 incurred;

14 (5) the estimated time when related costs or monetary
15 obligations are to be incurred;

16 (6) a description of the methods of financing all
17 estimated project costs and the expected sources of revenue to
18 finance or pay project costs, including the percentage of tax
19 increment to be derived from the property taxes of each taxing unit
20 anticipated to participate in the zone financing that levies taxes
21 on real property in the zone;

22 (7) the current total appraised value of taxable real
23 property in the zone;

24 (8) the estimated captured appraised value of the zone
25 during each year of its existence; and

26 (9) the duration of the zone.

27 (d) The governing body of the municipality or county that

1 created the zone must approve a project plan or reinvestment zone
2 financing plan after its adoption by the board. The approval must
3 be by ordinance, in the case of a municipality, or by order, in the
4 case of a county, that finds that the plan is feasible [~~and conforms~~
5 ~~to the master plan, if any, of the municipality or to subdivision~~
6 ~~rules and regulations, if any, of the county~~].

7 (g) [~~An amendment to the project plan or the reinvestment~~
8 ~~zone financing plan for a zone does not apply to a~~] A school
9 district that participates in a [the] zone is not required to
10 increase the percentage or amount of the tax increment to be
11 contributed by the school district due to an amendment to the
12 project plan or reinvestment zone financing plan for the zone
13 unless the governing body of the school district by official action
14 approves the amendment [~~, if the amendment:~~

15 ~~(1) has the effect of directly or indirectly~~
16 ~~increasing the percentage or amount of the tax increment to be~~
17 ~~contributed by the school district; or~~

18 ~~(2) requires or authorizes the municipality or county~~
19 ~~creating the zone to issue additional tax increment bonds or~~
20 ~~notes].~~

21 (h) Unless specifically provided otherwise in the project
22 plan and reinvestment zone financing plan, all figures contained in
23 the plan shall be considered estimates, and shall not act as a
24 limitation on the described items, including without limitation
25 expenditures relating to project costs and participation by taxing
26 units.

27 SECTION 9. Section 311.012(c), Tax Code, is amended as

1 follows:

2 (c) The tax increment base of a taxing unit is the total
3 [~~appraised~~] taxable value of all real property taxable by the unit
4 and located in a reinvestment zone for the year in which the zone
5 was designated under this chapter. The base year for any land
6 annexed into the zone is the year in which such land was annexed.

7 SECTION 10. Sections 311.013(f) and (l), Tax Code, is
8 amended as follows:

9 (f) A taxing unit is not required to pay into the tax
10 increment fund any of its tax increment produced from property
11 located in a reinvestment zone designated under Section 311.005(a)
12 or in an area added to a reinvestment zone under Section 311.007
13 unless the taxing unit enters into an agreement to do so with the
14 governing body of the municipality or county that created the zone.
15 A taxing unit may enter into an agreement under this subsection at
16 any time before or after the zone is created or enlarged. The
17 agreement may include conditions for payment of that tax increment
18 into the fund and must specify the portion of the tax increment to
19 be paid into the fund and the years for which that tax increment is
20 to be paid into the fund. The agreement may specify that the taxing
21 unit's participation may be computed with respect to a base year
22 later than the original base year of the zone. The agreement and
23 the conditions in the agreement are binding on the taxing unit, the
24 municipality or county, and the board of directors of the zone.

25 (l) The governing body of a municipality or a county that
26 designates an area as a reinvestment zone may determine, in the
27 designating ordinance or order adopted under Section 311.003 or in

1 the ordinance or order adopted under Section 311.011 approving the
2 reinvestment zone financing plan for the zone, the portion of the
3 tax increment produced by the municipality or the county that the
4 municipality or the county is required to pay into the tax increment
5 fund for the zone. If a municipality or a county does not determine
6 the portion of the tax increment produced by the municipality or the
7 county that the municipality or the county is required to pay into
8 the tax increment fund for a reinvestment zone, the municipality or
9 the county is required to pay into the fund for the zone the entire
10 tax increment produced by the municipality or the county, except as
11 provided by Subsection (b)(1).

12 SECTION 11. Section 311.014(b), Tax Code, is amended to
13 read as follows:

14 (b) Money may be disbursed from the fund only to satisfy
15 claims of holders of tax increment bonds or notes issued for the
16 zone, to pay project costs for the zone, to make payments pursuant
17 to an agreement made under Section 311.010(b) or a program under
18 Section 311.010(h) dedicating revenue from the tax increment fund,
19 or to repay other obligations incurred for the zone.

20 SECTION 12. Sections 311.015(a) and (l), Tax Code, are
21 amended as follows:

22 (a) A municipality creating a reinvestment zone may issue
23 tax increment bonds or notes, the proceeds of which may be used to
24 make payments pursuant to agreements made under Section 311.010(b),
25 to make payments pursuant to programs under Section 311.010(h), and
26 to pay project costs for the reinvestment zone on behalf of which
27 the bonds or notes were issued, or to satisfy claims of holders of

1 the bonds or notes. The municipality may issue refunding bonds or
2 notes for the payment or retirement of tax increment bonds or notes
3 previously issued by it.

4 (1) A tax increment bond or note must mature ~~within 20 years~~
5 ~~of the date of issue~~ on or before the date by which the final
6 payments of tax increment into the tax increment fund are due.

7 SECTION 13. Section 311.016(a), Tax Code, is amended to
8 read as follows:

9 (a) On or before the 150th [~~90th~~] day following the end of
10 the fiscal year of the municipality or county, the governing body of
11 a municipality or county shall submit to the chief executive
12 officer of each taxing unit that levies property taxes on real
13 property in a reinvestment zone created by the municipality or
14 county a report on the status of the zone. The report must include:

15 (1) the amount and source of revenue in the tax
16 increment fund established for the zone;

17 (2) the amount and purpose of expenditures from the
18 fund;

19 (3) the amount of principal and interest due on
20 outstanding bonded indebtedness;

21 (4) the tax increment base and current captured
22 appraised value retained by the zone; and

23 (5) the captured appraised value shared by the
24 municipality or county and other taxing units, the total amount of
25 tax increments received, and any additional information necessary
26 to demonstrate compliance with the tax increment financing plan
27 adopted by the governing body of the municipality or county.

1 SECTION 14. Section 311.017, Tax Code, is amended by
2 amending Subsection (a) and adding new Subsections (a-1), (c), and
3 (d) to read as follows:

4 (a) A reinvestment zone terminates on the earlier of:

5 (1) the termination date designated in the ordinance
6 or order, as applicable, creating the zone or an earlier or later
7 termination date designated by an ordinance or order adopted
8 [~~subsequent to the ordinance or order creating the zone~~] under
9 Section 311.007(b); or

10 (2) the date on which all project costs, tax increment
11 bonds and interest on those bonds, and other obligations have been
12 paid in full.

13 (a-1) Notwithstanding the designation of a later
14 termination date under Section 311.007(b), a taxing unit that taxes
15 real property located in the zone, other than the municipality or
16 county that created the zone, is not required to pay any of its tax
17 increment into the tax increment fund for the zone after the
18 termination date designated in the ordinance or order creating the
19 zone unless the governing body of the taxing unit enters into an
20 agreement to do so with the governing body of the municipality or
21 county that created the zone.

22 (c) With respect to a zone established under Section
23 311.0031, the zone shall terminate on the date on which all project
24 costs, tax increment bonds and interest on those bonds, and other
25 obligations have been paid in full, notwithstanding the expiration
26 of the designation of the area under the specified law.

27 (d) If tax increment bonds or obligations of the zone are

1 outstanding when the zone is terminated, the zone shall remain in
2 existence solely for the purpose of fully paying its obligations or
3 the tax increment bonds. The termination is effective when all zone
4 obligations or tax increment bonds have been fully paid.

5 SECTION 15. Chapter 311, Tax Code, is amended by adding a
6 new Section 311.021, as follows:

7 Sec. 311.021. ACT OR PROCEEDING PRESUMED VALID. (a) A
8 governmental act or proceeding relating to the designation,
9 operation, or administration of a reinvestment zone or
10 implementation of a project plan or reinvestment zone financing
11 plan under this chapter of a municipality or county, zone board, or
12 an entity acting pursuant to Section 311.010(f), is conclusively
13 presumed, as of the date it occurred, valid and to have occurred in
14 accordance with all applicable statutes and rules if:

15 (1) the second anniversary of the effective date of
16 the act or proceeding has expired; and

17 (2) a lawsuit to annul or invalidate the act or
18 proceeding has not been filed on or before that second anniversary.

19 (b) This section does not apply to:

20 (1) an act or proceeding that was void at the time it
21 occurred;

22 (2) an act or proceeding that, under a statute of this
23 state or the United States, was a misdemeanor or felony at the time
24 the act or proceeding occurred;

25 (3) a rule that, at the time it was passed, was
26 preempted by a statute of this state or the United States, including
27 Section 1.06 or 109.57, Alcoholic Beverage Code; or

1 (4) a matter that on the effective date of this
2 section:

3 (A) is involved in litigation if the litigation
4 ultimately results in the matter being held invalid by a final
5 judgment of a court; or

6 (B) has been held invalid by a final judgment of a
7 court.

8 SECTION 16. The following provisions of the Tax Code are
9 repealed:

- 10 (1) Section 311.003(e), (f), and (g);
11 (2) Section 311.006;
12 (3) Section 311.01005;
13 (4) Section 311.007(b);
14 (5) Sections 311.013(d) and (e); and
15 (6) Section 311.016(b) as amended by Acts 2005, 79th
16 Leg., R.S., Ch. 977, Sec.2.

17 SECTION 17. Section 42.2516, Education Code, is amended to
18 designate existing subsections (k) and (l) as (l) and (m),
19 respectively, and to add a new subsection (k), as follows:

20 (k) In computing the local revenue per student available to
21 a school district there shall be deducted from the local revenue
22 available to the school district the amount of taxes paid by the
23 school district into a tax increment reinvestment zone under
24 Chapter 311, Tax Code.

25 SECTION 18. (a) The legislature validates and confirms all
26 governmental acts and proceedings that were taken before the
27 effective date of this Act and relate to or are associated with the

1 designation, operation, or administration of a reinvestment zone or
2 implementation of a project plan or reinvestment zone financing
3 plan under Chapter 311, Tax Code, of a municipality or county, zone
4 board, or an entity acting pursuant to Section 311.010(f),
5 including the extension of the term of a reinvestment zone, as of
6 the dates on which they occurred. The acts and proceedings may not
7 be held invalid because they were not in accordance with Chapter
8 311, Tax Code, or other law.

9 (b) Subsection (a) of this section does not apply to any
10 matter that on the effective date of this Act:

11 (1) is involved in litigation if the litigation
12 ultimately results in the matter being held invalid by a final
13 judgment of a court; or

14 (2) has been held invalid by a final judgment of a
15 court.

16 SECTION 19. EFFECTIVE DATE. This Act takes effect
17 immediately if it receives a vote of two-thirds of all the members
18 elected to each house, as provided by Section 39, Article III, Texas
19 Constitution. If this Act does not receive the vote necessary for
20 immediate effect, this Act takes effect September 1, 2009.