

1 HB345
2 117436-2
3 By Representatives Hinshaw, Williams (P), Taylor, McCutcheon,
4 Ball, Sanderford and Hall
5 RFD: Government Appropriations
6 First Read: 19-JAN-10

1 construction workers are reported and paid to the state; and
2 to provide an effective date, including retroactive effect for
3 certain districts created on or after January 1, 2010.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. This act shall be known and may be cited
6 as the Enhanced Use Lease Area Act of 2010.

7 Section 2. The Legislature makes the following
8 findings:

9 (1) It is in the best interest of the state to
10 ensure the continued location and expansion of military
11 installations in this state.

12 (2) The presence and expansion of military
13 installations in this state enhance the public benefit and
14 welfare by, among other things, promoting local economic
15 development and the stimulus of the local economy, increasing
16 job opportunities, creating additional tax revenues and
17 enhancing the public's overall quality of life.

18 (3) Growth to municipalities and counties of the
19 state as a result of the presence and expansion of military
20 installations requires additional capital and improved and
21 expanded infrastructure, and the provision of such capital and
22 infrastructure constitutes an important public purpose.

23 Section 3. Sections 11-99-1, 11-99-2, 11-99-4,
24 11-99-5, 11-99-6, 11-99-10, and 40-18-70, Code of Alabama
25 1975, are amended to read as follows:

26 "§11-99-1.

1 "(a) It is hereby found and declared that there
2 exist in municipalities and counties of the state blighted or
3 economically distressed areas which constitute a serious and
4 growing problem, injurious to the public health, safety,
5 morals, and welfare of the residents of the state; that the
6 existence of such areas contributes substantially and
7 increasingly to the spread of disease and crime, constitutes
8 an economic and social liability imposing onerous burdens
9 which decrease the tax base and reduce tax revenues,
10 substantially impairs or arrests sound growth, retards the
11 provision of housing accommodations, aggravates traffic
12 problems, and substantially hampers the elimination of traffic
13 hazards and the improvement of traffic facilities; and that
14 the prevention and elimination of slums and blighted areas and
15 economically distressed areas is a matter of state policy and
16 state concern in order that the state and its municipalities
17 and counties shall not continue to be endangered by areas
18 which are focal centers of disease, promote juvenile
19 delinquency, and consume an excessive proportion of public
20 revenues because of the extra services required for police,
21 fire, accident, hospitalization, and other forms of public
22 protection, services, and facilities.

23 "(b) It is further found and declared that certain
24 blighted and economically distressed areas or portions thereof
25 may require acquisition, clearance, and disposition subject to
26 use restrictions, as provided in this chapter, since the

1 prevailing condition of blight and economic distress may make
2 impracticable the reclamation of the area by conservation or
3 rehabilitation; that other areas or portions thereof may,
4 through the means provided in this chapter, be susceptible of
5 conservation or rehabilitation in such a manner that the
6 conditions and evils enumerated may be eliminated, remedied,
7 or prevented; and that salvageable blighted and economically
8 distressed areas can be conserved and rehabilitated through
9 appropriate public action as herein authorized and the
10 cooperation and voluntary action of the owners and tenants of
11 property in such areas.

12 "(c) It is further found and declared that there
13 exist in municipalities and counties of the state
14 underutilized real and personal property in enhanced use lease
15 areas which, when leased by a secretary of a military
16 department for cash or in-kind consideration, enhances the
17 public benefit and welfare by, among other things, promoting
18 local economic development and the stimulation of the local
19 economy, increasing job opportunities, creating additional tax
20 revenues and enhancing the public's overall quality of life.

21 "(c)(d) It is further found and declared that the
22 powers conferred by this chapter are for public uses and
23 purposes for which public money may be expended and the power
24 of eminent domain and police power exercised, and the
25 necessity in the public interest for the provisions herein

1 enacted is hereby declared as a matter of legislative
2 determination.

3 "§11-99-2.

4 "As used in this chapter:

5 "(1) BLIGHTED OR ECONOMICALLY DISTRESSED AREA:

6 "a. An area in which the structures, buildings, or
7 improvements, by reason of dilapidation, deterioration, age,
8 or obsolescence, inadequate provision for ventilation, light,
9 air, sanitation, or open spaces, high density of population
10 and overcrowding, or the existence of conditions which
11 endanger life or property by fire and other causes, or any
12 combination of such factors, are conducive to ill health,
13 transmission of disease, infant mortality, juvenile
14 delinquency, or crime, and are detrimental to the public
15 health, safety, morals, or welfare, or

16 "b. Any area which by reason of the presence of a
17 substantial number of substandard, slum, deteriorated, or
18 deteriorating structures, predominance of defective or
19 inadequate street layout, faulty lot layout in relation to
20 size, adequacy, accessibility, or usefulness, unsanitary or
21 unsafe conditions, deterioration of site or other
22 improvements, diversity of ownership, tax or special
23 assessment delinquencies exceeding the fair value of the land,
24 defective or unusual conditions of title, or the existence of
25 conditions which endanger life or property by fire and other
26 causes, or any combination of the foregoing, substantially

1 impairs or arrests the sound economic growth of an area,
2 retards the provision of housing accommodations, or
3 constitutes an economic or social liability and is a detriment
4 to the public health, safety, morals, or welfare in its
5 present condition and use, or

6 "c. Any area which is predominantly open and which
7 because of obsolete platting, diversity of ownership,
8 deterioration of structures or of site improvements, or
9 otherwise, substantially impairs or arrests the sound economic
10 growth of an area, or

11 "d. Any area which the local governing body
12 certifies is in need of redevelopment or rehabilitation as a
13 result of flood, fire, hurricane, tornado, earthquake, storm,
14 or other catastrophe respecting which the Governor of the
15 state has certified the need for disaster assistance under
16 federal law, or

17 "e. Any area containing excessive vacant land on
18 which structures were previously located, or on which are
19 located abandoned or vacant buildings or old buildings, or
20 where excessive vacancies exist in existing buildings, or
21 which contains substandard structures, or with respect to
22 which there exist delinquencies in payment of real property
23 taxes.

24 "(2) DEFERRED TAX RECIPIENT. Each ~~public entity,~~
25 ~~other than state,~~ taxing authority which receives ad valorem

1 taxes with respect to property located in a proposed tax
2 increment district.

3 "(3) ENHANCED USE LEASE AREA. Any area of a military
4 installation which contains underutilized real or personal
5 property, or both, that is leased by a secretary of a military
6 department to a lessee pursuant to the authority provided in
7 Title 10 U.S.C. §2667.

8 "~~(3)~~(4) LOCAL FINANCE OFFICER. The legally
9 authorized officer or agent responsible for receipt and
10 disbursement of the revenues of a ~~public entity~~ taxing
11 authority.

12 "~~(4)~~(5) LOCAL GOVERNING BODY. The governing body of
13 a county or municipality which proposes to create or has
14 created a tax increment district.

15 "~~(5)~~(6) MUNICIPALITY. Any incorporated municipality
16 in this state.

17 "~~(6)~~(7) PROJECT. Undertakings and activities of a
18 public entity in a tax increment district for either (i) the
19 elimination and prevention of the development or spread of
20 blight in a blighted or economically distressed area or (ii)
21 the utilization of underutilized real or personal property, or
22 both, in an enhanced use lease area, and may include property
23 acquisition, property clearance, development, redevelopment,
24 rehabilitation, or conservation or a combination or part
25 thereof in accordance with a project plan.

1 "~~(7)~~(8) PROJECT COSTS. Any expenditures made or
2 estimated to be made or monetary obligations incurred or
3 estimated to be incurred by a public entity which are listed
4 in a project plan as costs of public works or improvements
5 within a tax increment district, plus any costs incidental
6 thereto, diminished by any special assessments, received or
7 reasonably expected to be received by the public entity in
8 connection with the implementation of the project plan.
9 Project costs include, but are not limited to:

10 "a. Capital costs, including the costs of the
11 construction of public works or improvements, new buildings,
12 structures, and fixtures, the demolition, alteration,
13 remodeling, repair or reconstruction of existing buildings,
14 structures, and fixtures, the acquisition of equipment, the
15 acquisition, clearing, and grading of land and the acquisition
16 of interests in land;

17 "b. Financing costs, including all interest paid to
18 holders of tax increment obligations during the period of
19 implementation of the project plan, the costs of any form of
20 credit enhancement, printing and trustee costs, and any
21 premium paid in excess of the principal amount thereof because
22 of the redemption of such obligations prior to maturity;

23 "c. Real property assembly costs, meaning any
24 deficit resulting from the sale or lease as lessor by the
25 public entity of real or personal property within a tax

1 increment district for consideration which is less than its
2 cost to the public entity;

3 "d. Professional service costs, including those
4 costs incurred for architectural, planning, engineering,
5 fiscal, underwriting, and legal advice and services;

6 "e. Imputed administrative costs, including
7 reasonable charges for the time spent by officers and
8 employees of the public entity in connection with the
9 implementation of a project plan;

10 "f. Relocation costs, including those relocation
11 payments made following condemnation under Chapter 1A of Title
12 18;

13 "g. Organizational costs, including the costs of
14 conducting environmental impact and other studies and the
15 costs of informing the public with respect to the creation of
16 tax increment districts and the implementation of project
17 plans;

18 "h. The amount of any contributions made in
19 connection with the implementation of the project plan that
20 are within limits prescribed by law; ~~and~~

21 "i. Payments made, at the discretion of the local
22 governing body, which are to be necessary or convenient to the
23 creation of tax increment districts or the implementation of
24 project plans; and

25 "j. For purposes of any tax increment district in
26 which not less than 50 percent, by area, of the real property

1 within the tax increment district is an enhanced use lease
2 area, "project costs" shall also include all costs described
3 in this subdivision which are expended by a public entity or a
4 developer within three years immediately preceding the date of
5 the creation of such tax increment district.

6 ~~"(8)(9)~~ PROJECT PLAN. The properly approved plan for
7 the development or redevelopment of a tax increment district,
8 including all properly approved amendments thereto.

9 ~~"(9)(10)~~ PUBLIC ENTITY. Any municipality or county
10 in the state.

11 ~~"(10)(11)~~ TAX INCREMENT. That amount obtained by
12 multiplying the total revenue derived from ad valorem taxes
13 levied by all local taxing authorities on all taxable property
14 within a tax increment district in any tax year by a fraction
15 having a numerator equal to that tax year's market value of
16 all taxable property in the district minus the tax increment
17 base and a denominator equal to that tax year's equalized
18 value of all taxable property in the district. In any tax
19 year, a tax increment is "positive" if the tax increment base
20 is less than the aggregate value of taxable property as
21 equalized by the Department of Revenue; it is "negative" if
22 the base exceeds such value.

23 ~~"(11)(12)~~ TAX INCREMENT BASE. The aggregate value,
24 as equalized by the Department of Revenue, of all taxable
25 property located within a tax increment district on the date

1 the district is created, determined as provided in Section
2 ~~11-99-4~~ 11-99-5 hereof.

3 "~~(12)~~ (13) TAX INCREMENT DISTRICT. A contiguous
4 geographic area within the boundaries of a public entity
5 defined and created by resolution of the local governing body.

6 "~~(13)~~ (14) TAX INCREMENT FUND. A fund into which all
7 tax increments not retained by a taxing ~~unit~~ authority as
8 provided by Section 11-99-10(b) hereof are paid, and from
9 which money is disbursed to satisfy claims of holders of tax
10 increment obligations issued for the tax increment district.

11 "~~(14)~~ (15) TAX INCREMENT OBLIGATIONS. Bonds,
12 warrants, notes, or other evidences of indebtedness issued by
13 a public entity to fund all or any project costs.

14 "~~(15)~~ (16) TAXABLE PROPERTY. All real and personal
15 property located in a tax increment district which is subject
16 to ad valorem taxation on the date of adoption of the
17 resolution creating the tax increment district.

18 "(17) TAXING AUTHORITY.

19 "a. For tax increment districts in which not less
20 than 50 percent, by area, of the real property within the tax
21 increment district is a blighted or economically distressed
22 area, "taxing authority" means any municipality, county, or
23 other taxing authority which has the power to levy taxes on
24 property within the tax increment districts.

25 "b. For tax increment districts in which not less
26 than 50 percent, by area, of the real property within the tax

1 increment district is an enhanced use lease area, "taxing
2 authority" means the state or any municipality, county, or
3 other taxing authority which has the power to levy taxes on
4 property within the tax increment district.

5 "§11-99-4.

6 "In order to exercise its powers under this chapter,
7 a public entity shall take the following steps:

8 "(1) The local governing body shall hold a public
9 hearing at which all interested parties are afforded a
10 reasonable opportunity to express their views on the concept
11 of tax increment financing, on the proposed creation of a tax
12 increment district and its proposed boundaries, and its
13 benefits to the public entity. Notice of the hearing shall be
14 published in a newspaper of general circulation in either the
15 county or in the city, as the case may be, in which the
16 proposed tax increment district is to be located with such
17 notice to be published at least twice in the 15-day period
18 immediately preceding the date of the hearing. Prior to
19 publication, a copy of the notice shall be sent by first class
20 mail to the chief executive officer of each deferred tax
21 recipient.

22 "(2) In addition to the notice required by
23 subdivision (1) of this section, and either before or after
24 such hearing, the local governing body shall make a written
25 submission to the governing body of each deferred tax
26 recipient. The submission shall include a description of the

1 proposed boundaries of the tax increment district, the
2 tentative plans for the development or redevelopment of the
3 tax increment district, and an estimate of the general impact
4 of the proposed project plan on property values and tax
5 revenues. Not later than the fifteenth day after the date on
6 which the notice required by subdivision (1) of this section
7 is mailed, each deferred tax recipient shall designate a
8 representative empowered to meet with the local governing body
9 to discuss the project plan and the tax increment financing
10 and shall notify the local governing body of its designation.
11 Failure of any deferred tax recipient to designate a
12 representative within the 15-day period, or to notify the
13 local governing body of its designation, shall not prevent the
14 local governing body from proceeding hereunder. If a deferred
15 tax recipient which has failed to so designate a
16 representative shall thereafter designate a representative and
17 shall notify the local governing body of such designation,
18 such representative shall be entitled to notice of any
19 meetings held thereafter pursuant to this section, and shall
20 be entitled to attend such meetings, but shall have no right
21 to have matters discussed again which have already been
22 discussed. The local governing body shall call a meeting, or
23 meetings, of the representatives of the deferred tax
24 recipients to be held at any time after 20 days from the
25 mailing notice referred to in subdivision (1) of this section.
26 Each representative shall be notified of each meeting at least

1 three days before it is to be held, but such notice may be
2 waived. At the meetings the local governing body and the
3 representatives of the deferred tax recipients may discuss the
4 boundaries of the tax increment district, development within
5 such district, the exclusion of particular parcels of property
6 from such district, and tax collection for such district. On
7 the motion of the local governing body any other matter
8 relevant to the proposed tax increment district may be
9 discussed.

10 "(3) The local governing body shall adopt a
11 resolution (which need not be published) which:

12 "a. Describes the boundaries of the tax increment
13 district with sufficient definiteness to identify with
14 ordinary and reasonable certainty the territory included,
15 which shall include only those whole units of property (other
16 than publicly owned property such as streets, easements, and
17 rights-of-ways) assessed for general property tax purposes
18 and, if the public entity is a county, which shall include
19 only those areas which lie outside the corporate limits of any
20 municipality, unless the governing body of a municipality has
21 consented to the inclusion of land within its corporate limits
22 within a tax increment district formed by a county;

23 "b. Creates the tax increment district as of a given
24 date after the date of adoption of the resolution, and fixes
25 the period for its duration, which may be for a period not to
26 exceed 30 years in the case of a tax increment district in

1 which not less than 50 percent, by area, of the real property
2 within the tax increment district is a blighted or
3 economically distressed area, and which may be for a period
4 not to exceed 35 years in the case of a tax increment district
5 in which not less than 50 percent, by area, of the real
6 property within the tax increment district is an enhanced use
7 ~~lease area, unless an amendment is made to the project plan~~
8 ~~under subdivision (7) of this section, in which case the lease~~
9 ~~area, unless provided, however, that, in respect of a tax~~
10 ~~increment district in which not less than 50 percent, by area,~~
11 ~~of the real property within the tax increment district is a~~
12 ~~blighted or economically distressed area, if an amendment is~~
13 ~~made to the project plan for such district under subdivision~~
14 ~~(7) of this section, the period of duration for the tax~~
15 ~~increment district shall be extended as provided in such~~
16 ~~amendment to the project plan, but shall not be for a period~~
17 ~~which exceeds 30 years from the date such amendment is~~
18 ~~adopted. in the case of a tax increment district in which not~~
19 ~~less than 50 percent, by area, of the real property within the~~
20 ~~tax increment district is a blighted or economically~~
21 ~~distressed area, and shall not be for a period which exceeds~~
22 ~~35 years from the date such amendment is adopted in the case~~
23 ~~of a tax increment district in which not less than 50 percent,~~
24 ~~by area, of the real property within the tax increment~~
25 ~~district is an enhanced use lease area;~~

1 "c. Assigns a name to the tax increment district for
2 identification purposes, such as "tax increment district
3 number one";

4 "d. Contains findings (which shall not be subject to
5 review except after a showing of fraud, corruption, or undue
6 influence) that:

7 "1. Not less than 50 percent, by area, of the real
8 property within the tax increment district is either (i) a
9 blighted area and is in need of rehabilitation or conservation
10 work or (ii) an enhanced use lease area; and

11 "2. The aggregate value of equalized taxable
12 property in the district plus all existing districts created
13 by the public entity does not exceed 10 percent of the total
14 value of equalized taxable property within the public entity
15 or 50 percent if the public entity is a Class 3 municipality.
16 Provided, however, that equalized taxable property located
17 within the boundaries of a military reservation, jurisdiction
18 over which has been ceded to the United States pursuant to
19 Section 42-3-1, shall be excluded from aggregated value.

20 "(4) The local governmental body shall prepare and
21 adopt a project plan for each tax increment district. The plan
22 shall include a statement listing the kind, number, and
23 location of all proposed public works or improvements within
24 the district; a detailed list of estimated project costs; and
25 a description of the methods of financing all estimated
26 project cost and the time when related costs or monetary

1 obligations are to be incurred. For purposes of this chapter,
2 any work or improvement for a military installation and
3 located within an enhanced use lease area shall be deemed to
4 be for public uses and purposes. The project plan shall also
5 include: A map showing existing uses and condition of real
6 property in the district; a map showing proposed improvements
7 and uses therein; proposed changes of zoning, master map plan,
8 building code, and other ordinances or resolutions affecting
9 the district; a list of estimated nonproject costs; and a
10 proposed plan for the relocation of families, persons, and
11 businesses to be temporarily or permanently displaced from
12 housing or commercial facilities in the district by
13 implementation of the plan.

14 "(5) The local governing body shall certify before
15 approving the project plan that:

16 "a. The proposed tax increment district on the whole
17 has not been subject to growth and development through
18 investment by private enterprise and it is not reasonable to
19 anticipate that the land in the district will be developed
20 without the adoption of the project plan;

21 "b. A feasible method exists for the relocation and
22 compensation of individuals, families, and businesses that
23 will be displaced by the project in decent, safe, and sanitary
24 accommodations within their means and without undue hardship
25 to such individuals, families, and businesses;

1 "c. The plan conforms to the applicable master plan
2 of the local entity (if there is one); and

3 "d. The plan will afford maximum opportunity,
4 consistent with the sound needs of the public entity as a
5 whole, for the rehabilitation or redevelopment of the tax
6 increment district by private enterprise.

7 "(6) A copy of the project plan shall be mailed to
8 the governing body of each deferred tax recipient, before
9 approval of the project plan.

10 "(7) The local governing body may at any time adopt
11 an amendment to a project plan by complying with the
12 procedures for the original adoption of a project plan.

13 "§11-99-5.

14 "(a) Upon the creation of a tax increment district
15 or adoption of any amendment pursuant to subsection (c) of
16 this section, the tax increment base shall be determined.

17 "(b) Upon application in writing by the local
18 finance officer, the tax assessor (or the officer of the
19 county performing the duties of a tax assessor) for each
20 county in which any part of the district is located shall
21 determine according to his or her best judgment from all
22 sources available to him or her the full aggregate value of
23 the taxable property in the district located in that county.
24 The aggregate valuation from all such tax assessors or other
25 such public officials, upon certification to the local finance

1 officer, shall constitute the tax increment base of the
2 district.

3 "(c) If the public entity creating a tax increment
4 district in which not less than 50 percent, by area, of the
5 real property within the tax increment district is a blighted
6 or economically distressed area adopts an amendment to the
7 original project plan for ~~any~~ such district which includes
8 additional project costs for which tax increments may be
9 received by such public entity, the tax increment base for the
10 district shall be redetermined pursuant to subsection (b) of
11 this section as of 90 days following the effective date of the
12 amendment, except that if the effective date of the amendment
13 is October 1 of any year, the redetermination shall be made on
14 that date. The tax increment base as redetermined under this
15 subsection shall be effective for the purposes of this chapter
16 only if it exceeds the original tax increment base determined
17 under subsection (b) of this section.

18 "(d) If the public entity creating a tax increment
19 district in which not less than 50 percent, by area, of the
20 real property within the tax increment district is an enhanced
21 use lease area adopts an amendment to the original project
22 plan for such district which includes additional project costs
23 for which tax increments may be received by such public entity
24 or an expansion of the tax increment district, the tax
25 increment base for the district shall not be redetermined.

1 "~~(d)~~(e) There shall be a rebuttable presumption that
2 any property within a tax increment district acquired or
3 leased as lessee by the public entity or any agency or
4 instrumentality thereof within one year immediately preceding
5 the date of the creation of the district was so acquired or
6 leased in contemplation of the creation of the district. The
7 presumption may be rebutted by the public entity with proof
8 that the property was so leased or acquired primarily for a
9 purpose other than to reduce the tax increment base. If the
10 presumption is not rebutted, in determining the tax increment
11 base of the district, but for no other purpose, the taxable
12 status of such property shall be determined as though such
13 lease or acquisition had not occurred.

14 "~~(e)~~(f) The local tax assessor or person performing
15 his or her duties shall identify upon the tax records prepared
16 by him or her under Chapter 7 of Title 40 those parcels of
17 property which are within each existing tax increment
18 district, specifying the name of each district. A similar
19 notation shall also appear on the tax records made by the
20 local finance officer.

21 "~~(f)~~(g) The Department of Revenue shall annually
22 give notice to the designated finance officer of all
23 ~~governmental entities having the power to levy~~ taxing
24 authorities levying taxes on property within each district as
25 to both the assessed and equalized value of the property and
26 the assessed and equalized value of the tax increment base.

1 The notice shall state that the taxes collected in excess of
2 the base will be paid to the public entity.

3 "§11-99-6.

4 "(a) Positive tax increments of a tax increment
5 district shall be allocated and paid over to the public entity
6 which created the district for each year commencing on the
7 October 1 following the date when the district is created
8 until the earlier of:

9 "(1) That time, after the completion of all public
10 improvements specified in the project plan or amendments
11 thereto, when the public entity has received aggregate tax
12 increments from the district in an amount equal to the
13 aggregate of all expenditures previously made or monetary
14 obligations previously incurred for project costs for the
15 district; or

16 "(2) Thirty-five years after the last expenditure
17 identified in the project plan is made. No expenditure may be
18 provided for in the project plan to be made more than five
19 years after the district is created, except in Class 3
20 municipalities where such expenditures may be made not more
21 than 10 years thereafter if so provided and in tax increment
22 districts in which not less than 50 percent, by area, of the
23 real property within the tax increment district is an enhanced
24 use lease area where such expenditures may be made not more
25 than 15 years thereafter if so provided, unless an amendment

1 is adopted by the local governing body under subdivision (7)
2 of Section 11-99-4.

3 "(b) Notwithstanding any other provision of law,
4 every officer charged by law to collect and pay over or retain
5 local general property taxes in the case of a tax increment
6 district in which not less than 50 percent, by area, of the
7 real property within the tax increment district is a blighted
8 or economically distressed area, or state and local general
9 property taxes in the case of a tax increment district in
10 which not less than 50 percent, by area, of the real property
11 within the tax increment district is an enhanced use lease
12 area, shall first, on the next settlement date provided by
13 law, pay over to the local finance officer out of all such
14 taxes which have been collected that portion which represents
15 a tax increment allocable to a tax increment district,
16 identifying the amount for each district.

17 "(c) All tax increments received for a tax increment
18 district shall, upon receipt by the local finance officer, be
19 deposited into the tax increment fund for that district. The
20 local finance officer may deposit additional moneys into the
21 fund pursuant to an appropriation by the local governing body.
22 Moneys shall be paid out of the fund only to reimburse the
23 public entity for payments theretofore made by it for
24 principal of or interest on tax increment obligations for that
25 district if such obligations are general obligations of the
26 public entity, or to satisfy claims of holders of tax

1 increment obligations issued for that district. Subject to any
2 agreement with security holders, moneys in the fund may be
3 temporarily invested in the same manner as other surplus funds
4 of the public entity. After the principal of and interest on
5 all tax increment obligations of the district have been paid
6 or provided for, subject to any agreement with security
7 holders, if there remain in the fund any moneys, they shall be
8 paid over to the chief finance officer of the state, each
9 county, each municipality, each school district, and to the
10 general fund of the public entity in such amounts as are due
11 to each respectively, having due regard for what portion of
12 such moneys, if any, represents tax increments not allocated
13 to the public entity and what portion thereof, if any,
14 represents voluntary deposits of the public entity into the
15 fund.

16 "§11-99-10.

17 "(a) With respect to any taxing authority other
18 ~~governing body having the power to levy taxes on property~~
19 ~~located within a~~ than the public entity which created the tax
20 increment district, the calculation of the equalized valuation
21 of taxable property in a tax increment district may not exceed
22 the tax increment base of the district until the district is
23 terminated, unless agreement has been made for other
24 arrangements under subsection (b) of this section.

25 "(b) In such cases where it can be shown that losing
26 tax increments would be harmful to any given taxing unit

1 authority or cause such unit taxing authority not to honor a
2 prior binding commitment, by contract executed with the public
3 entity prior to the designation of the tax increment district,
4 and if an agreement has been made for such allowances through
5 a process of negotiation at the time of the creation of the
6 tax increment district, a taxing unit authority may make
7 payments into the tax increment fund, less the sum of:

8 "(1) Any property taxes produced from the tax
9 increments which are required to be paid by the taxing unit
10 authority to another political subdivision; and

11 "(2) A portion, not to exceed 20 percent or a
12 one-time payment mutually agreed upon at the time of the
13 creation of the tax increment district, of the tax increment
14 produced in the district by the taxes levied on behalf of that
15 taxing unit authority.

16 "(c) All tax increments which have accrued with
17 respect to school districts under this chapter shall be
18 determined and the amounts shall be paid on February 1 of each
19 year out of the taxes of all school districts which have
20 territory in a tax increment district.

21 "(d) The use of the increased valuations in the tax
22 increment district before the completion of the project in
23 calculating any general state school aid formula is
24 prohibited.

25 "(e) A taxing unit authority is not required to pay
26 a tax increment into the tax increment fund for a district

1 beyond three years from the date the district was created
2 unless one or more of the following conditions exist or have
3 been met:

4 "(1) Tax increment obligations have been issued for
5 the district;

6 "(2) The public entity has acquired property within
7 the district pursuant to the project plan; or

8 "(3) Construction of improvements pursuant to the
9 project plan has commenced in the district.

10 "§40-18-70.

11 "For the purpose of this article, the following
12 terms shall have the respective meanings ascribed by this
13 section:

14 "(1) EMPLOYEE. "Employee" as defined in the Internal
15 Revenue Code, as amended from time to time.

16 "(2) EMPLOYER. "Employer" as defined in the Internal
17 Revenue Code, as amended from time to time. An employer is
18 required to withhold tax from the wages of employees to the
19 extent that such wages are earned in Alabama, whether the
20 employee is a resident or a nonresident of the state.

21 "(3) INTERNAL REVENUE CODE. The Internal Revenue
22 Code of the United States, as amended from time to time.

23 "(4) PROVISIONAL CONSTRUCTION EMPLOYERS. A
24 provisional construction employer is any employer, including
25 members of its affiliated group as that term is defined in the
26 Internal Revenue Code, that (i) employs 50 or more employees

1 in a construction project for qualified property located in a
2 tax increment district in which not less than 50 percent, by
3 area, of the real property within the tax increment district
4 is an enhanced use lease area, as these terms are defined in
5 Section 40-9E-1, a construction project for a qualifying
6 industrial or research enterprise described in Section
7 40-9B-3(a)(8)e, or a construction project, the cost of which
8 is part of a qualifying entity's capital cost, as these terms
9 are defined in Section 40-9D-3, and (ii) has not registered in
10 the tax year preceding the current tax year with the Alabama
11 Department of Revenue for withholding tax purposes. If the
12 provisional construction employer reports and pays all past
13 withholding taxes due the state and continues to report and
14 pay for a one-year period all withholding taxes due to
15 Alabama, the employer will no longer be deemed to be a
16 provisional construction employer.

17 "(5) WAGES. "Wages" as defined in the Internal
18 Revenue Code, as amended from time to time. However, Alabama
19 does differentiate from federal requirements for certain
20 classes and amounts pursuant to departmental rules adopted via
21 the procedures in Title 41."

22 Section 4. The following new Chapter 9E, comprised
23 of Sections 40-9E-1 and 40-9E-2, is added to Title 40 of the
24 Code of Alabama 1975, to read as follows:

25 CHAPTER 9E. STATE PROPERTY TAX IN TAX INCREMENT
26 DISTRICTS

1 §40-9E-1.

2 For purposes of this chapter only, the following
3 terms shall have the following meanings:

4 (1) BASE YEAR. The taxable year immediately before
5 the taxable year in which property first becomes qualified
6 property under this section.

7 (2) BASE YEAR VALUE. The value of the property used
8 to determine the assessment on which the property tax on
9 property is imposed for the base year. "Base year value" does
10 not include any new property that is first assessed in the
11 base year.

12 (3) ELIGIBLE ASSESSMENT. The difference between the
13 base year value and the actual value as determined by the
14 county tax assessor for the applicable taxable year.

15 (4) ENHANCED USE LEASE AREA. Any area of a military
16 installation which contains underutilized real or personal
17 property, or both, that is leased by a secretary of a military
18 department to a lessee pursuant to the authority provided in
19 Title 10 U.S.C. §2667.

20 (5) LOCAL GOVERNING BODY. The governing body of a
21 county or municipality which proposes to create or has created
22 a tax increment district.

23 (6) PROJECT COSTS. Any expenditures made or
24 estimated to be made or monetary obligations incurred or
25 estimated to be incurred by a public entity which are listed
26 in a project plan as costs of public works or improvements

1 within a tax increment district, plus any costs incidental
2 thereto, diminished by any special assessments received or
3 reasonably expected to be received by the public entity in
4 connection with the implementation of the project plan.

5 Project costs include, but are not limited to:

6 a. Capital costs, including the costs of the
7 construction of public works or improvements, new buildings,
8 structures, and fixtures, the demolition, alteration,
9 remodeling, repair or reconstruction of existing buildings,
10 structures, and fixtures, the acquisition of equipment, the
11 acquisition, clearing, and grading of land and the acquisition
12 of interests in land;

13 b. Financing costs, including all interest paid to
14 holders of tax increment obligations during the period of
15 implementation of the project plan, the costs of any form of
16 credit enhancement, printing and trustee costs, and any
17 premium paid in excess of the principal amount thereof because
18 of the redemption of such obligations prior to maturity;

19 c. Real property assembly costs, meaning any deficit
20 resulting from the sale or lease as lessor by the public
21 entity of real or personal property within a tax increment
22 district for consideration which is less than its cost to the
23 public entity;

24 d. Professional service costs, including those costs
25 incurred for architectural, planning, engineering, fiscal,
26 underwriting, and legal advice and services;

1 e. Imputed administrative costs, including
2 reasonable charges for the time spent by officers and
3 employees of the public entity in connection with the
4 implementation of a project plan;

5 f. Relocation costs, including those relocation
6 payments made following condemnation under Chapter 1A of Title
7 18;

8 g. Organizational costs, including the costs of
9 conducting environmental impact and other studies and the
10 costs of informing the public with respect to the creation of
11 tax increment districts and the implementation of project
12 plans;

13 h. The amount of any contributions made in
14 connection with the implementation of the project plan that
15 are within limits prescribed by law;

16 i. Payments made, at the discretion of the local
17 governing body, which are to be necessary or convenient to the
18 creation of tax increment districts or the implementation of
19 project plans; and

20 j. For purposes of any tax increment district in
21 which not less than 50 percent, by area, of the real property
22 within the tax increment district is an enhanced use lease
23 area, "project costs" shall also include all costs described
24 in this subdivision which are expended within three years
25 immediately preceding the date of the creation of such tax
26 increment district.

1 (7) PROJECT PLAN. The properly approved plan for the
2 development or redevelopment of a tax increment district,
3 including all properly approved amendments thereto.

4 (8) PUBLIC ENTITY. Any municipality or county in the
5 state.

6 (9) QUALIFIED PROPERTY. Real property that is
7 located in a tax increment district in which not less than 50
8 percent, by area, of the real property within the tax
9 increment district is an enhanced use lease area.

10 (10) STATE PROPERTY TAX INCREMENT. The state
11 property taxes attributable to the eligible assessment of
12 qualified property.

13 (11) TAX INCREMENT DISTRICT. A contiguous geographic
14 area within the boundaries of a public entity defined and
15 created by resolution of the local governing body.

16 (12) TAX INCREMENT OBLIGATIONS. Bonds, warrants,
17 notes, or other evidences of indebtedness issued by a public
18 entity to fund all or any project costs.

19 §40-9E-2.

20 (a) Notwithstanding any other law of this state,
21 qualified property shall be entitled to an abatement of state
22 property taxes provided the conditions of this section are
23 satisfied.

24 (b) In lieu of paying the state property tax
25 increment on qualified property, any owner of qualified
26 property not exempt from ad valorem taxation must pay the

1 state property tax increment on such qualified property to the
2 public entity that created the tax increment district in which
3 the qualified property is located for each year commencing on
4 the October 1 following the date when property first becomes
5 qualified property under this chapter, and each October 1
6 thereafter, until the tax increment district in which such
7 qualified property is located is terminated in accordance with
8 Section 11-99-7.

9 (c) State property tax increments received by the
10 public entity which created the tax increment district in
11 which the qualified property is located shall be used:

12 (1) To pay for project costs; and

13 (2) To repay tax increment obligations issued to
14 fund project costs.

15 Section 5. If a court of competent jurisdiction
16 adjudges invalid or unconstitutional any clause, sentence,
17 paragraph, section, or part of this act, such judgment or
18 decree shall not affect, impair, invalidate, or nullify the
19 remainder of this act, but the effect of the decision shall be
20 confined to the clause, sentence, paragraph, section, or part
21 of this act adjudged to be invalid or unconstitutional.

22 Section 6. All laws or parts of laws which conflict
23 with this act are repealed.

24 Section 7. The provisions of this act shall become
25 effective immediately following its passage and approval by
26 the Governor or its otherwise becoming law. Notwithstanding

1 the foregoing, the provisions of this act shall apply to any
2 tax increment district created before the effective date of
3 this act provided that (1) such tax increment district is
4 created on or after January 1, 2010, and (2) not less than 50
5 percent, by area, of the real property within such tax
6 increment district is an enhanced use lease area.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Government Ap-
propriations 19-JAN-10

Read for the second time and placed
on the calendar with 1 substitute
and 28-JAN-10

Read for the third time and passed
as amended 04-FEB-10

Yeas 93, Nays 0, Abstains 3

Greg Pappas
Clerk