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House Bill 15-1348-Urban Renewal – Frequently Asked Questions

June 15, 2015

H.B. 15-1348 was signed by the Governor on May 29. The bill enacts several changes related to urban renewal authorities and tax increment financing for such authorities including governance changes and changes related to how much property tax increment will be available for an urban renewal financing. The following are some frequently asked questions related to the provisions of the bill.

When will the bill take effect? The effective date of the bill is August 5, 2015 (unless a referendum petition is filed to require a statewide vote.) But even though the bill takes effect it is only applicable to:

1. Municipalities, urban renewal authorities, and any urban renewal plans created on or after January 1, 2016; or
2. Urban renewal plan amendments or modifications adopted on or after January 1, 2016, that include any of the following: Any addition of an urban renewal project; an alteration in the boundaries of an urban renewal area; any change in the mill levy or the sales tax component of any such plan, except where such changes or modifications are made in connection with refinancing any outstanding bonded indebtedness; or an extension of an urban renewal plan or the duration of a specific urban renewal project regardless of whether such extension or related changes in duration of a specific urban renewal project require actual alteration of the terms of the urban renewal plan.

How will the bill impact governance of an authority? For urban renewal authorities created on or after January 1, 2016 or new or modified plans approved on or after January 1, 2016, the bill permits various taxing bodies which levy a mill levy on property with an urban renewal area to appoint members of the authority governing body as follows:

1. One commissioner must be appointed by the board of county commissioners of the county in which an urban renewal area is located. If the authority is located within more than one county the appointment is made by agreement of the counties.
2. One commissioner must be an elected member of a board of education of a school district levying a mill levy in an urban renewal area. (Although the bill does not state how this commissioner is chosen for an urban renewal area overlapping with more than one school district, it will likely be through agreement of those districts)
3. One commissioner must be a board member of a special district selected by agreement of the special districts levying a mill levy in the urban renewal area. (Note the term special district is not defined in the bill so it is unclear how many districts might be included.)

These governance rules apply whether the authority board is appointed or is the governing body of the municipality. In the case of an appointed board the number of commissioners now must be thirteen, ten of which are appointed by the mayor and three of which are appointed by the taxing entities as outlined above. If the governing body of the municipality is the board of the authority and if the appointment of the three commissioners by the taxing entities results in an even number of commissioners, the mayor appoints an additional commissioner to have an odd number of commissioners. In either case, if the applicable appointing taxing entities do not appoint a commissioner that seat remains vacant.

How will the allocation of property tax increment change for new or amended plans? Under prior law, all of the property tax incremental revenues from the various taxing entities levying a mill levy in an urban renewal area were paid into a special fund of the authority. The bill provides a process for or new or modified plans approved on or after January 1, 2016, where the municipality and the other taxing entities levying a mill levy in an urban renewal area must meet and negotiate an agreement concerning the types and limits of tax revenues to be allocated. The agreement must address the estimated impacts of the urban renewal plan on county or district services. There may be separate agreements with each taxing entity or a joint agreement with multiple taxing entities. So an outcome of this negotiation process may be that less than all of the property tax incremental revenues from taxing entities will be deposited to the special fund of the authority.

What happens if an agreement on the allocation of property tax increment cannot be reached? For new or modified plans approved on or after January 1, 2016, if after 120 days from when the municipality notifies the taxing entities, there is no agreement, the parties are to submit the matter to mediation. In making a determination of the appropriate allocation, the mediator must

consider the nature of the project, the nature and relative size of the revenue and other benefits that are expected to accrue to the municipality and other taxing entities as a result of the project, any legal limitations on the use of revenues belonging to the municipality or any taxing entity, and any capital or operating costs that are expected to result from the project. Within ninety days, the mediator must issue his or her findings of fact as to the appropriate allocation of costs and shall promptly transmit such information to the parties. It appears that this is intended to be a binding process, although usually a mediator cannot impose a resolution of a dispute on the parties. Notably, the bill says the municipality "may agree to the mediator's findings" but it does not say the municipality "shall."

What is the impact of the bill on revenues from future mill levy elections or debrucing elections? Under prior law, if a taxing entity received voter approval to increase its mill levy or to keep revenues from a mill levy pursuant to a debrucing election, incremental revenues resulting from the effect of those actions in an urban renewal area go into the authority's special fund. For example, if a special district receives voter approval to increase its mill levy 2 mills the revenue from 2 mills multiplied times the incremental assessed value in an urban renewal area go into the special fund. Pursuant to the bill, for new or modified plans approved on or after January 1, 2016, revenues derived from a mill levy which exceeds the mill levy in effect at the time of the approval or substantial modification of a plan are not included as incremental revenues. If a special district's levy was 8 mills when a plan was adopted, then reduced to 7 mills and then increased to 9 mills based upon an election to increase 2 mills, only 1 mill would be exempt from the allocation to the special fund. If a special district's levy was 8 mills when a plan was adopted and then increased to 10 mills based upon an election to increase 2 mills, 2 mills would be exempt from the allocation to the special fund.

What happens to revenues in the authority's special fund when bonds or other debt of the authority are paid? For new or modified plans approved on or after January 1, 2016, all moneys remaining in the special fund of the authority that have not previously been rebated and that originated as property tax increment generated based on the mill levy of a taxing body, other than the municipality, within the boundaries of the urban renewal area must be repaid to each taxing body based on the pro rata share of the prior year's property tax increment attributable to each taxing body's current mill levy in which property taxes were divided.

Is the authority required to reimburse other governments for amount contributed to an urban renewal project? Although the provision is oddly worded, apparently the authority is required to reimburse the municipality, county, any special district or school district that pays to, contributes

to or invests in the authority for a project within the 12 months prior to the approval or modification of an urban renewal plan.

How might the bill impact urban renewal projects where bonds have been issued or there are contractual obligations to pay TIF revenues to another party? As noted above, in general the bill only applies to new authorities or plans adopted on or after January 1, 2016, or to specified urban renewal plan amendments or modifications adopted on or after January 1, 2016. The applicability provision of the bill also states that the bill applies "to an extension of an urban renewal plan or the duration of a specific urban renewal project regardless of whether such extension or related changes in duration of a specific urban renewal project require actual alteration of the terms of the urban renewal plan." This provision is ambiguous because it is uncertain what might be an extension of a specific urban renewal project. This ambiguity is creating uncertainty about when the bill might apply to plans and projects approved before January 1, 2016.

However, for an authority which has pledged its TIF revenues under a contract or bond issue before January 1, 2016, it is likely that it would be unconstitutional to apply the provisions of the bill related to the allocation of less than all of the property tax increment revenues to such pledge. The U.S. and Colorado Constitutions prohibit the passage of laws which impair contracts. The legal determination of whether there might be a contractual obligation which would be impaired by the bill will have to be determined based upon the specific nature of the pledge.