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History of Tax Increment Financing (TIF) and Sales Tax and Revenue (STAR) Bonds

The following memorandum will look at all of the legislative changes made to the Tax Increment Financing (pages 1-7) and Sales Tax and Revenue Bond statutes (pages 7-17).

Tax Increment Financing (TIF)

During the **1976** Session, HB 2666, authorized cities to acquire property in downtown commercial areas by eminent domain, if necessary, for redevelopment purposes. Cities were authorized to issue special obligation bonds to pay for the cost of the acquisition and clearing of the redevelopment site, the cost of relocation assistance, necessary related street and municipal utility costs, and other related project expenses. The special obligation bonds were to be paid by the tax increment produced due to the increase in assessed value over the old assessed value of the project area or by private or other governmental assistance. The bonds would not be a general obligation of the city. The increment would apply only to the city, the county, and the school district involved. All other taxing subdivisions would continue to receive taxes as under current law.

Procedures a city must follow to implement a downtown redevelopment project under HB 2666 include:

- A city must adopt a resolution finding that the downtown area to be redeveloped is blighted and its redevelopment is necessary to promote the economic and general welfare of the city. A majority of 10 factors must be found before an area can be found to be blighted.

- Before any project shall be undertaken the city must be provided with a feasibility study which shows the benefits will exceed the costs and the income will be sufficient to pay for the cost of the project.

- The city is required to prepare a redevelopment plan in consultation with the planning commission of the city. This plan must include: (1) a summary of the feasibility study; (2) a description and map of the area to be redeveloped; (3) the relocation assistance plan; and (4) a description of what is to be constructed. The planning commission must find the redevelopment plan is consistent with the comprehensive general plan of the city.

- The city must then adopt a resolution stating it is considering adopting the redevelopment plan. This resolution must fix a time and place for a public

hearing and describe the boundaries of the downtown commercial area of the city and the specific area to be included in the proposed project. A copy of this resolution must be mailed to each owner and occupant of the land in the project area and to the county and school district involved. The resolution must be published for three consecutive weeks.

- Following the hearing, the city may adopt the redevelopment plan by adoption of an ordinance by a 2/3 vote. Any substantial changes in the redevelopment plan must be subject to another public hearing procedure.

- The county commission and the board of education of the school district levying taxes on the property have 30 days following the public hearing to determine if the project will have an adverse effect on them. Their finding of an adverse effect must be done by passage of a resolution which would halt the project. They need not approve the project if no adverse effect is found.

- Any city which has adopted a redevelopment plan may purchase or acquire real property. A 2/3 vote of the city's governing body is required, however, to acquire land by eminent domain.

- Relocation assistance includes payments to persons, families, and businesses who have to move. No person or families residing in the downtown project area will be displaced until suitable housing is available. Retailers shall be entitled to damages sustained due to liquidating inventories.

- The use of industrial revenue bonds in connection with this act is prohibited.

In **1979**, the law was changed by Substitute for SB 454, which amended approximately 200 statutes authorizing various ad valorem property tax levies for cities, counties, and school districts to specify that a portion of these tax moneys may be used to pay the principal and interest on bonds issued under the tax increment act. The bill requires that ad valorem property taxes levied by cities and counties under home rule must allow a portion of these taxes to be used to pay principal and interest on bonds issued under the tax increment law. It struck the term "downtown commercial areas" from tax increment law and replaced it with the term "central business district" and made various cleanup amendments. The bill was in response to a Kansas District Court decision which held the city tax increment financing law to be unconstitutional. The tax increment financing law allowed cities to acquire rundown property in their central business districts by eminent domain, if necessary, for redevelopment purposes. Cities were authorized to issue special obligation bonds to pay for the cost of the acquisition and clearing of necessary related street and municipal utility costs and other related project expenses. Developers then must buy the land and build the improvements thereon. The special obligation bonds are to be paid by the tax increment produced by the increase of assessed value over the old assessed value in the project area.

In **1982,** the law was amended by HB 3121, which authorized the creation of enterprise zones in cities to aid economically distressed areas by providing tax and other incentives for business and industrial development therein. Business and industrial development incentives available for areas designated as enterprise zones include preferences for state programs, funds and services which impact on the economic viability of the area, as well as a relaxation of state agency rules and regulations. Tax increment financing, which was available only for use in central business districts, is made available also in areas designated as enterprise zones. Eminent domain, however, can only be exercised in central business districts.

In **1984,** the law was amended by Substitute for SB 631 to authorize a second category of bonds which may be issued under the act– full faith and credit tax increment bonds. Under prior law, only special obligation bonds could be issued and the full faith and credit of the city could not have been pledged as backing for the bonds.

The bill requires that the resolution, which a city must publish giving public notice of its plans to undertake a redevelopment project, must include notice of the city's intent to issue full faith and credit tax increment bonds. A protest petition procedure was established whereby 3 percent of the qualified electors may protest the issuance of full faith and credit tax increment bonds within 60 days of the date of the public hearing thereby requiring an election on the issue. No election shall be held if either the board of county commissioners or the school board vetoes the proposed project, as either may do under the law. Failure of the voters to approve the issuance of full faith and credit tax increment bonds shall not prevent the city from issuing special obligation bonds. The amount of full faith and credit tax increment bonds outstanding which exceed 3 percent of the assessed value of the city shall be within the bonded debt limits applicable to the city.

The bill also contained a special procedure for cities (*e.g.*, Manhattan) which had already adopted a redevelopment plan under this act but had not commenced the acquisition of property. This provision permits the cities to issue full faith and credit tax increment bonds subject to a mandatory vote on the issue.

The bill also permitted cities to issue temporary notes during the progress of any redevelopment project if the city's costs would be financed in whole or in part by full faith and credit tax increment bonds.

The **1988** changed to the Act occurred in HB 2670, which made major changes to the law. The areas of cities where the tax increment law can be used were expanded to include any blighted area. Prior law was limited to central business districts and enterprise zones.

The tax increment proceeds may be obtained from all real property in a redevelopment district designated by the city governing body. Prior law limited the tax increment proceeds to real property within the redevelopment project area only.

The bill also extended the time frame under which projects must be completed to 15 years and authorized separate development stages for projects. Prior law required projects to be commenced within one year of the acquisition of property and completed within five years of the adoption of the redevelopment plan. Excess tax increment proceeds from one project within a district may be used for other projects within the district subject to the 15-year time limitation.

The bill created a two-step approval process – one for the initial establishment of the redevelopment district and the other for each specific redevelopment project to be undertaken. Both stages require notice and a public hearing. The bill also clarified and expanded the purposes for which tax increment bonds could be issued.

The **1991** changes to the Act occurred in HB 2124, which allowed for environmental remediation. The governing body of any city, which has entered into contracts with the Kansas Department of Health and Environment (KDHE) or the United States Environmental Protection Agency (EPA), may pledge tax increments receivable in future years to pay costs directly related to the investigation and remediation of environmentally contaminated areas. Contract provisions dealing with the pledging of the tax increment are exempted from requirements of the cash basis and budget laws. Projects must be completed within 20 years from the date the city enters into a consent decree with either KDHE or EPA.

A provision was added to the definition of "blighted area" to permit a tax increment financing district to be created whenever an area has been identified as being environmentally contaminated to an extent that requires further investigation or remediation. The bill also outlined four preconditions for the establishment by the city of tax increments for remediation projects in blighted areas.

Regular appraisal procedures must be used to establish fair market values of all property within the district and such values are subject to annual review as is any other property. The city is authorized to establish the increment, adjustable each year, as a percentage of not to exceed 20 percent of the amount of taxes that are produced in the redevelopment district in the year the district is established. The increment must be in an amount sufficient to pay costs anticipated to be incurred each year, including the principal and interest of any increment bonds.

The city is required to create a special fund and an annual budget for these tax increment moneys. Any moneys collected from responsible parties will either be paid into this fund, plus interest, or be distributed to parties who have entered into a contract with the city to pay part of the costs if the contract provides for their reimbursement from other third parties responsible for the contamination. Any moneys remaining after the project is completed must be returned to the city, the county, and the school district which had agreed to forego a portion of their ad valorem taxes for this project.

During **1992**, Substitute for HB 2681 created the Enterprise Zone Act, which stated that areas designated by cities as enterprise zones prior to July 1, 1992, may include redevelopment districts.

The **1996** Legislature made substantial changes to the TIF law in HB 2878 as follows:

- Expanded the definition of eligible redevelopment areas to include conservation areas; a "conservation area" is defined as any improved area within city limits in which 50 percent or more of the structures in the area are 35 years or older and which is not yet blighted but may become blighted because of a combination of two or more factors specified in the bill; however, the conservation area may not exceed 15 percent of the land area of the city;

- Extended the time frame for project completion of a redevelopment project using TIF from a maximum of 15 years to a maximum of 20 years (this is the same time frame that applies to increment financing for projects relating to environmental investigation and remediation);

- Required that increases in ad valorem taxes collected by *all* taxing subdivisions on real property located within any currently existing or subsequently created redevelopment district areas be included in the increment used to retire the bonds (under prior law, the "taxing subdivision" included only the county, the city, and the unified school district in which the redevelopment district was located);

- Permitted the use of a portion or all of the revenue received by the city from local sales tax to secure special obligation bonds for any redevelopment project (under existing law, local sales tax may only be used for the project of the magnitude identified above);

- Permitted the use of a portion or all of the increased revenue received by the city from retailers' sales tax and from franchise fees collected from utilities and other

businesses using public right-of-way within the redevelopment district to secure the special obligation bonds for any redevelopment project;

- Permitted cities and school districts to negotiate a redevelopment project in which only a portion of the increment arising from the 35 mills school levy (which is now 20 mills) is pledged to the project (under prior law, the entire increment or no increment had to be applied to such project);

- Prohibitted cities from exercising the power of eminent domain to acquire real property in a conservation area.

HB 2878 also amended the Kansas Neighborhood Revitalization Act to allow the use of tax increment financing for a dilapidated structure (defined in the bill), which is located outside of a designated revitalization area.

The act was amended during **1998** with enactment of SB 672 which caused the 20-year period allowed for the financing of a tax increment financing project to be triggered by transmittal of a redevelopment plan, or revised plan submitted under conditions specified below, to the county in which the redevelopment district is located. Under prior law, the 20-year period was triggered by the creation of a redevelopment district.

The bill authorized the City of Topeka to adopt an ordinance to revise a previously approved but dormant redevelopment plan for an area, which includes a portion of the land under the jurisdiction of the Capitol Area Plaza Authority. The bill required the city's ordinance to: revise the project areas of the previously adopted plan into one or more separate stages; fix a date of completion for each stage; and adopt, by reference, a revised plan containing specified information, including a summary of a new comprehensive feasibility study.

The **2001** Legislature made several changes to the Act in Substitute for HB 2005. Under prior law, the TIF statutes required the city to: adopt a resolution and give notice that a redevelopment district will be established; hold a public hearing on the establishment of development district; pass a resolution making appropriate findings and pass an ordinance establishing the redevelopment district; develop a redevelopment plan for the redevelopment project area, including a feasibility study, map, relocation matters, details about the buildings and facilities, and other items; have the planning commission find that the redevelopment plan is consistent with the comprehensive general plan of the city; adopt a resolution and give 30-70 days' notice that a redevelopment plan will be adopted and, if full faith and credit bonds will be issued, state that intent in the resolution; hold a hearing on the redevelopment plan; and pass an ordinance with at least a two-thirds vote adopting the redevelopment plan. Once the redevelopment plan has been adopted, the city may purchase or otherwise acquire real property. Eminent domain proceedings may be pursued (except in conservation areas) upon two-thirds vote of the governing body of the city. The redevelopment plan may be undertaken in separate stages. Projects within the redevelopment district must be completed within 20 years after the transmittal of a redevelopment plan to the county and, for environmentally-related projects, within 20 years from the date of a consent decree agreement with environmental regulators.

Most of the amendments to the TIF statutes involved reorganization or clarification. The most notable of such amendments are listed below:

- New Definition Section. A new definition section consolidated many of the specialized terms used in the TIF statutes which are, for the most part, spread throughout the statutes.

- Provisions—No Longer Relevant. Several provisions were deleted because they were no longer relevant. Specifically, these provision referring to the Topeka Capitol Complex project which was under construction.

- Consolidations. The bill consolidated the provisions related to a city's procedures for establishing a redevelopment district. The bill also consolidated the provisions related to project plans for proposed redevelopment projects, the resolution requirements, hearing requirements, post hearing procedures, and the disposition of the project once it has been approved.

- Clarification Concerning Substantial Changes to the Project Plan. The TIF statutes required notice and a public hearing if a change was made to a project plan and if that change deviated substantially from the intent of a city's comprehensive plan. The bill amended that provision to clarify that notice and hearing will be required if a proposed change causes the redevelopment district plan or project plan to deviate substantially from the approved district or project plan and not from the city's comprehensive plan.

The bill included several substantive policy amendments:

- Starting Point for Tax Increments. Under prior law, the collection of tax increments was triggered by the transmittal of a redevelopment plan. The bill made the trigger point the establishment date of the redevelopment district. The definition of the terms "tax increment" and "base year assessed valuation" in the bill clarify that intent.

- Treatment of Changes to Property Within Redevelopment Districts. The bill included procedures for treating the valuation of property that is added to or removed from a redevelopment district, or that is divided within a redevelopment district into more than one redevelopment district. The existing statute is silent concerning the valuation of remaining property within the redevelopment district when such modifications occur. Moreover, the bill defined the term *de minimus* as an amount of less than 15 percent of the land area within a redevelopment district. If the city wished to remove more than the *de minimus* amount of property from the redevelopment district or if the city wished to divide property within the redevelopment district into more than one district, a feasibility study would be required as a precondition for such action. Public notice and hearing were required if property is divided within a district into separate redevelopment districts. (Public notice and hearing is required in current law for property added to a redevelopment district and for substantial changes to the comprehensive plan.)

- Completion of TIF Project. Under prior law, the deadline for completion of a project within the redevelopment district was within 20 years from the date the redevelopment project plan was transmitted to the county. The bill amended the law to tie the completion of the TIF project to within 20 years of approval by the city of the project plan.

Again, in **2004**, with enactment of SB 235, changes were made to the TIF Act. The bill allowed a city to extend the amount of time for remediation of an environmentally contaminated area to 30 years after receiving the approval of the board of county commissioners and the local board of education. Prior law limited the amount of time to 20 years.

The final amendments were made in **2005** HB 2140, which changed the definition of "blighted area" within the TIF statutes to include property that has "a majority of the property" in a 100-year flood plain. In addition, both a Kansas certified engineer and the United States Federal Emergency Management Agency were required to identify the majority of the property as existing in the 100-year flood plain.

Also in **2005,** HB 2144 amended TIF statutes to clarify TIF statutes and amended the law so that a city may pledge all or a portion of the revenue received from local sales taxes for a local tax increment financing project.

Sales Tax and Revenue (STAR) Bonds

The first STAR bond legislation occurred in 1993 with the enacment of SB 421, commonly known as "The Wonderful World of Oz" Theme Park and Resort Sales Tax Increment Financing legislation. The bill permitted a pledge of a portion or all of revenues from sales, use, and transient guest taxes collected within that portion of a city's redevelopment district occupied by a redevelopment project to the repayment of special obligation bonds and interest thereon for the proposed redevelopment project. Such revenues must be generated from sales occurring within that portion of the redevelopment district. The bond issue was conditional upon a finding by the Secretary of Commerce and Housing that the project is of statewide as well as of local importance. This finding was based on two conclusions:

- Capital improvements costing not less than $300 million will be built in the state for the redevelopment project; and

- Not less than 1,500 permanent and seasonal positions will be created in the state by the redevelopment project.

The city is prohibited from issuing full faith and credit tax increment bonds for the proposed redevelopment project.

The bill authorized the city to enlarge enterprise zones established prior to July 1, 1992 (the date the old enterprise zone law was repealed) to encompass the proposed redevelopment project. Before such authorization is granted, the Secretary of Commerce and Housing must conclude that the project is of statewide importance and will meet the investment and job creation criteria addressed above.

The City Bond Finance Fund was established. All state sales and use taxes from sales within the redevelopment project will be credited to the fund and will be distributed to the city to pay the interest and principal of the bonds. In addition, the city will pledge all or any portion of its revenue from local sales tax and transient guest tax for that purpose.

The establishment or operation of a lottery is prohibited within the redevelopment district.

Public funds may not be used to pay the holders of special obligation bonds issued for purposes of this act in the event that there is a default in the payment of such bonds.

Finally, no assessment against a property may be made for any infrastructure construction unless that property abuts the site of the proposed redevelopment project or supporting infrastructure and it has been determined that the abutting property specifically benefits from the construction.

During **1997,** the law was amended with enactment of SB 280. Specifically, the bill authorized the use of transient guest, sales, and use tax proceeds to retire special obligation bonds issued to finance the construction of buildings or other structures to be owned by, or to be leased to, developers. (Special obligation bonds backed by this type of revenue stream often are referred to as STAR bonds.) In addition, the bill authorizes the use of proceeds of special obligation bonds (which may be backed by various revenue sources, such as property tax increments) for construction of buildings to be owned by, or to be leased to, developers. Such construction projects must occur within redevelopment districts that will include some or all of the land and buildings of Topeka State Hospital and Winfield State Hospital. (The redevelopment districts must be established as a precondition for such financing.)

Under prior law, proceeds from the sale of special obligation bonds could only be used for: property acquisition; relocation assistance payments; site preparation; specified infrastructure improvements; and all related redevelopment project expenditures. The bill has the effect of expanding the type of projects that may be financed from special obligation bond proceeds.

During 1998, Substitute for SB 675 provided an alternative site for the Oz Theme Park and Resort and amended the STAR bond statutes. The bill established a mechanism for creating a redevelopment district within federal enclaves in which STAR bonds may be used to finance "projects of statewide as well as local importance." Specifically, the federal enclaves in the bill refer to the Sunflower Ammunition site in Johnson County and the Parsons Ammunition site in Labette County. The U.S. Army would like to dispose of both these sites.

The Sunflower Ammunition site would be considered an alternative site to an area under consideration in Wyandotte County for the development of the Oz Theme Park and Resort. The bill authorized the Kansas Development Finance Authority (KDFA) to issue bonds to finance the project at the Sunflower Ammunition site because the project would be developed within a federal enclave outside city limits. Although cities are authorized under STAR bonds statute to issue bonds for projects of statewide as well as local importance (*e.g.*, the Oz project), the KDFA is authorized in the bill to issue bonds for the Oz project if the developer decides to select Wyandotte County as the project site. Therefore, the Unified Government of Wyandotte County/Kansas City, Kansas now has two options: bonds for the Oz project may be issued by Kansas City or the KDFA.

As is required in the law, the Secretary of Commerce and Housing must designate the redevelopment project as being of statewide as well as local importance as a precondition for any bond issues. To be designated as being of statewide as well as of local importance, a project at the Sunflower Ammunition site would be subject to the same capital improvement commitments (at least $300 million) and employment commitments (at least 1,500 positions) as would be required of a project within the redevelopment district of a city under TIF law. For a project at the Parsons Ammunition site, developers would have to commit to at least $5 million in capital improvements and employment of at least 150 positions.

The procedures for establishing the redevelopment district and redevelopment plan are essentially the same for projects within federal enclaves as for any project that may be

developed within a city under TIF law. Moreover, as is authorized in law, this bill allows local transient guest tax, local sales tax, and state sales and use tax revenues from the redevelopment district to be pledged to repay any bonds (sales tax and revenue or STAR Bonds) that finance a project of statewide and local importance. Bonds for this type of project could be issued for no more than 20 years (the same as in TIF law). For purposes of redevelopment projects in federal enclaves (Johnson County or Labette County), the following taxes would be levied or collected within the redevelopment district to repay the bonds issued by the KDFA for the project:

- State sales and use tax at the rate of 5.9 percent (the 1.0 percent increase over the existing state sales tax rate corresponds to the 1.0 percent city sales tax rate that would be captured if the Oz project were located in Kansas City);
- Transient guest tax at the rate of 5.0 percent; and
- Countywide sales tax at the rate of 0.5 percent, and an additional county sales tax at a rate of 0.5 percent only within the redevelopment district.

The revenues could only be levied or collected for the duration of the bond repayment but could not exceed 20 years after establishment of the redevelopment district (whichever occurs earlier).

The bill authorized the enlargement of an enterprise zone by the Unified Government of Wyandotte County/Kansas City, Kansas for the Oz project even if the enlargement extends beyond Kansas City's boundary. Under prior law, the original location for the Oz project was an enterprise zone located completely in Kansas City. The bill also requires the developer of the Oz project to reimburse, within one year of the commencement of project construction, the Unified Government of Wyandotte County/Kansas City, Kansas for cash investments in the project and for the use of the local government's employees and other resources during the course of negotiations with the developer if the developer elects to construct the project in Johnson County. The Secretary of Commerce and Housing must determine the amount of reimbursement based on documentation.

Finally, the bill clarified that the state, local units of government, and the KDFA will not assume responsibility for any environmental remediation required to be performed in any redevelopment district within a federal enclave.

Also in **1998,** the Legislature enacted HB 2631 for the Auto Race Track Facility. The bill authorized the unified government of Wyandotte County/Kansas City, Kansas to utilize 30-year special obligation bonds to finance an auto race track facility rather than the 20-year bonds otherwise authorized. However, STAR bonds, paid from sales and other excise taxes, may be issued for 30 years only if the Governor makes a finding that the longer term is necessary for the economic feasibility of the track's funding. All of the payments in lieu of taxes made by the track will go toward the bonds, financed from payments in lieu of property taxes, rather than only the increment. Further development of the major tourism area is limited to a 400-acre parcel described in the bill and would be eligible for 20-year STAR bonds, but not for TIF bonds. Qualified competitive bidding is required for the underwriting services for the bonds.

"Race track facility" is defined to include grandstands, suites and viewing areas, concessions and souvenir facilities, catering facilities, visitor and retail centers, signage, and temporary hospitality facilities, but excludes hotels, motels, restaurants, and retail facilities not included above.

Owners of property condemned for the track will receive an additional award equal to 25 percent of the compensation or damage amount otherwise determined. In condemnation proceedings for redevelopment projects other than for the auto race track, a city will be required to offer at least the highest appraised valuation determined for property tax purposes within the last three years by the county appraiser, unless the property had been damaged or destroyed by a catastrophic event. The minimum payment for relocation will be $500.

S.B. 76, enacted by the **1999** Legislature, expanded the application of STAR Bond financing, to buildings designated as historic theaters. The bill defines "historic theater" as a building constructed prior to 1940, which was constructed for the purpose of staging entertainment, including motion pictures, vaudeville shows, or operas. The building must be owned and operated by a nonprofit corporation. Moreover, the building must be designated by the State Historical Preservation Officer as eligible to be enrolled on the Kansas Register of Historic Places or it must be a member of the Kansas Historic Theatre Association.

The bill authorized a city to designate a building to be an historic theater if the city and the Secretary of Commerce and Housing agree that the building satisfies the definition of "historic theater" and will have a significant impact on the city and surrounding area.

H.B. 2166, also enacted by the **1999** Legislature, amended the Oz Theme Park and Resort legislation enacted in 1998, which established a mechanism for creating development districts within federal enclaves. In those enclaves (Johnson County and Labette County), tax increment financing may be used to finance "projects of statewide as well as local importance." Although not explicitly stated anywhere in the bill, the intended "project of statewide as well as local importance" is the proposed Oz Theme Park and Resort to be developed on the Sunflower Ammunition site in Johnson County. Most of the same provisions in this bill applied to any future project developed on a federal enclave in Labette County that meets certain capital improvement and employment commitments. As authorized in the 1998 legislation, STAR Bonds may be issued by the KDFA for the Oz project. H.B. 2166:

- Extended the maximum maturity of bonds associated with projects of statewide as well as local importance (hereafter referred to as the Oz project) from 20 to 30 years from the issuance of the first series of bonds to finance the project. Under prior law, the duration of the bonds was tied to the establishment of the redevelopment district.

- Excluded the proceeds from the mandatory school finance tax levy, including local property tax levies issued by or on behalf of school districts, as revenue sources to repay the bonds to be issued by the KDFA.

- Prohibited any economic development property tax abatement granted to the Oz project developer from capturing revenue from the DeSoto school district.

- Increased the state sales and compensating use tax rate within a redevelopment district containing the Oz project from the previously authorized rate of 5.9 percent to 6.9 percent. The term of the additional tax will be limited until the earlier of two dates—when the bonds have been fully paid or the date of the final scheduled maturity of the first series of bonds issued for the project. The same limitation will be applied to the 5.0 percent transient guest tax authorized in the 1998 legislation as one of the revenue sources to repay the bonds.

- Authorized KDFA to form a subsidiary corporation—the Kansas Statewide Projects Development Corporation—for the purpose of acquiring or conveying property, issuing bonds, or otherwise financing the Oz project on behalf of the state.

- Conditioned establishment of the redevelopment district in which the Oz project would be located upon approval by the Johnson County Board of Commissioners of the redevelopment agreement between the Oz Entertainment Company and the KDFA.

- Required the developer, as a precondition for taking legal title to the land for the development of the Oz project, to enter into a consent decree agreement with the Kansas Department of Health and Environment or the Environmental Protection Agency. In this agreement, the developer must consent to be responsible for and complete the remediation of all environmental contamination on the land according to established standards and levels for appropriate property uses. Any portion of the land which the federal government has agreed to remediate, subject to an agreement approved by the Governor, will not have to be remediated by the developer. The agreement also must include prepaid third-party financial guarantees to the state or KDFA. These guarantees must be sufficient in form and amount to ensure that the developer will complete the remediation of all the land as required in the agreement.

- Required, as a precondition for taking title to the land, that the state or KDFA obtain the written opinion of a competent attorney specializing in environmental law regarding the state's potential liability resulting from taking title, possession, or otherwise exercising control over the land. The 1998 legislation already expressly precludes the state, any of its political subdivisions, KDFA, or any local governmental unit from assuming responsibility for any environmental remediation to be performed within the redevelopment district in which the Oz project would be located.

- Required that any redevelopment plan for the Oz project must be adopted prior to July 1, 2001.

- Limited the use of bond proceeds for payment or reimbursement of project costs, if bonds have been paid before completion of the project, to any purpose identified in the redevelopment agreement between the Oz Entertainment Company and KDFA.

- Provided that any revenues not needed or committed for the payment of bonds or other project costs, as authorized by the redevelopment agreement, must be remitted by the State Treasurer to the appropriate taxing authorities. KDFA must approve those remittances.

- Amended the 1998 legislation to accurately reflect legislative intent concerning compensation by the Oz developers to the Unified Government of Wyandotte County for expenses incurred by the county for the project.

During **2001**, the Legislature enacted HB 2005, which allowed bond financing for the OZ, NASCAR, and multi-sport facility projects financed up to 30 years. The bill deleted the OZ provision

which placed the project in Wyandotte County (at that time the project had moved to DeSoto in Johnson County); and consolidated existing provisions relating to the NASCAR project.

Also enacted during **2001** was HB 2573, which amended two statutes related to requirements governing the developer of the Oz Entertainment Company, Inc. As a precondition for issuing STAR bonds, the Kansas Development Finance Authority must adopt a redevelopment plan of the proposed Oz Theme Park project. The statutorily-prescribed deadline for adoption was July 1, 2001. The bill extended that deadline to July 1, 2002, if the developer of the Oz Entertainment Company, Inc. had reimbursed the Unified Government of Wyandotte County for cash investments in the project within 120 days after July 1, 2001. The developer was required under prior law to reimburse the Unified Government within one-year of commencement of project construction.

During **2003**, Substitute for HB 2208 was enacted that provided for statewide STAR bond authority for special bond projects of regional or statewide importance. The bill defined a special bond project as a project with at least a $50,000,000 capital investment and $50,000,000 in projected gross annual sales revenues. The bill includes in this definition projects located outside of metropolitan statistical areas, which have been found by the Secretary of Commerce to be in an eligible area under TIF law and of regional or statewide importance. The bill specifically excluded a project including a gambling casino from the definition of special bond project.

The bill modified prior law as it relates to areas eligible for STAR bond financing to include a major commercial entertainment and tourism area as determined by the Secretary of Commerce. The bill also included a major multi-sport athletic complex in the definition of major commercial entertainment and tourism area.

Under the bill, river walk canal facilities are included in the list of redevelopment project costs which may be financed by STAR bonds.

The bill allowed the governing body of a city to establish one or more special bond projects in any area in the city. Under the bill, special bond projects are eligible for financing by special obligation STAR bonds. However, each special bond project must be approved by the Secretary of Commerce, based on the required feasibility study, prior to utilizing STAR bond financing. This includes a special bond project located in a redevelopment district established by a city prior to the effective date of the act. If the project plan involves a redevelopment project in Wichita including an arena, a vote of the citizens of Wichita is necessary before the Secretary may approve the special bond project for STAR bond eligibility. A special bond project may not be approved by the Secretary if the required marketing study indicates a substantial negative impact on existing businesses in the projected market area or if granting the special bond project would cause a default in the payment of any outstanding STAR bonds.

The bill requires that 100 percent of local sales taxes be pledged to fund the special obligation bonds except for those amounts committed to other use by election of voters prior to the effective date of the act.

A provision was included in the bill which prohibited a business from benefitting from STAR bond legislation if it relocated from an area in Kansas and within 50 miles of the major commercial, entertainment, and tourism area.

Under the bill, the maximum maturity of special obligation STAR bonds may not exceed 20 years.

The bill set out procedures for undertaking a special bond project, including the requirements for preparing a project plan, holding a hearing on the plan, and the adoption of the project plan. Under the bill, any project was required to be completed within 20 years from the date of the approval of the project plan. One of the required components of the project plan is a feasibility study showing whether a special bond project's benefits and tax increment revenue and other financing are expected to be sufficient to pay for the special bond and the effect, if any, the special bond project will have on any outstanding STAR bonds. Another component of the project plan was a marketing study conducted to examine the impact of the special bond project upon similar businesses in the projected market area.

The developer of a special bond project is required to commence work on the project within two years from the date of adoption of the project plan. If the developer does not commence work on the project within the two-year period, funding for the project ceases and the developer has one year to appeal to the Secretary of Commerce for reapproval of the project. If the project is reapproved, the two-year period for commencement applies.

The bill required that Kansas resident employees be given priority consideration for employment in construction projects located in a special bond project area.

The bill allowed the State Treasurer to place state sales tax increment moneys from taxpayers doing business with entities financed by a special bond project into the City Bond Finance Fund.

The bill required Kansas, Inc. to include an analysis of STAR bonds in that agency's annual report on the cost effectiveness of economic development tax exemptions and credits.

The STAR bond authority provided for special bond projects under the bill will sunset on July 1, 2007.

SB 395, enacted by the **2004** Legislature, amended the law to allow any redevelopment district established prior to January 1, 2003, to continue to receive transient guest, sales and use taxes from taxpayers, whether or not revenues from such taxes are received by the city.

In addition, the bill included the following components:

- STAR bonds could not be used to finance personal property as defined in the state's property tax laws after the effective date of the act.

- Redevelopment districts could be established wholly outside of a city's boundaries with the written approval of the county commission.

- The Department of Commerce is given the authority to adopt rules and regulations.

- Tax increment financing bonds are made payable from all of the revenues received by the city or county from any transient guest, local sales and use taxes which are collected from taxpayers doing business within that portion of the city's redevelopment district.

- A city that owns a building or structure that was financed in whole or in part by STAR bonds is allowed to engage a manager to manage such building or

structure and the contractual relationship will not be deemed as a lease to a developer as defined in the tax increment financing laws.

- A city that exercises eminent domain to acquire property must compensate the property owner at least 125 percent of the highest appraised valuation based on the prior three years' evaluation.

- All cities that have projects financed with STAR bonds are to prepare and submit an annual report to the Governor; the Secretary of Commerce; Kansas, Inc.; and the Legislature by October 1 of each year that describes the status of any projects within the redevelopment area.

During the 2005 Session Substitute for HB 2144 amended STAR bonds law. The changes are as follows.

- The bill amended the STAR bond statutes to add "major motorsports complex" to the list of projects eligible for STAR bonds. The definition of "major motorsports complex" specifies that it is a project located in Shawnee County. In addition, STAR bonds for the major motorsports complex could be used to finance a maximum of 50 percent of the redevelopment project costs.

- The feasibility study for STAR bonds requires the following information:

  - Description of the project;

  - A statement of how the jobs and taxes obtained from the project will contribute significantly to the economic development of the state and region;

  - A statement concerning whether a portion of the local sales and use taxes is pledged to other uses and unavailable as revenue for the redevelopment project. If a portion of local sales and use taxes is committed, the applicant will describe the following:

    - The percentage of sales and use taxes collected that are committed; and

    - The date or dates on which the local sales and uses taxes pledged to other uses can be pledged for repayment of STAR bonds;

- An anticipated principal and interest payment schedule on the bonds;

- Following approval of the redevelopment plan, the feasibility study will be supplemented to include a copy of the minutes of the governing body meeting or meetings of the city whose bonding authority will be utilized in the project, to show that the redevelopment plan has been created, discussed, and adopted by the city in a regularly scheduled open public meeting.

- For a proposed major commercial entertainment and tourism area applying for STAR bonds, the feasibility study will be required to also include:

  - Visitation expectations;

- Economic impact;
- The unique quality of the project;
- The ability of the project to gain sufficient market share to remain profitable past the term of repayment and maintain status as a significant factor for travel decisions;
- Integration and collaboration with other resources or businesses;
- The quality of service and experience provided, as measured against national consumer standards for the specific target market;
- Project accountability, measured according to best industry practices; and
- The expected return on state and local investment that the project is anticipated to produce.

- The failure to include all information required in the feasibility study for a redevelopment project will not affect the validity of the bonds issued pursuant to the Act.

- The definition of redevelopment project costs is amended to mean those costs necessary to implement a redevelopment project plan or a bioscience development project plan including costs incurred for:
  - Acquisition of property within the redevelopment project area;
  - Payment of relocation assistance for persons dispossessed of ownership of property in a redevelopment district;
  - Site preparation including utility relocations;
  - Sanitary and storm sewers and lift stations;
  - Drainage conduits, channels, levees, and river walk canal facilities;
  - Street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing;
  - Street light fixtures, connections, and facilities;
  - Underground gas, water, heating and electrical services and connections located within the public right-of-way;
  - Sidewalks and pedestrian underpasses or overpasses;
  - Drives and driveway approaches located within the public right-of-way;
  - Water mains and extensions;

- Plazas and arcades;
- Parking facilities;
- Landscaping and plantings, fountains, shelters, benches, sculptures, lighting, decorations and similar amenities; and
- Related expenses to redevelop and finance the redevelopment project, except that for a redevelopment project financed with STAR bonds, such expenses will require prior approval by the Secretary of Commerce.

- The bill prohibited the use of STAR bond proceeds from being spent on the construction of buildings or other structures to be owned by or leased to a developer; however, the "redevelopment project costs" could include costs incurred in connection with the construction of buildings or other structures to be owned or leased to a developer which includes an auto race track facility. In addition, proceeds could not be available for:
  - Fees and commissions paid to real estate agents, financial advisors, or any other consultants who represent the businesses considering locating in a redevelopment district;
  - Salaries for local government employees;
  - Moving expenses for employees of the businesses locating within the redevelopment district;
  - Property taxes for businesses that locate in the redevelopment district;
  - Lobbying costs; and
  - Bond origination fees paid to the city.

- The auto race track facility and the 400-acre area were limited to no more than $308,000,000 of STAR bonds. However, bonds issued solely for the purpose of refunding STAR bonds required approval of both the Secretary of the Department of Commerce and the Secretary of the Department of Revenue prior to issuance. If the project required additional STAR bond funding, the Unified Government of Wyandotte County was required to reapply to the Secretary of Commerce. Under prior law, the auto race track facility had no limit on issuing STAR bonds.

- Any city approved for a STAR bond project is required to prepare and submit an annual report of the status of any STAR bond project, describing the status of the project and any expenditures of the proceeds of the bonds that have occurred since the last annual report and any expenditures of the proceeds expected to occur in the future, to the Department of Commerce on October 1. The Department of Commerce was required to compile the information and submit a report annually to the Governor; Kansas, Inc.; and the Legislature by February 1 of each year about all STAR bond projects. The reporting requirement also applied to the auto race track project.

- Relocation payments made to persons, families, and businesses who move from real property located in the redevelopment district or who move personal property from real property located in the redevelopment district due to the acquisition of the real property by the city is considered relocation assistance.

- The Secretary of Commerce was required to set a limit on the total amount of STAR bonds that may be issued for any redevelopment project.

- The bill also required an independent certified public accountant annually audit each project at the expense of the city. Any unauthorized payments will be repaid to the bond fund through an agreement with the Department of Revenue.

Finally, during the **2006** Legislative Session, SB 324 was enacted which changed the eminent domain requirements for STAR bond statutes. The bill required that:

- Any property acquired by use of eminent domain that is sold, transferred, or leased to a developer for a specific redevelopment project could only be used for the specific approved redevelopment project.

- If the developer does not utilize the entire tract of the property acquired, that portion of property not used could not be sold, transferred, or leased by the developer to another developer or party, but only deeded back to the city.

    - If the developer paid the city for the land, a percentage of the original purchase price paid to the city which represents the percentage of the entire tract being deeded back would be reimbursed to the developer.

- Any transfer by the redevelopment project developer of property acquired by eminent domain would require a two-thirds majority vote of the elected governing body of the city.