AMERICAN PLANNING ASSOCIATION
ST. LOUIS METROPOLITAN SECTION

EAST-WEST GATEWAY COUNCIL OF GOVERNMENTS

AND THE

UNIVERSITY OF MISSOURI-ST. LOUIS

CHANCELLOR'S CERTIFICATE PROGRAM
IN
PLANNING AND ZONING

✦ ✦ ✦

MODULE 9

DEVELOPMENT FINANCING

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January 25, 2012

APA MODULE 9 – DEVELOPMENT FINANCING

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I. TOOLS FOR PLAN IMPLEMENTATION AND LOCAL PROJECT FINANCING.

A. OPTIONS: WHO PAYS?

1. **Taxing Power.** Use of tax revenue typically provides that the general public shares the cost of local project financing. Use of property and sales taxes provide the broadest "spread" of costs because the burden falls indiscriminately on all taxpayers. This burden may be limited, however, through the adoption of special taxes applicable to specified geographic areas. By way of illustration, under the "Hancock Amendment" to the Missouri constitution, such levies must be authorized by voter approval. In theory, activity or "excise" taxes place the cost burden on those taxpayers who actually derive use from or participate in the financed improvement. Again, in Missouri, "Hancock Amendment" voter approval requirements apply.

2. **Police Power.** Municipal "police power" or regulatory authority may also be employed to achieve development ends. For example, where applicants seek municipal land use approvals or rezonings, development agreements provide a means to obtain a "quid pro quo." The voluntary nature of such development agreements further insulates against challenges of arbitrary actions. *See e.g., §70.240 Mo. Rev. Stat.* In Missouri, even where voluntary compliance is not available, zoning approvals may be conditioned on dedications of property or payment of levies by the applicant. Such exactions must be reasonably attributable, however, to the impact of the proposed development. *Home Builders Ass'n of Greater Kansas City v. City of Kansas City, 555 S.W.2d 832 (Mo. 1977) (en banc); State ex rel. Noland v. St. Louis County, 478 S.W.2d 363 (Mo. 1972).* Further, exactions must be imposed on all similarly situated applicants. *State ex rel. Rhodes v. City of Springfield, 672 S.W.2d 349 (Mo. Ct. App. 1984).* Finally, municipalities may obtain recoupment of monies expended through the imposition of regulatory fees or charges. In Missouri such charges must be limited, however, to an approximation of the actual cost of the regulatory action to avoid violation of the "Hancock Amendment." *See e.g., Larson v. City of Sullivan, 92 S.W.3d 128 (Mo. Ct. App. 2002) (upholding sewer tap-in and inspection fees against "Hancock" challenge); Ashworth v. City of Moberly, 53 S.W.3d 564 (Mo. Ct. App. 2001) (upholding housing inspection fees where evidence demonstrated that administrative costs exceeded revenues collected).* Police power mechanisms have the effect of shifting the burden of development from the general public to the developer/applicant. Often, however, these costs are ultimately shifted to the "end" consumer.

3. **Special Districts and Self Taxing Mechanisms.** Various special taxing districts provide means whereby the user of the service or improvement (or, in the case of additional local sales taxes or assessments, the ultimate consumer) bears a portion of the cost burden. A variety of such vehicles exist under both Missouri and Illinois law, some of which are reviewed below.

a. Neighborhood Improvement District Act ("NID"). In Missouri, a neighborhood improvement district or "NID" describes a designated area targeted for specific public improvements that are financed by special assessments levied upon benefiting properties. *See Mo. Rev. Stat. §§67.453-475.* As "special assessments" (as differentiated from taxes), these levies are not subject to "Hancock Amendment" limitations. *See Zahner v. City of Perryville, 813 S.W.2d 855 (Mo.1991) (en banc).* Public improvements for which special assessments may be levied include maintenance and renovation of existing public facilities as well as new construction. In addition to labor and material expenses, eligible costs include property acquisition, planning and design fees, underwriters' costs, attorney fees, and construction interest. The city or county may also include its own administrative expenses and project supervision costs. The NID Act also permits local issuance of general obligation bonds. Municipalities may combine improvements and individual projects in multiple districts within a single bond issue, thus reducing costs of issuance. Total indebtedness for neighborhood improvement district projects may not exceed 10 % of the assessed valuation of all taxable property within the city or county. The NID Act provides two independent procedures for establishing neighborhood improvement districts. A district may be established by approval of the qualified voters residing in the proposed district. The required percentage of voter approval equals that required for the issuance of general obligation bonds. Alternatively, a district may be established upon petition signed by at least two-thirds of the owners of property located within the proposed district. Upon requisite voter approval or filing of a petition, the governing body, by ordinance or resolution, may establish the district and direct preparation of improvement plans.

b. Community Improvement District Act ("CID"). The Missouri General Assembly created in 1997 and then recreated in 1998 the community improvement district, or "CID," another class of special purpose, self-taxing district. Once established, CIDs enjoy broad authority to levy and collect special assessments and taxes, to fix and collect fees for use of CID properties, to construct and maintain a variety of public improvements, to support business activity and economic development within district boundaries, and to issue tax exempt revenue and general obligations. *§§67.1461, 67.1491 Mo. Rev. Stat.* Authority to establish a CID has been limited to counties, cities located within first or second class counties, and the City of St. Louis. A CID may be established upon receipt of a petition signed by owners of real property representing more than 50% of the assessed valuation within the proposed CID boundary, which must be contiguous, and over 50% per capita of all property owners within the CID. *§67.1421 Mo. Rev. Stat.* The petition must contain a five-year plan and cost estimates for services and improvements to be provided the CID and must state the maximum rate of real property taxes that may be submitted for voter approval, the maximum rate for special assessments, and the limitations, if any, on district borrowing. *Id.* A CID may be organized as either a political subdivision or as a not-for-profit corporation. If the not-for-profit corporation form is desired, the corporation must be formed prior to the submittal of the petition to the municipal or county clerk. *§67.1411.4 RSMo.* Not-for-profit corporation CIDs enjoy the same authority as their political subdivision counterparts with the exception of the power to levy voter-approved real property taxes. Like political subdivision CIDs, however, not-for-profit CIDs may levy special assessments by petition and may issue bonds and similar obligations. *See §§67.1491-1501, 67.1521 Mo. Rev. Stat. (See also, Section 3e., supra, for Special Service Areas, an Illinois counterpart to community improvement districts).*

c. Transportation Development District Act ("TDD"). Similarly, the Transportation Development District Act, §§238.200-275 *Mo. Rev. Stat.*, provides for cooperation between a locally established special purpose district and political subdivision and the Missouri Highways and Transportation Commission ("MHTC") to "fund, promote, plan, design, construct, improve, maintain, and operate" one or more transportation related improvements or infrastructure. In particular, MHTC encourages applications by TDDs for the Missouri Department of Transportation's Innovative Finance program for development and maintenance of approved projects. To fund proposed projects, TDDs may levy special assessments, or property taxes and sales taxes, subject to approval of voters within the district. *§§238.227-235 Mo. Rev. Stat.* Additionally, TDDs may borrow funds, enter into lease-purchase arrangements, or issue bonds, notes or similar obligations. The TDD may secure the obligations by pledging district property or income. *§238.240 Mo. Rev. Stat.* Formation of a TDD requires a petition to the applicable circuit court by 50 registered voters within the proposed district, by all of the property owners within the district if the proposed TDD contains no registered voters, or by the governing body of any county, city, town, village, or any similar entity. *§238.207 Mo. Rev. Stat.*

d. Business Districts. Any Missouri city may, by action of its governing body, establish a special business district for specified areas in the city, subject to the approval of the electors within the area of the proposed district. *§71.800 Mo. Rev. Stat.* The purpose of the law is to provide power to districts to levy special fees and taxes in each district for the maintenance and improvement of the special business district. The special business district authorized by this law is in the nature of other special benefit districts discussed above. In the business district, real property owners may be taxed on an ad valorem basis and businesses by a license tax. The taxes and fees may be used for the purpose of maintaining and improving public facilities in the district and also for the purchase, construction and operation of buses, parking facilities, and child day-care, as well as for other purposes detailed in *§71.796(1)-(14) Mo. Rev. Stat.* Discretion as to expenditures remains with the local governing body, which appoints a commission or advisory board to make recommendations as to expenditures and uses. The governing body is prohibited from decreasing services in effect prior to establishment of the district and from using district funds for continuing that prior level of services in the district. The findings of the benefits to be derived by the district, as set out in the ordinance, "shall be conclusive." *§71.808, Mo. Rev. Stat.* The discretion as to use of the tax revenues remains with the local governing body. The district board or commission may make recommendations as to use of the revenues. The district may also issue general obligation bonds for up to 20 years and revenue bonds for up to 50 years, if authorized by the local governing body. The general obligation bonds may pledge the district taxes and require approval of two-thirds of the voters in the district voting in an election. Revenue bonds require only the approval of the governing body, but proceeds may be used only for the cost of acquiring, constructing, improving, or extending revenue-producing facilities and only the revenues of such facilities may be used to retire these bonds. All bonds may be sold at private or public sale.

Business Districts may similarly be established by the governing body of an Illinois city. *65 ILCS 5/11-74.3.* Establishment of a District under Illinois' Business District Development and Redevelopment Act provides a significant source of development financing assistance in the form of a 1% sales tax and a 1% hotel tax that may be imposed

for a period of up to 23 years. These taxes are in addition to all existing retail occupation and service taxes and home rule sales taxes. Revenue from the taxes is deposited in a special "Business District Tax Allocation Fund" and can be pledged to secure notes of bonds to finance District improvements. Parcels included within the Business District must be contiguous and be "directly and substantially" benefited by the activities of the District. To establish a District, the governing body of the city must determine that the proposed District area is "blighted." *65 ILCS 5/11-74.3-5(2).* The criteria for determining "blight" under applicable law, however, is similar to that used for Missouri's Urban Redevelopment Corporations Law (*see Section 4a., supra)* and is <u>much</u> less rigorous than blighting criteria under Illinois TIF. A city must also determine that, "but for" the establishment and operations of the Business District, the area will not experience adequate growth and development through private investment. Procedural requirements include preparation of a specific development plan for the District that describes boundaries, specifies each project to be undertaken and estimates project costs, and specifies proposed tax rates. At least two (2) public hearings are required.

e. <u>Special Service Areas</u>. Illinois law (the closest Missouri counterpart is the CID) defines a special service area ("SSA") as an area of differential taxation that provides a financing mechanism to fund a wide range of "special services," including physical improvements. *Ill. Const., art 7; §§6-7; ILCS 200/27-5 (the "Special Service Area Tax Law").* SSAs can and have been used to fund water lines, sewerage, streets, sidewalks, street lights, and even shopping malls. *See 65 ILCS 5/9-1-1 (extending the scope of permissible activities to "improvements" under art. 9 of the Illinois Municipal Code).* These "special" services must, however, be different in quality or quantity from services generally rendered within the municipality. SSAs may be applied to commercial or industrial development as well as new and, in certain limited cases, existing residential areas. Establishment of an SSA permits the levying of additional real property or other types of taxes (including sales taxes). In turn, this stream of enhanced tax revenue may be pledged to secure independent Special Service Area notes or bonds to finance the improvements. The Special Service Area Tax Law places no express limits on potential levies other than that the rate or resulting amount must be sufficient to provide the special services or improvements. Procedural requirements are limited and allow for expeditious establishment of an SSA. Unlike other Illinois redevelopment incentive programs, no finding of "blight" is required. Thus the SSA has broad application. Although the SSA must be "contiguous," Illinois decisions permit considerable latitude. *See e.g., Hiken Furniture v. City of Belleville, 368 N.E.2d 961 (Ill. Ct. App. 1997); Grais v. City of Chicago, 601 N.E.2d 745 (Ill. App. Ct. 1992).* Similarly, although some relationship must be shown between levy amounts and the benefits conferred on individual properties, only "unjust and irrational" disparities are prohibited. *Ciacco c. City of Elgin, 407 N.E.2d 108 (Ill. App. Ct. 1980).* Indeed, parcels may be included within the SSA even where only indirect benefits are derived. A single property owner may initiate the SSA process or the municipality itself may do so. No development plan and only one public hearing is required. Following the hearing, however, a 60-day "veto" period tolls, in which a petition to prevent the formation of the proposed SSA may be filed. To be effective, however, the "veto petition" requires 51% of registered voters <u>and</u> 51% of record owners of land included within proposed SSA. In most cases, the SSA may be established immediately after the 60-day tolling period.

4. Economic Development Incentives/Public-Private Partnerships. Other mechanisms provide incentives that can be leveraged against desired improvements or development types. Such mechanisms are in the nature of a true partnership in which the local government offers a tangible benefit in return for desired development. Examples of this approach are reviewed below.

a. Urban Redevelopment Corporations Law ("353"). The Urban Redevelopment Corporations Law ("Chapter 353") authorizes establishment of private corporations for the public purpose of the promotion of the public safety, health, and welfare by the planning, clearing, construction, or rehabilitation of "blighted" areas. *§353.030[11] Mo. Rev. Stat. See also, Council Plaza Redevelopment Corp. v. Duffey, 439 S.W.2d 526 (Mo. 1969).* Chapter 353 is now available to "any city within this state" where a local determination is made that an area within the city is "blighted." *See §353.020(3) Mo. Rev. Stat.* As a result of recent decisions construing Chapter 353 "blight," this determination must be supported by evidence of both "social" and "economic" conditions which are "conductive to ill health, transmission of disease, crime, or an inability to pay reasonable taxes." *Centene Plaza Redevelopment Corp. v. Mint Properties, 225 S.W.3d 431 (Mo. 2007) (en banc).* Chapter 353 expressly permits inclusion in redevelopment plans, however, areas that are not, of themselves, "blighted" so long as inclusion is required to accomplish the objectives of the plan for the improvement of the total plan area. *§353.020(1) Mo. Rev. Stat.* Thus, the redevelopment area may be very large or as small as a single lot or building. *Crestwood Commons Redevelopment Corp. v. 66 Drive-In, Inc., 812 S.W.2d 903 (Mo. Ct. App. 1991).* Typically, where private developers control the 353 corporation, activities are confined to a specific project location. More recently, however, municipalities such as Dardenne Prairie, Louisiana, Moberly, and Bowling Green have established their own "umbrella" corporations to facilitate economic development and redevelopment at various locations within the community, as well as to eliminate repetitive costs and to facilitate citywide redevelopment goals. The approving governing body must give notice by publication and hold a public hearing on any proposed redevelopment project and grant of tax abatement. *See §353.060 Mo. Rev. Stat.* Further, the language of this section implies a requirement for public hearing even where an existing, approved redevelopment project contemplates a new or amended grant of tax abatement. The grant of tax abatement involves a cap or limitation on future assessed valuations of affected real property within the redevelopment area. *See §353.110, Mo. Rev. Stat.* Thus the effect of the tax abatement is not limited to municipal levies and extends to the real property levies of the state and of all political subdivisions. *Id.* Notably, however, the local governing body retains sole discretion to approve the proposed redevelopment and associated tax abatement. Because tax abatement affects existing, as well future, real property improvements, potential exists for resultant net losses of tax revenues where abated properties contain significant existing improvements. To offset this potential loss, municipalities typically require imposition of "payments in lieu of taxes" in amounts equal to the difference between the taxes on the land and the taxes on the land and improvements prior to acquisition by the redevelopment corporation. Such payments in lieu of taxes are imposed by agreement between the local government and the developer. *§353.110.4 Mo. Rev. Stat.* Chapter 353 requires that payments-in-lieu be collected in the same manner and distributed to affected taxing jurisdictions in the same proportion as real property taxes. The practical effect of this provision is the "freezing" of tax revenues on the property at its pre-redevelopment level for the abatement period.

b. Real Property Tax Increment Allocation Redevelopment Act ("TIF"). In both Missouri and Illinois, each state's respective Real Property Tax Increment Allocation Redevelopment Act authorizes the use of tax increment allocation financing, popularly known as "TIF." *See §§99.800-65 Mo. Rev. Stat.; 65 ILCS 5/11-74.4-1.* TIF differs from tax abatement programs in that taxes continue to be paid on the redevelopment project, but the amount of resultant increases in tax revenue are "captured" and used by the sponsoring municipality to pay various costs of the project. Because the captured revenues are limited to incremental increases in real property and, in Missouri, "economic activity taxes" such as sales tax, affected taxing jurisdictions continue to receive the amount of revenue that they received from the designated area prior to the adoption of TIF. For example, the Missouri TIF Act targets two sources of revenue: (i) payments in lieu of taxes ("PILOTs") reflecting levies on increased real property valuation resulting from the redevelopment project, and (ii) economic activity taxes ("EATs") representing fifty percent of increased revenues from levies of sales taxes and certain other transactional taxes within the redevelopment project area. Both the Illinois and Missouri TIF Acts require that local collecting entities allocate and pay over TIF revenues to the municipality. The revenues are then deposited into a "special allocation fund" established by the municipality. Funds deposited in the special allocation fund may secure bonds, notes or other obligations issued by the municipality to finance designated redevelopment project costs. TIF may be used to finance costs of land acquisition, infrastructure improvements, renovation of buildings, acquisition of machinery, equipment costs, professional services fees, and, within certain limitations, interim project financing. As a redevelopment tool, TIF provides several advantages. Use of TIF bonds provides the municipality and the redeveloper with available funds at the inception of the project, when most needed. In both Missouri and Illinois, TIF provides for direct representation of all affected taxing districts on a commission or review board that is empowered to review and recommend TIF proposals to the municipal governing body. Finally, TIF permits use of eminent domain as a tool to facilitate property acquisition and assembly. Recent Missouri courts have taken fairly expansive view of the applicability of TIF. In *JG St. Louis West Limited Liability Company v. City of Des Peres and West County Center, LLC, 41 S.W.3d 513 (Mo. Ct. App. 2001)* for example, the Court of Appeals upheld a determination that the West County Center shopping mall in the City of Des Peres was an "economic liability." Among other blighting factors presented, obsolete planning inhibited growth and development; improper subdivision of plated lots constrained the mall's ability to expand; deterioration in a water line could endanger the mall property in the event of a fire; the mall faced a decline in sales (and corresponding sales tax generation for Des Peres); and it was not keeping its value relative to neighboring properties. *Id. at 518-519.*

c. Enhanced Enterprise Zones. In Missouri, statutes authorizing Enhanced Enterprise Zones ("EEZs") permit a combination of abatement of ad valorem taxes on improvements to real property with state tax credits to promote new or expanding businesses within areas designated by the local governing body and approved by the Missouri Department of Economic Development ("DED") as an EEZ. *§§135.950-73 Mo. Rev. Stat.* Additionally, all enterprise zones established pursuant to *§§135.200 et seq. Mo. Rev. Stat.* before January 1, 2006, are permitted to receive the tax benefits of an EEZ. The utility of EEZs is relatively limited in scope as an area must meet somewhat stringent demographic criteria establishing that the area is subject to blight, high unemployment, and

low earnings, among other factors. *See §135.953 Mo. Rev. Stat.* for eligibility criteria. Furthermore, "enhanced business enterprises" that may take advantage of the EEZ program do **not** include retail trades, food, or drinking establishments, or service industries that do not derive a majority of annual revenues from out of the state, among other businesses. Eligible "enhanced business enterprises" are industries (or clusters of industries) that are either "[i]dentified by the [DED] as critical to the state's economic security and growth" or "[w]ill have an impact on industry cluster development, as identified by the governing authority...and approved by the [DED]." The Missouri EEZ program offers whole or partial abatement of all ad valorem taxes on improvements to real property made subsequent to the designation of the area as an EEZ. Exemptions from ad valorem taxes may be granted on a case-by-case basis by resolution of the governing authority having jurisdiction. EEZs are designated for a period of 25 years beginning upon DED approval and no tax abatement may extend beyond this period. While tax abatement may last the entire 25-year term and may exempt 100% of ad valorem taxes on subsequent improvements to real property, authorizing statutes require a **minimum** abatement of at least 50% of the ad valorem taxes imposed on subsequent improvements to real property in the EEZ for at least 10 years. As for the other component of the EEZ program, state tax credits, the amount of tax credits issued to a business owner in an Enhanced Enterprise Zone is based on the number of new employees created within the EEZ and the amount of new business facility investment within the EEZ. New business owners and existing owners of expanded business facilities can claim tax credits for up to 10 years and these credits can be sold or transferred, but cannot be carried forward. Total tax credits authorized by the DED are limited to $24,000,000 annually.

Illinois offers a similar program through the Illinois Enterprise Zone Act, *20 ILCS 655/1 et seq.*, which authorizes various state and local tax incentives and regulatory relief to encourage businesses to locate or expand within specifically designated, economically depressed areas of the state. State incentives include state tax sales exemptions for certain materials and equipment, state utility tax exemptions, tax credits for capital investment and jobs created in the Enterprise Zone, and tax deductions for certain types of income derived from Enterprise Zones. Each of these incentives may be subject to separate eligibility requirements. In addition, local incentives are offered at the election of the local governing body and differ in each Enterprise Zone. A common local incentive is tax abatement of a taxing district's property tax under *35 ILCS 200/18-170*. This tax abatement may in whole or partial but is limited to the amount attributable to the construction of improvements and the renovation or rehabilitation of existing improvements on a parcel. This tax abatement differs from the tax abatement offered in the Missouri EEZ program in that each Illinois taxing district can only elect to abate its own taxes under *§18-170*, in contrast to the "all inclusive" grant available in Missouri. Illinois Enterprise Zones are initially designated by local governing bodies by ordinance. Local governing bodies then apply to the Illinois Department of Commerce and Community Affairs ("DCCA") for certification. Enterprise Zones may last no longer than 30 years and the total number of Enterprise Zones that may be certified by the DCCA is limited by statute.

d. Economic Incentive Agreements. Illinois expressly authorizes cities to offer a rebate of local sales taxes and other city levies generally on a pay-as-you-go basis to assist approved development projects. *See 65 ILCS 5/8-11-20.* Requirements are quite simple. The levying municipality may enter into a written development agreement with the

prospective developer which specifies the terms and time limits of the rebate and of the developer's corresponding obligations. In this regard, cities have significant flexibility and these categorical obligations may range from reimbursement for certain public improvement costs to commitments to maintain a certain level of business activity at the project location for a fixed period. Illinois additionally requires that the following findings must accompany any such agreement: (i) the subject property has been either vacant for one year or more or, if improved, the improvements have been out of local code compliance or underutilized for one year or more; (ii) the benefiting project will create or retain jobs or further adjacent development; and (iii) "but for" the availability of the agreement and the rebate, the project and associated benefits would not be realized.

OTHER FINANCING TOOLS.

1. Transportation Corporation Act. In an example of statutory intergovernmental cooperation, the Missouri Transportation Corporation Act *(§§238.300 – 238.360 Mo. Rev. Stat.)* authorizes the formation of private, nonprofit, tax-exempt transportation corporations to promote and develop public transportation projects and/or facilities. Created to ease burdens on the Missouri Highway Commission (the "Commission"), the Act envisions cooperation between local municipalities or counties, the transportation corporation, and the Commission in efficiently and innovatively developing or improving and funding transportation facilities and systems. A transportation corporation "may be created to fund, promote, plan, design, construct, maintain, and operate one or more [transportation] projects or to assist in such activity. All of its [the corporation's] plans must be approved by the Commission." Approval must also be received from any county, city, town, or village in which all or part of the proposed project is located. *§238.310.3 Mo. Rev. Stat.* After the completion of the project and the retirement of all bonds, notes, obligations, liabilities, or other debts incurred by the transportation corporation, title to the project transfers to the Commission pursuant to contract and the Commission then assumes responsibility for project maintenance. *§238.352.1 Mo. Rev. Stat.* Unless otherwise provided, the transportation corporation then dissolves. *Id.* Under the Transportation Corporation Act, a transportation corporation "may contract and incur liabilities to accomplish its purposes," borrow money, and issue bonds, notes, and other obligations. *§238.327 Mo. Rev. Stat.* Issuance of revenue bonds is specifically authorized. As one way of assisting with financing, the transportation corporation may, with Commission approval, impose fees for its services, including the charging and collection of tolls. *§238.325 Mo. Rev. Stat.* Indeed, the toll bridge across part of Lake of the Ozarks was built under the authority of this Act and its specific provisions related to the charging of tolls. A transportation corporation is not limited to the imposition of tolls, however, in financing its transportation project(s) or retiring bond debt. In a recent textbook case, the Wentzville Parkway Transportation Corporation issued revenue bonds in 2001 to finance the expansion and reconstruction of a bridge over Interstate Highway 70. The arrangement among the Transportation Corporation, the City, and the Commission provided for "advance funding" from bond proceeds of the bridge and improvements that were otherwise scheduled to begin in six to eight years. The bonds were secured by the Commission's pledge to reimburse most of the principal cost amount from future highway funds on a date certain. In the interim, the remainder of the principal amounts and debt service are secured by and paid from annual appropriations from the City of Wentzville.

2. Chapter 100 Bonds. So called "Chapter 100 Bonds" represent a species of financing that results in abatement of real and personal property taxes on private facilities by virtue of the municipality's ownership of the "fee" interest. The facilities are acquired by the municipality and leased back to the benefiting entity. Theoretically, a "true lease" (one having a reasonable residual value for the facilities at the end of the lease term as distinguished from a "financing" lease in which the entire capital cost of the facilities is amortized over the lease term) avoids the taxation of "bonus value" leases. The following chart illustrates the flow of funds in a typical Chapter 100 Bond transaction.

CHAPTER 100 BONDS FLOW CHART

Bonds	Lease
City Issues and Company Buys Bonds	Company (as Lessee) Pays Rents
↓	↓
Bond Proceeds to Acquisition Fund	Rent Payments to Bond Fund
↓	↓
City Purchases Equipment	Bond Fund Monies to Pay P & I

B. BOND FINANCING ISSUES.

1. Authority? Cities enjoy no inherent power to issue bonds. Power can derive from State Constitution (for general obligation and revenue bonds), Statutes, and Home Rule Charters (*i.e.*, moral obligation bonds). The importance of this principle is illustrated in its absence. Where authority is lacking, the obligations are "ultra vires" or void as beyond the powers of the municipality. Thus, entities contemplating bond financing are urged to make sure of their authority even where such authority seems self-evident. For example, statutes authorizing the Local Parks & Storm Water Control Sales Tax contain no inherent authorization to issue bonds. Municipalities seeking to undertake improvements on a more efficient basis than "pay as you go" must seek conduit authority "work-arounds" such as establishment of "on behalf of" entities or annual appropriation limited "moral obligation" bonds.

2. General or Special Obligation? General obligation or "full faith and credit" bonds require resort to local taxing power. The exception to this principle is the NID "general obligation" bond which, while not secured by the local taxing power and the concomitant obligation to raise taxes in the event of shortfalls, does provide resort to all available funds of the issuing municipality, including the general fund. Conversely, "special" or "limited" obligation bonds are secured by one or more identified revenue sources, thus limiting exposure of the public treasury. Illinois additionally authorizes issuance of Alternate Bonds (popularly known as "double-barreled bonds") secured by a principal revenue source together with a stand-by pledge of a general obligation tax levy. *30 ILCS 350/15.* Moreover, under Illinois' Local Government Debt Reform Act, municipalities may pledge any identifiable source of revenue as primary security and a source of repayment of such obligations. *See 30 ILCS 350/1.*

3. **Debt Limits?** The Missouri constitution (and most other state constitutions, including Illinois') imposes limits on the amount of indebtedness that local governments may incur. Typically, this limit applies only to "tax-backed" bonds, however. The Missouri local debt limitation is typically based on a percentage of the local tax base or assessed valuation.

4. **Voter Authorization?** Prior voter authorization for bonded indebtedness is not always a requirement. As in the case of constitutional debt limits, obligations, the repayment of which is limited to specific, non-tax revenue sources, do not as a rule require prior voter authorization. *But see, Ch. 250 Mo. Rev. Stat. (requiring voter approval for sewer bonds that are secured by user fee revenues).* In Illinois, "double barreled bonds" are expressly subject to "backdoor referendum" requirements under which registered voters enjoy a right of petition to subject the question of the issuance of bonds and associated tax levies to voter approval. *See 30 ILCS 350/15.* In Missouri, voter approval must be obtained for any multi-year expenditure including executory contracts that require in excess of one year to perform. This limit may be avoided via resort to requirements for annual appropriation of debt service.

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