

1 SB283
2 116520-2
3 By Senators Butler, Orr, Mitchem, Barron and Bedford
4 RFD: Finance and Taxation General Fund
5 First Read: 19-JAN-10

2
3
4 ENGROSSED

5
6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To create the Enhanced Use Lease Area Act of 2010;
12 to amend Sections 11-99-1, 11-99-2, 11-99-4, 11-99-5, 11-99-6,
13 11-99-10, and 40-18-70, Code of Alabama 1975, and to add
14 Chapter 9E to Title 40, Code of Alabama 1975; to make
15 legislative findings and define terms; to provide for the
16 utilization of underutilized real and personal property
17 located in enhanced use lease areas and funding the costs
18 thereof through tax increment financing; to entitle certain
19 qualified property within a tax increment district in which
20 not less than 50 percent, by area, of the real property within
21 the tax increment district is an enhanced use lease area, to
22 an abatement of state property taxes; to provide that in lieu
23 of paying state property taxes, the taxable owner of certain
24 qualified property must make a payment to the public entity
25 which created the tax increment district in which the
26 qualified property is located and that this payment to the
27 public entity would be used to pay for project costs and to

1 repay tax increment obligations issued to fund project costs;
2 to ensure that withholding amounts for wages paid to certain
3 construction workers are reported and paid to the state; and
4 to provide an effective date, including retroactive effect for
5 certain districts created on or after January 1, 2010.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 Section 2. The Legislature makes the following
10 findings:

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

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

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

25 Section 3. Sections 11-99-1, 11-99-2, 11-99-4,
26 11-99-5, 11-99-6, 11-99-10, and 40-18-70, Code of Alabama
27 1975, are amended to read as follows:

1 "§11-99-1.

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

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

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

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

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

1 "§11-99-2.

2 "As used in this chapter:

3 "(1) BLIGHTED OR ECONOMICALLY DISTRESSED AREA:

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

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

1 to the public health, safety, morals, or welfare in its
2 present condition and use, or

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

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

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

21 "(2) DEFERRED TAX RECIPIENT. Each ~~public entity,~~
22 ~~other than state,~~ taxing authority which receives ad valorem
23 taxes with respect to property located in a proposed tax
24 increment district.

25 "(3) ENHANCED USE LEASE AREA. Any area of a military
26 installation which contains underutilized real or personal
27 property, or both, that is leased by a secretary of a military

1 department to a lessee pursuant to the authority provided in
2 Title 10 U.S.C. §2667.

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

7 ~~"(4)(5)~~ LOCAL GOVERNING BODY. The governing body of
8 a county or municipality which proposes to create or has
9 created a tax increment district.

10 ~~"(5)(6)~~ MUNICIPALITY. Any incorporated municipality
11 in this state.

12 ~~"(6)(7)~~ PROJECT. Undertakings and activities of a
13 public entity in a tax increment district for either (i) the
14 elimination and prevention of the development or spread of
15 blight in a blighted or economically distressed area or (ii)
16 the utilization of underutilized real or personal property, or
17 both, in an enhanced use lease area, and may include property
18 acquisition, property clearance, development, redevelopment,
19 rehabilitation, or conservation or a combination or part
20 thereof in accordance with a project plan.

21 ~~"(7)(8)~~ PROJECT COSTS. Any expenditures made or
22 estimated to be made or monetary obligations incurred or
23 estimated to be incurred by a public entity which are listed
24 in a project plan as costs of public works or improvements
25 within a tax increment district, plus any costs incidental
26 thereto, diminished by any special assessments, received or
27 reasonably expected to be received by the public entity in

1 connection with the implementation of the project plan.

2 Project costs include, but are not limited to:

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

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

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

21 "d. Professional service costs, including those
22 costs incurred for architectural, planning, engineering,
23 fiscal, underwriting, and legal advice and services;

24 "e. Imputed administrative costs, including
25 reasonable charges for the time spent by officers and
26 employees of the public entity in connection with the
27 implementation of a project plan;

1 "f. Relocation costs, including those relocation
2 payments made following condemnation under Chapter 1A of Title
3 18;

4 "g. Organizational costs, including the costs of
5 conducting environmental impact and other studies and the
6 costs of informing the public with respect to the creation of
7 tax increment districts and the implementation of project
8 plans;

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

12 "i. Payments made, at the discretion of the local
13 governing body, which are to be necessary or convenient to the
14 creation of tax increment districts or the implementation of
15 project plans; ~~and~~

16 "j. For purposes of any tax increment district in
17 which not less than 50 percent, by area, of the real property
18 within the tax increment district is an enhanced use lease
19 area, "project costs" shall also include all costs described
20 in this subdivision which are expended by a public entity or a
21 developer within three years immediately preceding the date of
22 the creation of such tax increment district.

23 "~~(8)~~(9) PROJECT PLAN. The properly approved plan for
24 the development or redevelopment of a tax increment district,
25 including all properly approved amendments thereto.

26 "~~(9)~~(10) PUBLIC ENTITY. Any municipality or county
27 in the state.

1 "~~(10)~~(11) TAX INCREMENT. That amount obtained by
2 multiplying the total revenue derived from ad valorem taxes
3 levied by all local taxing authorities on all taxable property
4 within a tax increment district in any tax year by a fraction
5 having a numerator equal to that tax year's market value of
6 all taxable property in the district minus the tax increment
7 base and a denominator equal to that tax year's equalized
8 value of all taxable property in the district. In any tax
9 year, a tax increment is "positive" if the tax increment base
10 is less than the aggregate value of taxable property as
11 equalized by the Department of Revenue; it is "negative" if
12 the base exceeds such value.

13 "~~(11)~~(12) TAX INCREMENT BASE. The aggregate value,
14 as equalized by the Department of Revenue, of all taxable
15 property located within a tax increment district on the date
16 the district is created, determined as provided in Section
17 ~~11-99-4~~ 11-99-5 hereof.

18 "~~(12)~~(13) TAX INCREMENT DISTRICT. A contiguous
19 geographic area within the boundaries of a public entity
20 defined and created by resolution of the local governing body.

21 "~~(13)~~(14) TAX INCREMENT FUND. A fund into which all
22 tax increments not retained by a taxing ~~unit~~ authority as
23 provided by Section 11-99-10(b) hereof are paid, and from
24 which money is disbursed to satisfy claims of holders of tax
25 increment obligations issued for the tax increment district.

1 "~~(14)~~(15) TAX INCREMENT OBLIGATIONS. Bonds,
2 warrants, notes, or other evidences of indebtedness issued by
3 a public entity to fund all or any project costs.

4 "~~(15)~~(16) TAXABLE PROPERTY. All real and personal
5 property located in a tax increment district which is subject
6 to ad valorem taxation on the date of adoption of the
7 resolution creating the tax increment district.

8 "(17) TAXING AUTHORITY.

9 "a. For tax increment districts in which not less
10 than 50 percent, by area, of the real property within the tax
11 increment district is a blighted or economically distressed
12 area, "taxing authority" means any municipality, county, or
13 other taxing authority which has the power to levy taxes on
14 property within the tax increment districts.

15 "b. For tax increment districts in which not less
16 than 50 percent, by area, of the real property within the tax
17 increment district is an enhanced use lease area, "taxing
18 authority" means the state or any municipality, county, or
19 other taxing authority which has the power to levy taxes on
20 property within the tax increment district.

21 "§11-99-4.

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

24 "(1) The local governing body shall hold a public
25 hearing at which all interested parties are afforded a
26 reasonable opportunity to express their views on the concept
27 of tax increment financing, on the proposed creation of a tax

1 increment district and its proposed boundaries, and its
2 benefits to the public entity. Notice of the hearing shall be
3 published in a newspaper of general circulation in either the
4 county or in the city, as the case may be, in which the
5 proposed tax increment district is to be located with such
6 notice to be published at least twice in the 15-day period
7 immediately preceding the date of the hearing. Prior to
8 publication, a copy of the notice shall be sent by first class
9 mail to the chief executive officer of each deferred tax
10 recipient.

11 "(2) In addition to the notice required by
12 subdivision (1) of this section, and either before or after
13 such hearing, the local governing body shall make a written
14 submission to the governing body of each deferred tax
15 recipient. The submission shall include a description of the
16 proposed boundaries of the tax increment district, the
17 tentative plans for the development or redevelopment of the
18 tax increment district, and an estimate of the general impact
19 of the proposed project plan on property values and tax
20 revenues. Not later than the fifteenth day after the date on
21 which the notice required by subdivision (1) of this section
22 is mailed, each deferred tax recipient shall designate a
23 representative empowered to meet with the local governing body
24 to discuss the project plan and the tax increment financing
25 and shall notify the local governing body of its designation.
26 Failure of any deferred tax recipient to designate a
27 representative within the 15-day period, or to notify the

1 local governing body of its designation, shall not prevent the
2 local governing body from proceeding hereunder. If a deferred
3 tax recipient which has failed to so designate a
4 representative shall thereafter designate a representative and
5 shall notify the local governing body of such designation,
6 such representative shall be entitled to notice of any
7 meetings held thereafter pursuant to this section, and shall
8 be entitled to attend such meetings, but shall have no right
9 to have matters discussed again which have already been
10 discussed. The local governing body shall call a meeting, or
11 meetings, of the representatives of the deferred tax
12 recipients to be held at any time after 20 days from the
13 mailing notice referred to in subdivision (1) of this section.
14 Each representative shall be notified of each meeting at least
15 three days before it is to be held, but such notice may be
16 waived. At the meetings the local governing body and the
17 representatives of the deferred tax recipients may discuss the
18 boundaries of the tax increment district, development within
19 such district, the exclusion of particular parcels of property
20 from such district, and tax collection for such district. On
21 the motion of the local governing body any other matter
22 relevant to the proposed tax increment district may be
23 discussed.

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

26 "a. Describes the boundaries of the tax increment
27 district with sufficient definiteness to identify with

1 ordinary and reasonable certainty the territory included,
2 which shall include only those whole units of property (other
3 than publicly owned property such as streets, easements, and
4 rights-of-ways) assessed for general property tax purposes
5 and, if the public entity is a county, which shall include
6 only those areas which lie outside the corporate limits of any
7 municipality, unless the governing body of a municipality has
8 consented to the inclusion of land within its corporate limits
9 within a tax increment district formed by a county;

10 "b. Creates the tax increment district as of a given
11 date after the date of adoption of the resolution, and fixes
12 the period for its duration, which may be for a period not to
13 exceed 30 years in the case of a tax increment district in
14 which not less than 50 percent, by area, of the real property
15 within the tax increment district is a blighted or
16 economically distressed area, and which may be for a period
17 not to exceed 35 years in the case of a tax increment district
18 in which not less than 50 percent, by area, of the real
19 property within the tax increment district is an enhanced use
20 lease area, unless an amendment is made to the project plan
21 under subdivision (7) of this section;

22 "c. Assigns a name to the tax increment district for
23 identification purposes, such as "tax increment district
24 number one";

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

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

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

14 "(4) The local governmental body shall prepare and
15 adopt a project plan for each tax increment district. The plan
16 shall include a statement listing the kind, number, and
17 location of all proposed public works or improvements within
18 the district; a detailed list of estimated project costs; and
19 a description of the methods of financing all estimated
20 project cost and the time when related costs or monetary
21 obligations are to be incurred. For purposes of this chapter,
22 any work or improvement for a military installation and
23 located within an enhanced use lease area shall be deemed to
24 be for public uses and purposes. The project plan shall also
25 include: A map showing existing uses and condition of real
26 property in the district; a map showing proposed improvements
27 and uses therein; proposed changes of zoning, master map plan,

1 building code, and other ordinances or resolutions affecting
2 the district; a list of estimated nonproject costs; and a
3 proposed plan for the relocation of families, persons, and
4 businesses to be temporarily or permanently displaced from
5 housing or commercial facilities in the district by
6 implementation of the plan.

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

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

14 "b. A feasible method exists for the relocation and
15 compensation of individuals, families, and businesses that
16 will be displaced by the project in decent, safe, and sanitary
17 accommodations within their means and without undue hardship
18 to such individuals, families, and businesses;

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

21 "d. The plan will afford maximum opportunity,
22 consistent with the sound needs of the public entity as a
23 whole, for the rehabilitation or redevelopment of the tax
24 increment district by private enterprise.

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

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

4 "§11-99-5.

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

8 "(b) Upon application in writing by the local
9 finance officer, the tax assessor (or the officer of the
10 county performing the duties of a tax assessor) for each
11 county in which any part of the district is located shall
12 determine according to his or her best judgment from all
13 sources available to him or her the full aggregate value of
14 the taxable property in the district located in that county.
15 The aggregate valuation from all such tax assessors or other
16 such public officials, upon certification to the local finance
17 officer, shall constitute the tax increment base of the
18 district.

19 "(c) If the public entity creating a tax increment
20 district in which not less than 50 percent, by area, of the
21 real property within the tax increment district is a blighted
22 or economically distressed area adopts an amendment to the
23 original project plan for any such district which includes
24 additional project costs for which tax increments may be
25 received by such public entity, the tax increment base for the
26 district shall be redetermined pursuant to subsection (b) of
27 this section as of 90 days following the effective date of the

1 amendment, except that if the effective date of the amendment
2 is October 1 of any year, the redetermination shall be made on
3 that date. The tax increment base as redetermined under this
4 subsection shall be effective for the purposes of this chapter
5 only if it exceeds the original tax increment base determined
6 under subsection (b) of this section.

7 "(d) If the public entity creating a tax increment
8 district in which not less than 50 percent, by area, of the
9 real property within the tax increment district is an enhanced
10 use lease area adopts an amendment to the original project
11 plan for such district which includes additional project costs
12 for which tax increments may be received by such public entity
13 or an expansion of the tax increment district, the tax
14 increment base for the district shall not be redetermined.

15 ~~"(d)~~ (e) There shall be a rebuttable presumption that
16 any property within a tax increment district acquired or
17 leased as lessee by the public entity or any agency or
18 instrumentality thereof within one year immediately preceding
19 the date of the creation of the district was so acquired or
20 leased in contemplation of the creation of the district. The
21 presumption may be rebutted by the public entity with proof
22 that the property was so leased or acquired primarily for a
23 purpose other than to reduce the tax increment base. If the
24 presumption is not rebutted, in determining the tax increment
25 base of the district, but for no other purpose, the taxable
26 status of such property shall be determined as though such
27 lease or acquisition had not occurred.

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

8 "~~(f)~~(g) The Department of Revenue shall annually
9 give notice to the designated finance officer of all
10 ~~governmental entities having the power to levy~~ taxing
11 authorities levying taxes on property within each district as
12 to both the assessed and equalized value of the property and
13 the assessed and equalized value of the tax increment base.
14 The notice shall state that the taxes collected in excess of
15 the base will be paid to the public entity.

16 "§11-99-6.

17 "(a) Positive tax increments of a tax increment
18 district shall be allocated and paid over to the public entity
19 which created the district for each year commencing on the
20 October 1 following the date when the district is created
21 until the earlier of:

22 "(1) That time, after the completion of all public
23 improvements specified in the project plan or amendments
24 thereto, when the public entity has received aggregate tax
25 increments from the district in an amount equal to the
26 aggregate of all expenditures previously made or monetary

1 obligations previously incurred for project costs for the
2 district; or

3 "(2) Thirty-five years after the last expenditure
4 identified in the project plan is made. No expenditure may be
5 provided for in the project plan to be made more than five
6 years after the district is created, except in Class 3
7 municipalities where such expenditures may be made not more
8 than 10 years thereafter if so provided and in tax increment
9 districts in which not less than 50 percent, by area, of the
10 real property within the tax increment district is an enhanced
11 use lease area where such expenditures may be made not more
12 than 15 years thereafter if so provided, unless an amendment
13 is adopted by the local governing body under subdivision (7)
14 of Section 11-99-4.

15 "(b) Notwithstanding any other provision of law,
16 every officer charged by law to collect and pay over or retain
17 local general property taxes in the case of a tax increment
18 district in which not less than 50 percent, by area, of the
19 real property within the tax increment district is a blighted
20 or economically distressed area, or state and local general
21 property taxes in the case of a tax increment district in
22 which not less than 50 percent, by area, of the real property
23 within the tax increment district is an enhanced use lease
24 area, shall first, on the next settlement date provided by
25 law, pay over to the local finance officer out of all such
26 taxes which have been collected that portion which represents

1 a tax increment allocable to a tax increment district,
2 identifying the amount for each district.

3 "(c) All tax increments received for a tax increment
4 district shall, upon receipt by the local finance officer, be
5 deposited into the tax increment fund for that district. The
6 local finance officer may deposit additional moneys into the
7 fund pursuant to an appropriation by the local governing body.
8 Moneys shall be paid out of the fund only to reimburse the
9 public entity for payments theretofore made by it for
10 principal of or interest on tax increment obligations for that
11 district if such obligations are general obligations of the
12 public entity, or to satisfy claims of holders of tax
13 increment obligations issued for that district. Subject to any
14 agreement with security holders, moneys in the fund may be
15 temporarily invested in the same manner as other surplus funds
16 of the public entity. After the principal of and interest on
17 all tax increment obligations of the district have been paid
18 or provided for, subject to any agreement with security
19 holders, if there remain in the fund any moneys, they shall be
20 paid over to the chief finance officer of the state, each
21 county, each municipality, each school district, and to the
22 general fund of the public entity in such amounts as are due
23 to each respectively, having due regard for what portion of
24 such moneys, if any, represents tax increments not allocated
25 to the public entity and what portion thereof, if any,
26 represents voluntary deposits of the public entity into the
27 fund.

1 "§11-99-10.

2 "(a) With respect to any taxing authority other
3 ~~governing body having the power to levy taxes on property~~
4 ~~located within a~~ than the public entity which created the tax
5 increment district, the calculation of the equalized valuation
6 of taxable property in a tax increment district may not exceed
7 the tax increment base of the district until the district is
8 terminated, unless agreement has been made for other
9 arrangements under subsection (b) of this section.

10 "(b) In such cases where it can be shown that losing
11 tax increments would be harmful to any given taxing unit
12 authority or cause such unit taxing authority not to honor a
13 prior binding commitment, by contract executed with the public
14 entity prior to the designation of the tax increment district,
15 and if an agreement has been made for such allowances through
16 a process of negotiation at the time of the creation of the
17 tax increment district, a taxing unit authority may make
18 payments into the tax increment fund, less the sum of:

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

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

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

6 "(d) The use of the increased valuations in the tax
7 increment district before the completion of the project in
8 calculating any general state school aid formula is
9 prohibited.

10 "(e) A taxing ~~unit~~ authority is not required to pay
11 a tax increment into the tax increment fund for a district
12 beyond three years from the date the district was created
13 unless one or more of the following conditions exist or have
14 been met:

15 "(1) Tax increment obligations have been issued for
16 the district;

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

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

21 "§40-18-70.

22 "For the purpose of this article, the following
23 terms shall have the respective meanings ascribed by this
24 section:

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

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

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

8 "(4) PROVISIONAL CONSTRUCTION EMPLOYERS. A
9 provisional construction employer is any employer, including
10 members of its affiliated group as that term is defined in the
11 Internal Revenue Code, that (i) employs 50 or more employees
12 in a construction project for qualified property located in a
13 tax increment district in which not less than 50 percent, by
14 area, of the real property within the tax increment district
15 is an enhanced use lease area, as these terms are defined in
16 Section 40-9E-1, a construction project for a qualifying
17 industrial or research enterprise described in Section
18 40-9B-3(a)(8)e, or a construction project, the cost of which
19 is part of a qualifying entity's capital cost, as these terms
20 are defined in Section 40-9D-3, and (ii) has not registered in
21 the tax year preceding the current tax year with the Alabama
22 Department of Revenue for withholding tax purposes. If the
23 provisional construction employer reports and pays all past
24 withholding taxes due the state and continues to report and
25 pay for a one-year period all withholding taxes due to
26 Alabama, the employer will no longer be deemed to be a
27 provisional construction employer.

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

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

9 CHAPTER 9E. STATE PROPERTY TAX IN TAX INCREMENT
10 DISTRICTS

11 §40-9E-1.

12 For purposes of this chapter only, the following
13 terms shall have the following meanings:

14 (1) BASE YEAR. The taxable year immediately before
15 the taxable year in which property first becomes qualified
16 property under this section.

17 (2) BASE YEAR VALUE. The value of the property used
18 to determine the assessment on which the property tax on
19 property is imposed for the base year. "Base year value" does
20 not include any new property that is first assessed in the
21 base year.

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

25 (4) ENHANCED USE LEASE AREA. Any area of a military
26 installation which contains underutilized real or personal
27 property, or both, that is leased by a secretary of a military

1 department to a lessee pursuant to the authority provided in
2 Title 10 U.S.C. §2667.

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

6 (6) PROJECT COSTS. Any expenditures made or
7 estimated to be made or monetary obligations incurred or
8 estimated to be incurred by a public entity which are listed
9 in a project plan as costs of public works or improvements
10 within a tax increment district, plus any costs incidental
11 thereto, diminished by any special assessments received or
12 reasonably expected to be received by the public entity in
13 connection with the implementation of the project plan.

14 Project costs include, but are not limited to:

15 a. Capital costs, including the costs of the
16 construction of public works or improvements, new buildings,
17 structures, and fixtures, the demolition, alteration,
18 remodeling, repair or reconstruction of existing buildings,
19 structures, and fixtures, the acquisition of equipment, the
20 acquisition, clearing, and grading of land and the acquisition
21 of interests in land;

22 b. Financing costs, including all interest paid to
23 holders of tax increment obligations during the period of
24 implementation of the project plan, the costs of any form of
25 credit enhancement, printing and trustee costs, and any
26 premium paid in excess of the principal amount thereof because
27 of the redemption of such obligations prior to maturity;

1 c. Real property assembly costs, meaning any deficit
2 resulting from the sale or lease as lessor by the public
3 entity of real or personal property within a tax increment
4 district for consideration which is less than its cost to the
5 public entity;

6 d. Professional service costs, including those costs
7 incurred for architectural, planning, engineering, fiscal,
8 underwriting, and legal advice and services;

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

13 f. Relocation costs, including those relocation
14 payments made following condemnation under Chapter 1A of Title
15 18;

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

21 h. The amount of any contributions made in
22 connection with the implementation of the project plan that
23 are within limits prescribed by law;

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

1 j. For purposes of any tax increment district in
2 which not less than 50 percent, by area, of the real property
3 within the tax increment district is an enhanced use lease
4 area, "project costs" shall also include all costs described
5 in this subdivision which are expended within three years
6 immediately preceding the date of the creation of such tax
7 increment district.

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

11 (8) PUBLIC ENTITY. Any municipality or county in the
12 state.

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

17 (10) STATE PROPERTY TAX INCREMENT. The state
18 property taxes attributable to the eligible assessment of
19 qualified property.

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

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

26 §40-9E-2.

1 (a) Notwithstanding any other law of this state,
2 qualified property shall be entitled to an abatement of state
3 property taxes provided the conditions of this section are
4 satisfied.

5 (b) In lieu of paying the state property tax
6 increment on qualified property, any owner of qualified
7 property not exempt from ad valorem taxation must pay the
8 state property tax increment on such qualified property to the
9 public entity that created the tax increment district in which
10 the qualified property is located for each year commencing on
11 the October 1 following the date when property first becomes
12 qualified property under this chapter, and each October 1
13 thereafter, until the tax increment district in which such
14 qualified property is located is terminated in accordance with
15 Section 11-99-7.

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

19 (1) To pay for project costs; and

20 (2) To repay tax increment obligations issued to
21 fund project costs.

22 Section 5. If a court of competent jurisdiction
23 adjudges invalid or unconstitutional any clause, sentence,
24 paragraph, section, or part of this act, such judgment or
25 decree shall not affect, impair, invalidate, or nullify the
26 remainder of this act, but the effect of the decision shall be

1 confined to the clause, sentence, paragraph, section, or part
2 of this act adjudged to be invalid or unconstitutional.

3 Section 6. All laws or parts of laws which conflict
4 with this act are repealed.

5 Section 7. The provisions of this act shall become
6 effective immediately following its passage and approval by
7 the Governor or its otherwise becoming law. Notwithstanding
8 the foregoing, the provisions of this act shall apply to any
9 tax increment district created before the effective date of
10 this act provided that (1) such tax increment district is
11 created on or after January 1, 2010, and (2) not less than 50
12 percent, by area, of the real property within such tax
13 increment district is an enhanced use lease area.

1
2
3
4
5
6
7
8
9
10

11
12
13
14

Senate

Read for the first time and referred to the Senate
committee on Finance and Taxation General Fund .. 19-JAN-10

Read for the second time and placed on the calen-
dar 1 amendment 02-FEB-10

Read for the third time and passed as amended ... 02-FEB-10

McDowell Lee
Secretary