# Mississippi Municipal Attorneys Association Winter Conference 2023

## January 10, 2024

## "Incentivizing Private Development in Municipalities"

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## Purpose of Presentation

**"Incentivizing Private Development in Municipalities"**

**Assist municipalities by providing basic guidance to —**

- **Identify and respond to opportunities**
- **Identify and respond to challenges**
- **Recognize and avoid missteps**
- **Gain general understanding of procedures and requirements for various activities**

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## Types of Analysis

- **Legal Analysis – Can we do this? How do we do this?**
- **Financial Analysis – What is the return on investment of time and money?**
- **Policy Analysis – Should we do this?**

***These analyses are often intermingled and come at differing times in the process.**

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## "Incentivizing Private Development in Municipalities"

**Combining public programs, public dollars, and private dollars to fund the costs of public and private infrastructure to promote economic development (i.e., to create or retain jobs and improve quality of life)**

- **Local dollars and programs – ad valorem taxes, sales taxes, special assessments, bond proceeds, etc.**
- **State dollars and programs – sales taxes, loan and grant programs, bond proceeds, etc.**
- **Federal dollars and programs – EDA, HUD, USDA, EPA, etc.**
- **Private funds – investment by company, real estate developer, etc.**

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## Types of Projects

- **Industrial, Manufacturing, etc.**
- **Commercial**
  - **Retail**
  - **Hospitality, Recreation, and Tourism**

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## Summary of Topics

- **MDA Loan and Grant Programs**
- **Bonds and Borrowing**
- **Regional Economic Development Alliances**
- **Business Improvement Districts**
- **Tax Diversions**
- **Real Property Transfers**
- **Tax Credits**
- **Public Improvement Districts**

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## State-of-Play of Economic Development

- **Shortage of sites nationwide**
- **Companies have very aggressive timelines and typically require pad-ready sites that can accommodate up to 200,000 square feet of building space (with all utilities on site)**
- **100 acre rail sites are in very short supply**
- **Electricity and gas are always of high importance**

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## MDA Site Development Grant Program

- **Assists economic development organizations or local governments in Mississippi in developing more available green field sites for industrial development**
- **Eligibility: Local economic development partners – i.e., counties and municipalities and public or private nonprofit economic development entities including, but not limited to, local authorities, commissions, or other entities created by local and private legislation.**
- **Ready Sites: minimum of 20 highly developable acres that are site-work ready within 6 months or can have utilities on site in 12 months. Rail-served sites and sites with airport or port access are preferred.**
- **Premier Sites: properties that have additional differentiating or distinguishing site location attributes (e.g., are in high demand locations, offer intermodal and/or port access, have large-scale "mega" development acreage, have significant utility infrastructure already in place, etc.) Premier Sites must have a minimum of 100 acres with a labor force able to attract the intended market (a workforce study is required.) Rail-served sites are preferred, as are sites with airport or port access.**
- **50/50 match (no minimum), can participate in multiple rounds; can assist with environmental due diligence, grading, clearing and dirt work, etc.**
- **Closed now, but expecting another round to open in 2024**

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## Additional MDA Programs for Municipalities

- **Development Infrastructure Program (DIP)**
- **Capital Access Program (CAP Loan)**
  - **Private beneficiary – 3% interest**
  - **Public beneficiary – 2% interest**
- **Community Development Block Grant (CDBG Public Facilities)**
  - **Annual competitive application process (due in May)**
  - **Population below 3500 no match requirement**
  - **Population above 3500 competitive match requirement**
  - **51% low to moderate income requirement**
- **Note: All MDA programs require active engagement by municipal officials in the process and compliance with applicable regulations and statutes.**

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## General Overview of "Bond" Law

- **What is a Bond? The term "bond" includes every form of written obligation (with specified dates of repayment and periodic interest rates) that may be legally issued by any public entity.**
- **What is covered by "Bond Law"? All borrowing by public entities is subject to state law regarding issuance of bonds, regardless of what the obligation is called—i.e., bonds, notes, loans, certificates, lease—and type of security—i.e., general obligation, revenue, special assessments.**
- **Mississippi State Law. The Mississippi Code of 1972, as amended (the "Act") governs the authority to issue, sell, and repay obligations. Mississippi's "Home Rule" law excludes authority to borrow money without specific authority.**
- **Federal Tax Law. The Internal Revenue Code of 1986, as amended, and IRS regulations promulgated thereby (the "Code") determine tax-exempt status.**
- **Federal Securities Law. Requirements on disclosure concerning the issuer and the debt obligations, both at sale and ongoing disclosure requirements.**

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## General Procedures for Bonds

- **Procedure.** The governing body of a government unit (most likely municipalities and counties, but possibly other government units) must make various findings of fact and preference and act in a public meeting at various times and in various ways, including, but not limited to:
- statement of type of resolution
- description of project
- citation of authority (State law)
- maximum principal amount to be borrowed
- term of repayment
- authorized purpose of the proposed funds
- publication of notices of various sorts (public comment or protest, sale, validation, etc.)
- compliance with any applicable statutory debt limitations
- security for repayment (general obligation, revenue, special assessment, etc.)
- court or State approvals

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## General Obligation and Revenue Bonds

- **General obligation bonds for construction or improvement of roads, bridges, and buildings, amongst other items**
- **Utility system revenue bonds for construction or improvements of water, sewer, gas, electric, and other waste systems, amongst other items**
- **Depending upon substantial use of improvements, the borrowing may be taxable (as opposed to tax-exempt)**

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## Tax Increment Financing ("TIF")

- Amongst the most powerful tools a municipality has for encouraging new development or redevelopment
- Pursuant to specific TIF Plan for a specific project, along with other agreements (development, interlocal, etc.)
- Diverts initial risk to developer, with municipality's support after completion and operation
- Diverts the increased (incremental) property and sales taxes to pay for project-related improvements, such as:
  - installation or relocation of utilities
  - storm drainage
  - construction of roadways, curbs, gutters, traffic signals, sidewalks
  - landscaping and lighting
  - parking (both public and private)
  - right-of-way acquisition

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## Urban Renewal

- "Undertakings and activities for the elimination and prevention of the development or spread of … blight."
- Including, "installation, construction, or reconstruction of streets, utilities, and other improvements necessary for the urban renewal objectives."
- Declaration of slum or blight within municipality and declaration of public necessity to redevelop and rehabilitate the area
- Secured by pledge of revenues generated by urban renewal project or "other source" of funds of the municipality, including annual appropriations; solicit private financing for project
- Municipality is partner with developer in risks for fronting funds and/or taking actions (i.e., acquisition of property)

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## Mississippi Business Finance Corporation (MBFC)

- Companies with high capital investment can use MBFC as a conduit to borrow funds for projects
- 100% sales and use tax exemption
- Eligible for property tax exemption
- Typically for projects $10 million +
- Fees associated with going through MBFC

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## Business Improvement Districts ("BIDs")

- Property owners may join together and petition municipality to create
- Public notice, public hearings, and votes of property owners required
- Assessments may be requested and imposed by property owners for costs of—
  - Parking
  - Landscaping and beautification
  - Street improvements
  - Utilities improvements
  - Business, recreation, and tourism promotion
  - Fire prevention
  - etc.

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## Fee In Lieu of Tax Agreements

- For projects with a minimum $60,000,000 investment, local units of government can enter into an agreement with a company to abate up to 2/3 of the company's property tax liability for a term of up to 30 years.
- The main difference between a fee in lieu and a standard exemption (Miss. Code Ann. § 27-31-101) is that with a standard exemption, the county/city can abate all of the general fund taxes but none of the school taxes. A fee in lieu will always be more advantageous to both the local unit of government and to the company.
- Another reason to consider a fee in lieu is that a county/city can further incentivize the company to locate in their area by offering to use a portion of their expected fee in lieu payments to fund certain needs of the project.
  - For example, if the county receives a CAP loan from MDA or issues bonds, it can use the fee in lieu payments to pay down debt service from these loans.

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## Regional Economic Development Act (REDA) Agreement

- Requires a written, formal alliance between any combination of two or more of the following:

Municipality, County, utility district, community college, state university, municipal or regional airport authority, port authority, public economic development authority or district, municipal urban renewal district, redevelopment authority, or any other political subdivision of the state

- The purpose is to share in *costs and revenues* of project.
- "Cost of Project" means almost any cost, including site preparation and construction; real and personal property required for purposes of the project *whether publicly or privately owned*…
- Important for Cities to consider REDA in Fee in Lieu Projects

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## Mississippi's Flexible Tax Incentive (MFLEX)

- **Streamlined universal tax credit, approved by MDA**
- **Eligibility: businesses creating at least 10 new jobs and/or investing at least $2,500,000 in the state can qualify.**
- **Eligible business types include: manufacturers, warehouse and/or distribution businesses, research and development facilities, regional or national headquarters, air transportation and/or maintenance facilities, data and information, processing center, technology-intensive enterprises, telecommunications business and data centers**
- **Can be used to offset tax liabilities including: state income, sales and use, franchise and payroll withholding. Company chooses how to apply the credit, maximizing utilization for your particular tax scenario. MFLEX credits can be used over 10 years.**
- **Require annual company reporting. Credits will be adjusted annually based on actual investment, job creation and wages paid.**

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## Central Business Districts

- **Municipalities may grant 7-year property exemptions on new, privately owned structures and improvements to existing structures located in one of the following designated areas:**
  - **A designated historic preservation district**
  - **A historic landmark site**
  - **A designated central business district**
- **Applies only to real property (not personal property)**
- **Does not apply to school district taxes**

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## Central Business Districts

- **Municipalities may also grant 10-year property exemptions on new, privately owned structures and improvements to existing structures located in a designated "central business district"**
  - **Does not apply to school district taxes**
  - **Can designate all commercial zones in a municipality as the "central business district"**
  - **Simply make a finding that designated areas are where "commercial or mercantile activity is occurring or has traditionally occurred"**
  - **Includes residential construction**
- **Can "stack" the exemptions**

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## Qualified Tourism Project Rebates

- **Tourist attractions with a minimum private investment of at least $10 million**
- **Rebate of up to 80% of eligible sales tax collected at the certified project for a period of up to 15 years or until the applicant has recouped 30 percent of the total project cost – whichever occurs first**

### Qualified Tourism Projects

- **Theme parks**
- **Water parks**
- **Entertainment parks or outdoor adventure parks**
- **Cultural or historical interpretive educational centers or museums**
- **Motor speedways**
- **Indoor or outdoor entertainment centers or complexes**
- **Convention centers**
- **Professional sports facilities**
- **Spas**
- **Attractions created around a natural phenomenon or scenic landscape**
- **Marinas open to the public**

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## Qualified Tourism Projects

- **Hotels - private investment of $40+ million (and $150,000+ per guest room)**
- **Public golf courses with private investment of $10+ million**
- **Full-service hotels with private investment of $15+ million (and $200,000+ per guest room or suite), with a minimum of 25 guest rooms or suites and guest amenities such as restaurants, spas and other amenities as determined by MDA**
- **Tourism attraction located within an "entertainment district" that is open to the public, has seating to accommodate at least 40 people, is open at least 5 days per week, provides live entertainment at least 3 nights per week and serves food and beverages**
- **Resort developments with a minimum investment of $100 million which include a hotel with at least 200 guest rooms, private investment of $200,000+ per guest room, and also include guest amenities such as restaurants, golf courses, spas and entertainment activities**
- **Tourism attraction open to the public, located within a National Register of Historic Places historic district and with seating for at least 40 people that is open at least 5 days a week, serves food and beverages and provide live entertainment at least 3 nights a week.**

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## Brownfield Redevelopment Rebates

- **Municipalities that contain properties with environmental contamination may apply for approval for this incentive**
- **Abandoned industrial property but can also include commercial property with little contamination, such former dry cleaners, former co-ops, old buildings (asbestos/lead paint)**
- **The redevelopment project area is a geographic location that is defined by resolution**
- **Once MDA grants approval for the project, all sales, income, and franchise taxes collected from businesses located in the redevelopment project area will be deposited into a special fund that will be used to reimburse developers for approved cleanup costs**
- **Reimbursement to developers will be made semi-annually for a period of up to 15 years, with a maximum distribution to the developer of 2.5x the allowable remediation costs**

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## Brownfield Redevelopment Rebates

- Application must be made to MDA for approval of the project as eligible for the rebate program
- A redevelopment project combines remediation of a contaminated site that has been (1) abandoned from a bankruptcy estate or (2) a brownfield property that is subject to a Brownfield agreement under MS Code § 49-35-11, along with development of that site
- May be any type of permanent business, including:
  - Manufacturing, processing, assembling, storing, warehousing, servicing, distributing, or selling any goods or products, including agricultural products
  - Retail sales of goods and services
  - Recreation and hospitality establishments, including hotels, restaurants, and sports facilities
  - Any other businesses as approved by MDA

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## Brownfield Redevelopment Rebates

**To qualify, municipalities must meet all the following conditions:**

- Redevelopment project area must be established by resolution of the municipality
  - If project area falls wholly within a municipality, only the municipality must apply to MDA for designation as a redevelopment project
  - If the project is located in a municipality but with a portion of the project area extending outside the municipality's jurisdiction, the area must also be established by resolution by the county, and the two may jointly apply to MDA for approval.
- MDEQ must agree that contamination exists in the project area, and approve the contamination assessment and remediation plan by the developer
- Application to MDA for the rebate must be made within 6 months after MDEQ approval

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## Transfers of Real Property

- Various authorities, but broadest is Section 57-7-1 of the Act
- Transfer "lands….not needed….for other governmental purpose"
- May be "set aside and improved for industrial or commercial purposes….or….leased or sold"
- Without bids or appraisal if municipality receiving "good and valuable consideration" such as economic development, quality of life, etc.
- "good and valuable consideration" is a factual determination for the governing authority

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## Tax Credit Programs

*"Incentivized Project Finance"*

- **New Markets Tax Credit Program**
- **Opportunity Zone Program**
- **Historic Tax Credit Program**

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## New Market Tax Credit Program

**Provides a 20-25% subsidy to businesses that create impact (jobs, etc.) in underserved markets in rural and urban America that are experiencing out-migration or other levels of distress (poverty, unemployment, etc.)**

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## Opportunity Zone Program

**Tax Cuts and Jobs Act of 2017 created a new community development program that encourages private investment in qualified opportunity zones. The program allows taxpayers to defer and reduce capital gain if the taxpayer reinvests capital gain proceeds in a qualified opportunity fund.**

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## Historic Tax Credit Program

- The Federal Historic Preservation Tax Incentives Program provides a 20% federal tax credit to property owners who undertake a substantial rehabilitation of a historic building in a commercial or other income producing use, while maintaining its historic character.
- The Mississippi Historic Preservation Tax Incentives Program offers a 25% state tax credit for the rehabilitation of historic structures used for business purposes. Owner-occupied dwellings and properties used for income-producing purposes are eligible.

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## Public Improvement Districts ("PID")

- Developers in Mississippi may take advantage of significant economic incentives for the financing of basic project infrastructure.
- With the creation of the Public Improvement District Act (the "Act"), developers may reduce these risks associated with traditional financing by creating an independent public body known as a Public Improvement District ("PID").
- A PID can be established to undertake the following developments:
  - Residential
  - Commercial
  - Industrial
- A PID is empowered to finance the following type of public infrastructure:
  - Streets/Roads/Sidewalks
  - Water/Wastewater Facilities and Lines
  - Bridges and Drainage Improvements
  - Water Management & Control Facilities
- Also, with the consent of the affected local government (i.e. one creating the PID), the PID may finance the acquisition or construction of other infrastructure, including parks recreational facilities, and fire prevention facilities and equipment.

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## PID Financing

- A PID is authorized to issue tax-exempt revenue bonds to finance qualified infrastructure.
- Revenue Bonds issued by the PID are payable solely from the levy of special assessments by the District on benefited land within the PID and other sources that may be available.
- Interest rates, maturity and terms and conditions of any revenue bonds will be based on the strength of the developer, the type of development and specifications of the bond purchaser.
- The bonds may be sold as bank-qualified, tax-exempt (if less than $10 million per year, however the stimulus package being considered by Congress raises this threshold to $30 million during 2009-2010) at a substantial interest savings, or to investors as nonrecourse or recourse debt at market rate (subject to underwriting restrictions).
- In addition, a PID has the authority to enter into Contribution Agreements with government entities to provide additional security and/or other incentives to directly benefit the project.

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**Mississippi Municipal Attorneys Association**

**Thanks for the opportunity!**

**Please contact us with any questions!**

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