



WATKINS & EAGER

Mississippi Municipal Attorneys Association Winter Conference 2026

Wednesday, January 14, 2026

**“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

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.

“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.

Types of Projects

- Industrial, Manufacturing, etc.
- Commercial
 - Office
 - Retail
 - Hospitality, Recreation, and Tourism
 - Housing*
 - Mixed-Use

Summary of Topics

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

State-of-Play of Economic Development

- Shortage of sites nationwide
- Companies have very aggressive timelines and desire pad-ready sites that can accommodate up to 200,000 square feet of building space (with all utilities on site and transportation infrastructure in place)
- 100-acre rail sites are in very short supply
- “Power” is always of high importance

MDA Programs

- **Development Infrastructure Program (“DIP”)** & Site Development Grant Program
- **Capital Access Program (“CAP”)** Loan
 - Private beneficiary – 3% interest
 - Public beneficiary – 2% interest
- **Community Development Block Grant (“CDBG”)**
 - 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
- **Tourism Rebates Programs**
- **Brownfield Rebate Program**
- ***Note:** All MDA programs require active engagement by municipal officials in the process and compliance with applicable regulations and statutes.

Development Infrastructure Program ("DIP") Grants

- More often awarded in connection with industrial and warehousing/distribution projects, but can be awarded for community development projects
- Purpose –
 - Buildings (purchase, construction, or rehabilitation)
 - Water and sewer improvements
 - Drainage improvements
 - Roads and bridges
 - Land/site improvements
 - Any other project approved by MDA
- Lesser of \$15,000 per job or a maximum of \$500,000

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, dirt work, etc.

Community Development Block Grant ("CDBG") Program

- For Public Facilities Projects:
 - Competitive grant process
 - Purposes –
 - drainage systems
 - water and sewer systems
 - roads and bridges
 - public buildings
 - At least 51% of the persons benefitted must be persons of low and moderate income
 - Maximum of \$600,000 for cities and counties with population > 3,500
 - Maximum of \$450,000 for cities and counties with population < 3,500

Capital Improvements Revolving Loan Program (“CAP”)

- Terms up to 20 years
- Typically lower interest rates
- Municipalities pledge sales tax diversions as collateral
- Do not count against municipal debt limits
- Improvements funded with CAP Loan must remain publicly-owned until loan is repaid, but can be leased to private sector

CAP Loans

- The construction or renovation of economic development buildings for speculative purposes requires a 50/50 match - cash or in-kind
- May not purchase a building that has been constructed in the last 6 months
- May not purchase an existing building or facility for more than the appraised value
- May not acquire buildings or facilities from individuals, companies, or corporations, and subsequently lease them to the seller (previous owner) within 5 years of acquisition

Qualified Tourism Projects via MDA

- The developer is the applicant, with participation from the municipality.
- 80% of eligible sales tax diversions can be rebated to the applicant for up to 20 years or until the applicant has recouped 30% of the total project costs (whichever comes first).
- Broad definition of “eligible costs”, such as acquisition of land, construction, design, equipping, etc.
- MDA requires the participating municipality to approve the sales tax diversion.

Qualified Tourism Projects via MDA

- “Full Service” Hotels - private investment of \$20+ million, minimum of 25 rooms (and \$250,000+ per guest room), plus amenities (spa, restaurant, attraction, etc.)
- 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
- Public golf courses with private investment of \$10+ million.
- 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 provides live entertainment at least 3 nights a week.

Qualified Tourism Projects via MDA

- 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

Brownfield Redevelopment Rebates

- Developers of properties with environmental contamination may apply for approval for this incentive, with coordination with the relevant municipality or county.
- 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 2.5 times the allowable remediation costs.

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

Brownfield Redevelopment Rebates

- “Brownfield” may suggest an abandoned industrial property, but can also include commercial property with little contamination, such as:
 - Former gas stations
 - Former dry cleaners
 - Former co-ops
 - Old buildings (asbestos/lead paint)

Brownfield Redevelopment Rebates

- 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 Mississippi law, 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; or
 - Any other businesses as approved by MDA.

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 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 and IRS regulations promulgated thereby determine tax-exempt status.
- **Federal Securities Law.** Requirements on disclosure concerning the issuer and the debt obligations, both at sale and ongoing disclosure requirements.

General Procedures for Bonds

- 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

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)

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, REDA, etc.).
- Diverts initial risk to developer, with municipality’s support after completion and operation
- Diverts the increased (incremental) property taxes (real and personal) 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

TIF Development Agreement

- Creates a quasi public-private partnership with a project developer
 - Developer fronts the money for infrastructure costs in its project financing
 - Typically, upon completion of the project, the TIF bonds are issued, and the proceeds reimburse the developer
 - Based on a Development and Reimbursement Agreement with the developer
 - Developer may have to guarantee or pledge additional security for bond repayment

TIF Bonds

- TIF bonds repaid using incremental increases in property (real and personal) and sales taxes resulting from the project
- Maximum term of 30 years (but usually 10-15 years)
- TIF bonds do not count against statutory debt limits
- Public hearing and chancery court validation required but not subject to election or reverse referendum

TIF Limitations

- Cannot use ordinary TIF bond proceeds to fund privately-owned improvements
- A possible solution is to create an “Alliance” via the Regional Economic Development Act (REDA).

Urban Renewal Districts

- “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
- Developer may have to guarantee or pledge additional security for repayment of bond
- Municipality is partner with developer in risks for fronting funds and/or taking actions (i.e., acquisition of property)
- Municipality may retain powers or delegate to created authority

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.

Special Assessment Bonds

- Property owners may request to pay higher property taxes in exchange for specific benefits
- Requires creation of district for improvements, requiring various public notices, public hearings, and votes of property owners
- Assessments may be requested and imposed by property owners for costs of —
 - Street improvements
 - Utilities improvements
- Bonds issued for project are secured by special assessments

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.
- 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.

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.
- Depends on purpose of project, the bonds may be sold as tax-exempt
- 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.

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 for construction and “furniture, fixtures, and equipment”
- Does not capture the ongoing sales taxes or property taxes from operation of the project
- Also eligible for broad property tax exemptions from cities and/or counties
- Fees associated with going through MBFC; typically for projects \$10 million +

Regional Economic Development Act (“REDA”)

- 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 a 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
- *Costs are paid or reimbursed by bonds issued for the project*

REDA “Lite”

- Same as traditional REDA, except.....
- *Costs are paid or reimbursed by either bonds issued for the project or from annual revenues of the project on an ongoing basis*

REDA Process

- Public governing bodies must first approve a formal REDA "Alliance Agreement" to describe:
 - Purpose of the Alliance (one or more projects, such a downtown redevelopment project)
 - How Alliance will be governed
 - How Alliance will be funded (e.g., TIF bonds)
- REDA Application must be submitted to the MDA describing the benefits of the proposed project(s)
- MDA approval, together with REDA Alliance Agreement, must be filed with and ratified by the Attorney General's office
- Similar to an interlocal agreement, any member of a REDA Alliance can do anything another member can do

REDA Benefits

- TIF Bonds (or General Obligation Bonds) can be issued pursuant to REDA
- REDA allows TIF or GO bond proceeds to fund any "costs of a project"
 - "Cost of project" means all costs of site preparation and other start-up costs; all costs of construction; all costs of fixtures and of real and personal property required for the purposes of the project and facilities related thereto, whether publicly or privately owned...
- 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 or redevelopment authority	Any other political subdivision of the state

Redevelopment Authority Powers

- Zone or rezone any part of the municipality or make exceptions from building regulations
- Enter into any building or property in any urban renewal area to make inspections, surveys, appraisals, soundings, or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted
- Acquire property by purchase, lease, option, gift, grant, bequest, devise, or by eminent domain
- Hold, improve, clear, or prepare for redevelopment any such property

Redevelopment Authority Powers

- Borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, state, county, or other public body, or from any sources, public or private
- Mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property — permits non-recourse borrowings
- A municipality also has the authority to issue bonds to finance the undertaking of urban renewal projects
 - Excluded from municipality debt limits
 - Can be issued on a tax-exempt basis if use of the funded project qualifies
 - For a maximum term of 30 years
 - Borrowings are repayable solely from the income, revenues, and funds derived from the carrying out of the urban renewal project, including any contributions from the federal government to the urban renewal project or a mortgage on the urban renewal project

Redevelopment Authorities

- Eminent domain power coupled with authority to dispose of property to a private party for urban renewal purposes is unique
- Permits rehabilitation of neglected properties
 - Municipality can adopt new building rehabilitation/maintenance standards
 - If owners refuse to bring their properties up to the new standard, the municipality can acquire the property through negotiation or by eminent domain, and then dispose of the property (sale or lease) for "fair value" through competitive bidding process
- 2011 Ballot Initiative exception - property can be transferred to a private enterprise if the use of eminent domain:
 - removes a public nuisance
 - removes a structure that is beyond repair or unfit for human habitation or use;
 - is used to acquire abandoned property, or
 - eliminates a direct threat to public health or safety caused by its current condition

Redevelopment Authorities

- Alternatively, if a municipality does not wish to purchase the property...
- It may exercise its powers set forth in Section 21-19-11 (providing for cleaning of private property) or Section 43-45-105 (authorizing slum clearance)
- Both statutes authorize a municipality, if the property owner refuses, to repair or improve structures on private property, with the cost of such repair or improvement becoming a lien on the property to be collected as a tax
- Further, Section 39-13-15 provides certain authority for the municipality to make repairs to correct demolition by neglect of historic landmarks or structures located within historic districts, the expense of which also becomes a lien on the property

Redevelopment Authorities

- A separate Urban Renewal Agency (or a Redevelopment Authority) may be formed by the municipality governing board but this is not required
- Requires a specific delegation of urban renewal powers
- If created, the mayor, by and with the advice and consent of the local governing body, must appoint a board of commissioners of the new authority which must consist of five (5) commissioners

Fee In Lieu of Tax Agreements (“FILOT”)

- 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 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.

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.

Municipal Property Tax Breaks

- 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

Municipal Property Tax Breaks

- 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"
 - 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
- Does not apply to school district taxes
- Can "stack" the city and county exemptions

Transfers of Real Property

- Various authorities, but broadest is Section 57-7-1 of the MS Code
- 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

Tax Credit Programs

"Incentivized Project Finance"

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

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.)

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.

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.

Mississippi Municipal Attorneys Association

Thanks for the opportunity!

Please contact us with any questions!

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