



TRANSPORTATION DEVELOPMENT DISTRICTS (“TDDs”) AS LOCAL INFRASTRUCTURE FINANCING OPTION

Overview:

Missouri statutes authorize creation of Transportation Development Districts to “fund, promote, plan, design, construct, improve, maintain, and operate one or more transportation projects or to assist in such activity”. A transportation development district is created by submission of a petition to the circuit court. Once created, a transportation development district constitutes a separate political subdivision governed by a board of directors. The City may retain involvement in the governance of the district by agreement. Districts may fund approved transportation projects utilizing special assessments, property taxes, sales taxes and tolls. TDDs are also authorized to issue bonds, including revenue bonds, by resolution of the board of directors without a vote of the public. These bonds do not count against the City’s debt limit because they are issued by the district and not by the City.

Discussion and Analysis:

Enacted in 1990, the Transportation Development District Act, Sections 238.200-275 of the Revised Statutes of Missouri, as amended, provides for cooperation between a locally established special purpose district and political subdivision and the Missouri Highways and Transportation Commission (“MHTC”) to “fund, promote, plan, design, construct, improve, maintain, and operate” one or more transportation related improvements or infrastructure. Although not required, MHTC encourages applications by TDDs for the Missouri Department of Transportation’s Innovative Finance program for development and maintenance of approved projects.

A Transportation Development District may fund a broad range of road and transportation projects (subject to the approval of MHTC or of the City, if the project is not designed to be incorporated in the state highway system). To fund proposed projects, TDDs may levy special assessments, or property taxes and sales taxes, subject to approval of voters within the district. The amount of a sales tax may not exceed one percent. After enactment, the sales tax is subject to a citizen petition for an election to repeal the tax. There is no statutory limit on the amount of special assessments or tolls that can be imposed.

Transportation Development Districts may also issue bonds or notes, including revenue bonds, by resolution of the board of directors without a vote of the public. Because bonds are issued by the district and not by the city, the bonds are not included in calculations of municipal bonded indebtedness. Additionally, TDDs may borrow funds

and enter into lease-purchase arrangements or similar obligations. The TDD may secure the obligations by pledging district property or income.

Formation of a TDD requires a petition to the applicable circuit court by fifty registered voters within the proposed district, by all of the property owners within the district if the proposed TDD contains no registered voters, or by the governing body of any county, city, town, village, or any similar entity. Specific requirements for the petition are set forth in Section 238.207.4 of the Revised Statutes of Missouri, as amended.

Within thirty days of filing, the circuit court clerk must serve a copy of the petition upon respondents who shall include MHTC and any other public entity having jurisdiction over any transportation improvement or service within the proposed district. Respondents have thirty days after receipt of service to file an answer stating agreement with or opposition to the creation of the TDD. If the circuit court determines after hearing that the petition and the proposed method of funding are lawful, the court then certifies the question of district creation and project funding for voter approval. The court may additionally order a public hearing on the question. Alternatively, if the owners of record filed the petition, the court may declare the TDD organized and, as required, certify the proposed funding methods for voter approval.

Where voter approval is required, the TDD Act supplies a novel definition. The term “qualified voter” as set forth in Section 238.202.2 of the Revised Statutes of Missouri, as amended encompasses not only registered voters residing within the TDD but, where the district contains no residents, owners of real property. It remains to be seen whether courts reviewing owner-authorized TDD sales or property tax levies will endorse these methods as meeting Hancock Amendment requirements.

Once created, a TDD remains a separate political subdivision of the state with powers such as condemnation, the power to contract with parties, to lease or purchase real or personal property, and to sue and be sued. Although the City has no formal control or jurisdiction over transportation development district projects, such an end can be achieved by prior agreement. In any event, the board of directors of the district cannot increase or decrease the number of projects in the district without first obtaining voter authorization, as applicable, and the approval of the MHTC and/or the City, depending on the project.