POPE FLYNN
GROUP

Economic Development Tools and Their Impact on School Districts

South Carolina Association of School Business Officials

November 8, 2018

The Basics

What is "economic development"?

POPE FLYNN GROUP

What is “economic development”?

Economic Development - the process by which wealth is generated through an investment in a community, and the investment:

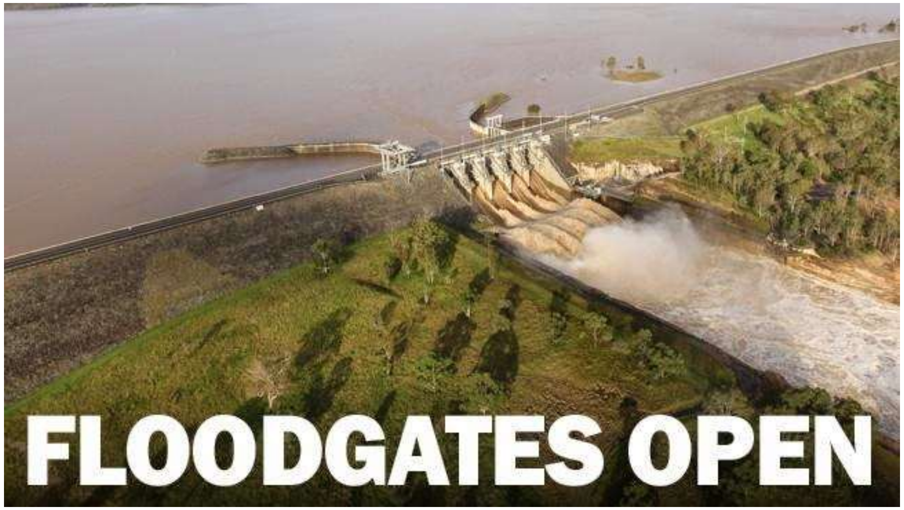
1. Brings new money and jobs into the community; and

2. Is not dependent on the community for its sales/revenues.

Quick History

- Given the money involved, it is no surprise that private industry has invested massive amounts in creating economic development incentives

- "Economic Development" blessed as a "public purpose" in the 1980's by the South Carolina Supreme Court, opening the floodgates



Public Purpose Test:

Nichols Test (1986) determine whether public purpose:

- What is the intended or ultimate goal or benefit to the public?
- Are public parties or private parties the primary beneficiaries?
- Is the benefit to the public speculative?
- What is the probability that the public interest will be ultimately served and to what degree?

POPE FLYNN GROUP

Questions to Ask

What is the rate of return on the investment of public funds?

Will the project increase costs in other parts of the community or for other local governments that are not being considered?

What other benefits does the local government expect to gain from the project?

Does the project serve the larger goals of the community (downtown revitalization, job growth, affordable housing)?

Are the incentives structured such that the private party receives its benefit after it has performed on its obligations?

POPE FLYNN
GROUP

Economic Development Tools that Impact School District Revenues:

- Tax Increment Finance Districts (TIFs)
- Fee-in-lieu-of-tax Agreements
- Multi-County Business Parks
- Bailey Bill

"Do something Barney...we're being siphoned in broad daylight"

POPE FLYNN
GROUP

- Article X, Section 14 authorizes a city to borrow money for redevelopment within its incorporated boundaries, with debt service to be provided from the incremental property tax revenues resulting from the value added by the redevelopment project.

- Law for cities is codified at Chapter 6 of Title 31, Code of Laws of South Carolina (originally enacted in 1984, and amended many, many times).

- Law for counties is codified at Chapter 7 of Title 31, Code of Laws of South Carolina (enacted in 1999, amended once).

- TIF Law upheld in *Wolper v. City Council of City of Charleston* (1985).

POPE FLYNN
GROUP

TIFs | Statutory Process

- Starting point is the adoption of a Redevelopment Plan (defining a Redevelopment Project Area). The Redevelopment Project Area must contain blighted areas, conservation areas or more recently agricultural areas (sprawl areas for the County TIF – unincorporated territory).

- Differences between blighted areas and conservation areas; and improved areas and vacant areas.

- Factors for improved structures: age, dilapidation, deterioration, illegal use of structures, code violations, vacancies, lack of planning, lack of adequate infrastructure, etc….

- Factors for vacant areas (if not blighted or conservation) include: poor platting, tax delinquencies, deterioration of neighboring structures, etc….

- Redevelopment Project Area must be greater than 1.5 acres (limited to 5% of total acreage of County in County TIF)

POPE FLYNN GROUP

TIFs | Activating the TIF

- The TIF Law (both municipal and county) does not authorize any revenues from the TIF to be used for the Redevelopment Projects until the issuance of TIF Bonds, secured by and payable from tax increments.

- Once the assessed value in the Redevelopment Area exceeds the initial assessed value at the time the Redevelopment Area is created and TIF Bonds are issued, a special tax allocation fund is created and the funds therein are used to pay project costs (including the payment of the debt obligations).

- Initial issue of TIF Bonds must be issued within 10 years of the adoption of the Redevelopment Plan (5 years for County TIF) and other affected taxing districts must consent to inclusion within the District in order for their increment to be pulled off.

- Other revenues may be made available to retire the obligations.

- Debt is not chargeable against debt limit.

POPE FLYNN
GROUP

TIFs | Statutory Process

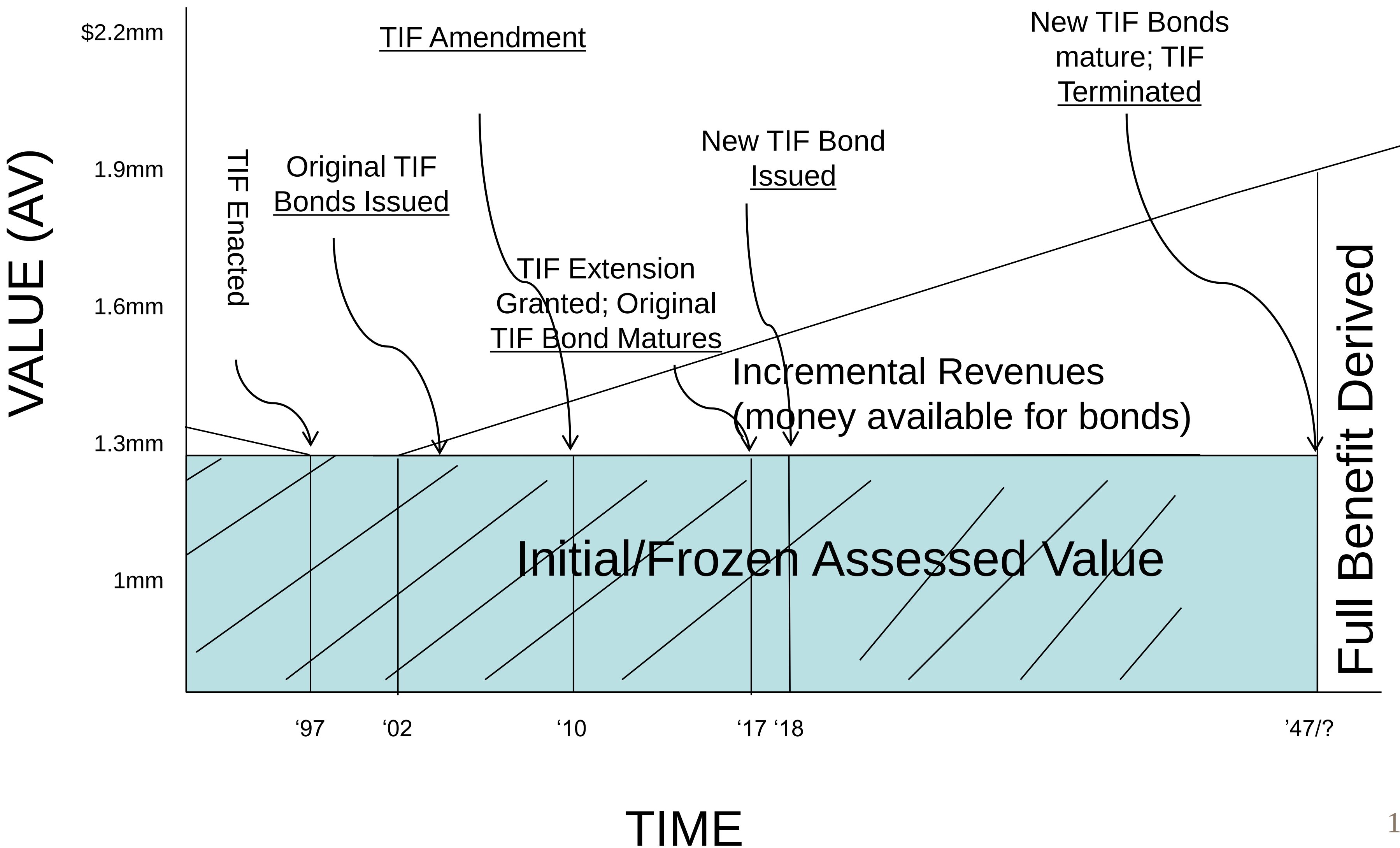
- Sections 31-6-80/31-7-80 require the issuer to give forty-five days public notice to all taxing districts (i.e. School District, Special Purpose Districts, etc.) if there is taxable property included in redevelopment project area.

- Notice must direct taxing district to give comments to the municipality concerning the subject matter of the hearing prior to date of the public hearing.

- If taxing district does not file an objection to the redevelopment plan at or prior to date of public hearing, **<u>the taxing district is deemed to consent.</u>**

- City can then make changes to respond to taxing district’s objections.

TIFs | Graphic Depiction



POPE FLYNN GROUP

You receive a request to consent to a TIF…

You receive notice from a municipality/county that it is considering a development plan that includes Tax Increment Financing . . .

- What should you do?
- What are your considerations?
- What options do you have?

Response | What are your choices?

- Consent without comment (no action required)
- Consent in part (can object to obligations above a certain amount)
- Object to the project entirely (object to any obligations)
- As of 2012, enter into an intergovernmental agreement (IGA)

POPE FLYNN GROUP

Negotiated Fee-in-Lieu-of-Tax Agreements

- Authorized under Title 12, Chapter 44 of the South Carolina Code

- The benefits of a FILOT may only be offered to <u>manufacturers</u> making <u>new</u> investment:
  - The assessment ratio of taxable property is reduced from 10.5% to 6%;
  - The millage is capped at the current rate for the term of the FILOT Agreement; and
  - The taxable value of real property improvements is often capped for the FILOT term (may also be subject to reassessment every 5 years)

- Requires a minimum investment of $2.5 MM ($1 MM in counties with high unemployment rate) and is often subject to a larger contractual investment requirement or job creation requirement

- Maximum term of 30 years (40 years for “super fees”)

- Often used in conjunction with a Multi-County Industrial/Business Park

Multi-County Industrial Parks | The Basics

- Tool that allows <u>counties</u> to control the <u>allocation</u> of future tax revenue that is generated by industrial investment

- An MCP are a legal construct where property taxes are “magically” converted to “fee revenue” giving the County far greater control over the allocation of the revenue

- County can allocate revenue to partners to fund economic development

Multi-County Industrial/Business Parks | The Basics

- Authorized under Article VIII, Section 13(D) of the South Carolina Constitution and implemented under Section 4-1-170 of the South Carolina Code

- Allows counties to control the allocation of future revenue that is generated by industrial or commercial investment

- MCPs are a legal construct where property taxes are "magically" converted to "fee revenue" giving the County far greater control over the allocation of the revenue

- What MCPs are not:
  - Actual "industrial parks" in the traditional sense
  - Actually located in more than one county

POPE FLYNN GROUP

MCPs | How MCPs Work

- Once real property has been designated an MCP, the real property and any personal property situated on it become “exempt” from property taxes BUT the property owner has to pay the county a “fee” equal to what the total property taxes would have otherwise been (a “fee-in-liue-of-tax”)

- If the revenue generated by the taxable property is “tax” revenue the county is constitutionally required to hand it over to the taxing entities based upon their respective millages

- Once the revenue is considered “fee” revenue, those limitations no longer apply and the county can allocate a greater share of the MCP revenue to itself or other taxing entities, use it to give credits against FILOTS due from industry or businesses located in the MCP, or pay debt service on bonds secured by park revenue (SSRBs)

MCPs | Statutory Process

- County where the MCP designated property is to be located asks a contiguous partner county to assist in the creation of the MCP

- Both counties enact ordinances approving a Multi-County Park Agreement that addresses:
  - How the expenses of the MCP are to be paid (to the extent that there are expenses, typically by the county where the property is located)
  - The sharing of "park revenue" between the two counties (typically the partner county gets 1%)
  - The manner in which park revenue is to be allocated among the taxing entities in the county (incorporation any property tax credits given to industry/business and debt service on special source revenue bonds)

- If the MCP is located within the boundary of a municipality it has the power to consent to the MCP

- School districts and other taxing entities have no power of consent

POPE FLYNN
GROUP

MCPs | Models

- Model #1: Manufacturing/Business Incentives
    - Manufacturing property (often an entire industrial park) is designated as an MCP
    - Owners of taxable property located within the MCP are given special source revenue credits—simply credits against the FILOT that would otherwise be due
    - Owner of property in the MCP is eligible for other incentives available only when located in an MCP such as jobs tax credits
    - Often given in addition to negotiated FILOTs (6% assessment ratio)

PROPERTY TAXES
$1 MILLION

Normal Allocation:

- School – $600k
- County – $400k

MCP Designation

FILOT
$1 MILLION

Re-allocation:

- Partner – $10k (1%)
- SSRC - $100k
- County – $356k (40% of remainder)
- School – $534k (60% of remainder)

MCPs | Models

- Model #2: Funding County economic development activities
  - County routinely gives MCP designation to all eligible manufacturing properties
  - County takes a percentage of all park revenue “off the top” to fund economic development activities
  - County then allocates remaining revenue among all taxing entities (county included) based upon their respective millages

PROPERTY TAXES
$1 MILLION

Normal Allocation:

- School – $600k
- County – $400k

MCP Designation

FILOT
$1 MILLION

Re-allocation:

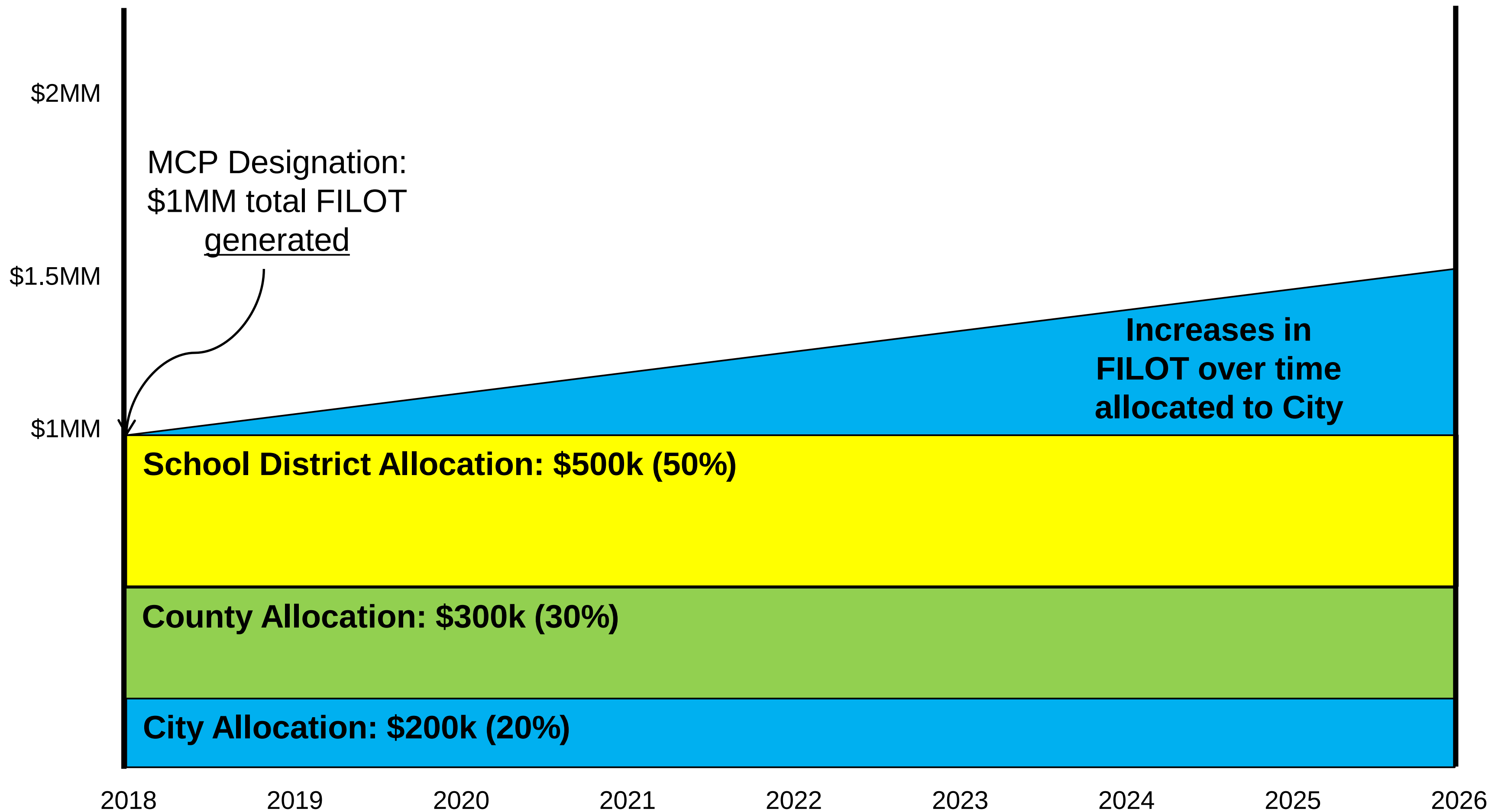
- Partner – $10k (1%)
- ED Fund - $50k (5%)
- County – $376k (40% of remainder)
- School – $564k (60% of remainder)

POPE FLYNN GROUP

MCPs | Models

- Model #3: Municipal MCP districts
  - City asks county to designate a particular property or an entire district (a downtown) as a MCP
  - City gives its consent to the MCP subject to an intergovernmental agreement that requires that the park revenue be allocated among taxing entities in a specific way
  - The city receives a greater share of the park revenue
  - Often structured as a “synthetic TIF” that does not require school district consent

Model #3: Municipal MCP districts



POPE FLYNN GROUP

The Bailey Bill

- A local real estate tax incentive for rehabilitation of historic property or affordable housing—freezes the taxable assessed value of a property at the pre-rehabilitation value for up to 20 years

- Requires a minimum investment threshold of at least 20% of the pre-rehabilitation value of the building

- Property must be 50 years old or older and:
  - Listed on the National Register of Historic Places
  - Designated as historic by the city or county
  - Located within a historic district

- For historic properties the rehabilitation must be done in accordance with historic preservation standards

POPE FLYNN
GROUP

Economic Development | Contact

Lawrence Flynn
(803) 354-4902
lflynn@popeflynn.com

C.D. Rhodes III
(803) 354-4911
cdrhodes@popeflynn.com