

**SUMMARY OF THE  
MISSOURI TRANSPORTATION DEVELOPMENT DISTRICT ACT**

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## EXECUTIVE SUMMARY

The Public Law and Finance Department of Armstrong Teasdale LLP is at the forefront of utilizing the transportation development district, commonly referred to as “TDD,” as a financing/development vehicle. Armstrong Teasdale LLP has been involved in the use of TDD in the following instances:

- City of Brentwood, Kenilworth (Brentwood Square) Redevelopment Area (Pace Properties, Inc.). TDD used in conjunction with TIF to create additional tax revenues to fund transportation-related public improvements that could not otherwise be funded within the budget established by the TIF Redevelopment Plan.
- City of Columbia, Highway 63 & Vandiver Drive (CenterState Properties, L.L.C.). TDD used to induce private developer to cover cost overruns in connection with a new highway interchange being constructed by the Missouri Department of Transportation in cooperation with the City of Columbia and Boone County.
- City of Columbia (Lake of the Woods). Local street and interchange improvements at I-70 and Lake of the Woods to support planned commercial development south of the interchange.
- City of Crestwood, Big Bend Crossing Redevelopment Area (Novus Companies). TDD used in conjunction with Chapter 353 redevelopment project to finance transportation project.
- City of Crestwood, Crestwood Point (THF Realty, Inc.). A TDD used in conjunction with a TIF project to provide improvements to Watson Road and public parking at the Kohl’s development.
- City of Fenton, Gravois Bluffs Redevelopment Area (G.J. Grewe, Inc.). TDD used in conjunction with tax increment financing (“TIF”) to reduce the amount of TIF obligations needed to fund public improvements. Also, TDD sales tax utilized to generate additional TIF revenues.
- City of Hannibal, Stardust-Munger-Diamond Redevelopment Area (THF Realty, Inc.). TDD used in conjunction with TIF to allow additional public improvements to be made with TIF revenues.
- City of Hazelwood/City of Bridgeton, Highway 370/Missouri Bottom Road Redevelopment Area (Park 370/Missouri Mills). TDD used in conjunction with TIF to finance significant transportation-related public improvements involving State Highway 370 as well as various local roads to enable an expanded retail component as part of a planned commercial development.
- Highway 36 Improvements (Six County Cooperative effort in Northeast Missouri). TDD representing local governments working with MoDOT to bring Highway 36 to 4-lane, divided highway status.
- City of O’Fallon, Mexico Road (Pace Properties, Inc.). TDD to make internal street improvements and upgrade to existing highway improvements in conjunction with multi parcel commercial development.
- City of St. John, Orlando Avenue & St. Charles Rock Road (St. John Crossings) Redevelopment Area (Walpert Properties). TDD used in conjunction with TIF to finance transportation-related public improvements along St. Charles Rock Road, Bristol Avenue and Orlando Avenue to facilitate a retail development.
- City of St. Louis, Hilton Hotel parking structure (Drury Development Corporation). TDD used to finance public garage in downtown next to Merchants-Laclede hotel development.

- St. Louis County, Meramec Station Road & Highway 141 Improvements (Drury Development Corporation). TDD used to finance transportation-related public improvements to enable a planned commercial development.
- St. Louis County, Lindbergh Boulevard and St. John's Church Road (Costco Wholesale Corporation). TDD used to finance transportation-related public improvements to enable a planned commercial development at Lindbergh Boulevard and Interstate 55.

Although enacted in 1990, the Missouri Transportation Development Act (the "*TDD Act*") has recently received attention throughout the State as a viable development tool for local governments. The TDD Act provides for the formation of a transportation development district (the "*District*") to fund, promote, plan, design, construct, improve, maintain, and operate one or more projects or to assist in such activity. A District is a separate political subdivision of the state. Pursuant to the TDD Act, a District may undertake a variety of transportation-related projects including bridges, streets, highways, interchanges, intersections, signage, signalization, parking lots, bus stops, stations, garages, terminals, hangars, shelters, rest areas, docks, wharves, lake or river ports, airports, railroads, light rail, or other mass transit and any similar or related improvements or infrastructure.

A District is established by filing a petition in the circuit court of the county within which the proposed District will be located. The petition shall be brought as follows: (i) by not less than fifty (50) registered voters residing within the proposed District; or (ii) if there are no persons eligible to be registered voters residing within the proposed District, by the owners of record of all real property located within the proposed District; or (iii) by the governing body of any local public authority or political subdivision responsible for transportation services; or (iv) if two or more local transportation authorities have adopted resolutions calling for the joint establishment of a District, by the governing body of any one such local transportation authority.

Before the construction or funding of any project, the District shall submit a proposed project, together with the proposed plans and specifications, to the Missouri Highways and Transportation Commission (the "*Commission*") for its prior approval of the project. If the proposed project is not intended to be merged into the state highways and transportation system under the Commission's jurisdiction, the District shall also submit the proposed project and proposed plans and specifications to the local transportation authority that will become the owner of the project for its prior approval. A District may fund such a project by issuing bonds, notes and other obligations for not more than forty (40) years and may secure any such obligations by mortgage, pledge, assignment or deed of trust of property and income of the District. A District may use one or more of the taxes or other funding mechanisms specifically authorized by the TDD Act to fund a project or to repay such obligations, including sales tax, property tax, special assessment and toll roads.

Unlike TIF, the District imposes its own taxes to fund projects and does not divert or diminish the revenue of other taxing jurisdictions. Nevertheless, the use of TDD, as with TIF, is premised on the philosophy that an investment in public improvements spurs economic development, which in the long run will pay for the public improvements and more. Moreover, TDD has proven to be an effective complement to TIF where a project to be financed primarily by TIF includes transportation-related public improvements. The use of TDD in conjunction with TIF can allow TIF revenues to be used to finance other public improvements, to reduce the amount of TIF obligations needed to finance the project or to complete additional transportation-related public improvements not included as part of the TIF redevelopment project. What is more, if a District is created within a TIF redevelopment area and imposes a sales tax, such a sales tax would be considered an additional economic activity tax, fifty percent (50%) of which would be captured by the TIF. In this manner, TDD and TIF create a unique synergy that not only generates TDD revenue to fund the District's portion of the project, but also generates additional TIF revenue to fund the TIF portion of the project.

Currently, TDD is an extremely valuable means of encouraging economic development, since almost all publicly financed projects include a significant transportation-related component. Moreover, given the

recent attention that the TDD Act has received throughout the State as a viable development tool for local governments, the future of TDD appears bright. As more familiarity is gained with the use of TDD as a financing vehicle, it is conceivable that TDD will be increasingly used not only for local transportation projects, but also for regional and state-wide transportation projects involving multiple local governments and the Missouri Highways and Transportation Commission.

## I. INTRODUCTION

The Public Law and Finance Department of Armstrong Teasdale LLP has extensive experience in utilizing development incentives to finance public and private projects. We have served as bond counsel and counsel to issuers, underwriters and developers in numerous public finance transactions. One development vehicle that has recently received increasing attention in our public development practice is the transportation development district, commonly referred to as “TDD.”

Simply defined, a transportation development district is a special taxing district authorized to undertake certain public improvements to be financed by the district through the issuance of notes or bonds, which are in turn retired by the district’s levy of various taxes within the geographic boundaries of the district, including sales tax, property tax and special assessment. Used alone or in conjunction with tax increment financing (“TIF”), a transportation development district can provide the flexibility necessary to meet some of the difficult political, legal and financial challenges that accompany the transformation of property from under-utilized to economically prosperous.

Because of the flexibility of transportation development districts as a financing/development tool, their true potential and applicability can only be realized when the concept is applied to a particular set of circumstances. Accordingly, this Summary is intended only as a general introduction to transportation development districts, with the hope that the information contained herein will provide a starting point for a useful dialogue on how a transportation development district might complement other development tools that are contemplated or may already be in place.

## II. GENERAL PROVISIONS OF THE TDD ACT

**Legal Authority and Purpose.** The Missouri Transportation Development District Act (the “TDD Act”) became effective on May 30, 1990. See §§ 238.200-.275, RSMo. The TDD Act provides for the formation of a transportation development district (a “District”) to fund, promote, plan, design, construct, improve, maintain, and operate one or more projects or to assist in such activity. A District is a separate political subdivision of the state. Pursuant to the TDD Act, the term “project” includes any bridge, street, road, highway, access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail, or other mass transit and any similar or related improvement or infrastructure.

**Establishment of the District.** As discussed in more detail in **Section III**, a District is established by filing a petition in the circuit court of the county within which the proposed District will be located. The petition shall be brought as follows: (i) by not less than fifty (50) registered voters residing within the proposed District; or (ii) if there are no persons eligible to be registered voters residing within the proposed District, by the owners of record of all real property located within the proposed District; or (iii) by the governing body of any local transportation authority in which a proposed project may be located; or (iv) if two or more local transportation authorities have adopted resolutions calling for the joint establishment of a District, by the governing body of any one such local transportation authority. Pursuant to the TDD Act, a “local transportation authority” includes a county, city, town, village, county highway commission, special road district, interstate compact agency, or any local public authority or political subdivision having jurisdiction over any bridge, street, highway, dock, wharf, ferry, lake or river port, airport, railroad, light rail or other transit improvement or service.

The proposed boundaries of the District shall be contiguous and may contain all or any portion of one or more municipalities and counties. Property separated only by public streets, easements or rights-of-way shall be considered contiguous and, in the case of a District created by joint resolution of two or more local transportation authorities, property connected by a single public street, easement or right-of-way shall be considered contiguous. Furthermore, if a District is formed pursuant to a petition filed by the owners of record of all of the real property located within the proposed District, the proposed District need not contain

contiguous properties if (a) the petition provides that the only funding method for project costs will be a sales tax; (b) the court finds that all of the real property located within the proposed District will benefit from the projects to be undertaken by the District; and (c) each parcel within the proposed District is within five miles of every other parcel.

**District Board of Directors.** As noted above, a District is a separate political subdivision. Pursuant to the TDD Act, a board of directors (the “*Board*”) shall possess and exercise all of the District’s legislative and executive powers. The Board shall consist of not less than five (5) nor more than fifteen (15) members. The Board shall elect a chairman from its members and shall appoint an executive director, a secretary, a treasurer and such other officers or employees as it deems necessary. Within thirty (30) days after the election of the initial directors or selection of the initial directors if the District was formed pursuant to a joint resolution of two or more local transportation authorities, the Board shall meet. The time and place of the first meeting of the Board shall be designated by the court that heard the petition upon the court’s own initiative or the petition of any interested person. At the first meeting, the Board, by resolution, shall define the first and subsequent fiscal years of the District and shall adopt a corporate seal. A simple majority of the Board shall constitute a quorum. If a quorum exists, a majority of those voting shall have the authority to act in the name of the Board and approve any Board resolution. Each director shall devote such time to the duties of the office as the faithful discharge thereof may require and may be reimbursed for his actual expenditures in the performance of his duties on behalf of the District.

**Project Submission; State and Local Approval.** Before the construction or funding of any project, the District shall submit a proposed project, together with the proposed plans and specifications, to the Missouri Highways and Transportation Commission (the “*Commission*”) for its prior approval of the project. If the Commission finds that the project will improve or is a necessary or desirable extension of the state highways and transportation system, the Commission may approve the project subject to the District making any revisions in the plans and specifications required by the Commission and the District and the Commission entering into a mutually satisfactory agreement regarding development and future maintenance of the project. After the Commission approves the final construction plans and specifications, the District shall obtain prior Commission approval of any modification of such plans or specifications.

If the proposed project is not intended to be merged into the state highways and transportation system under the Commission’s jurisdiction, the District shall also submit the proposed project and proposed plans and specifications to the local transportation authority that will become the owner of the project for its prior approval. In those instances in which the local transportation authority is required to approve a project and the Commission determines that it has no direct interest in that project, the Commission may decline to consider the project, at which point approval of the project shall vest exclusively in the local transportation authority subject to the District making any revisions in the plans and specifications required by the local transportation authority and the District and the local transportation authority entering into a mutually satisfactory agreement regarding development and future maintenance of the project. After the local transportation authority approves the final construction plans and specifications, the District shall obtain prior approval of the local transportation authority before modifying such plans or specifications.

**Project Financing; District Obligations; Revenue Bonds.** Once established, a District may issue bonds, notes and other obligations for not more than forty (40) years and may secure any of such obligations by mortgage, pledge, assignment or deed of trust of any or all of the property and income of the District, except that the District shall not mortgage, pledge or give a deed of trust on any real property or interests which it obtained by eminent domain. Furthermore, the District shall not mortgage, pledge or give a deed of trust on any real property or interests which it acquired from the state of Missouri or any agency or political subdivision thereof without the written consent of the state, agency or political subdivision from which it obtained the property.

A District may at any time authorize or issue revenue bonds for the purpose of paying all or part of the cost of any project. Every issue of such bonds shall be payable out of the revenues of the District and may be

further secured by other property of the district which may be pledged, assigned, mortgaged or a security interest granted for such payment, without preference or priority of the first bonds issued, subject to any agreement with the holders of any other bonds pledging any specified property or revenues. Any issue of district bonds outstanding may be refunded at any time by the District by issuing its refunding bonds in such amount as the District may deem necessary. Such refunding bonds may not exceed the amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest thereon and any premiums, commissions, service fees, and other expenses necessary to be paid in connection with the refunding.

Any of the bonds described in the preceding paragraph shall exclusively be the responsibility of the District payable solely out of District funds and property and shall not constitute a debt or liability of the state of Missouri or any agency or political subdivision of the state. Neither the District, local transportation authority, nor the Commission shall be obligated to pay such bonds with any funds other than those specifically pledged to repayment of the bonds. Any bonds issued by the District shall state on their face that they are not obligations of the state of Missouri or any agency or political subdivision thereof other than the District. The interest on or any proceeds from such bonds shall be exempt from taxation in the state of Missouri for all purposes except the state estate tax.

**Funding Mechanisms.** As discussed in detail in **Section IV**, a District may use one or more of the taxes or other funding mechanisms specifically authorized by the TDD Act to fund a project or to repay any of the obligations identified above. Such funding mechanisms include sales tax, property tax, special assessment and toll roads. Except for the sales tax, which generally must be submitted by the Board after creation of the District, a proposed funding mechanism for a project may be submitted or resubmitted at any time to the District's qualified voters for approval. The Commission may by contract with the District receive any revenue received by the District from any funding mechanism. Such revenue shall be deposited by the Commission and applied to project costs including debt service on revenue bonds or refunding bonds issued by the District or the Commission pursuant to the TDD Act. If the proposed project is not intended to be merged into the state highways and transportation system under the Commission's jurisdiction, the local transportation authority that will assume maintenance of the project may by contract with a District receive any revenue received by the District and deposit such revenue in a special trust account. Such revenue and interest therefrom shall be applied by the local transportation authority to project costs or debt service on revenue bonds issued by the District or the local transportation authority pursuant to the TDD Act.

### **III. PROCEDURE FOR ESTABLISHING A DISTRICT**

The TDD Act sets out a detailed procedure for establishing a District. This procedure, while not overly burdensome, must be followed precisely in order to ensure the legal validity of the District and thereby the validity and marketability of the District obligations issued to pay for the project. The following is a step-by-step outline of the procedure for creation of a District.

**Petition; Contents.** As noted above, a District is established by filing a petition in the circuit court of the county within which the proposed District will be located. The petition shall be brought as follows: (i) by not less than fifty (50) registered voters residing within the proposed District; or (ii) if there are no persons eligible to be registered voters residing within the proposed District, by the owners of record of all real property located within the proposed District; or (iii) by the governing body of any local transportation authority in which a proposed project may be located. The proposed boundaries of the District shall be contiguous and may contain all or any portion of one or more municipalities and counties. Property separated only by public streets shall be considered contiguous. The petition shall set forth each of the following:

- (1) The name, voting residence and county of residence of each individual petitioner or, if no persons eligible to be registered voters reside within the proposed District, the name and address of each owner of record of real property located within the proposed District, or shall recite that the petitioner is the governing body of a local transportation authority acting in its official capacity.

- (2) The name and address of each respondent. Respondents must include the Commission and each affected local transportation authority within the proposed District, except a petitioning local transportation authority.
- (3) A specific description of the proposed District boundaries including a map illustrating such boundaries.
- (4) A general description of each project proposed to be undertaken by that District, including a description of the approximate location of each project.
- (5) The name of the proposed District.
- (6) The number of members of the Board of the proposed District, which shall not be less than five (5) or more than fifteen (15) members.
- (7) A statement that the terms of office of initial Board members shall be staggered in approximately equal numbers to expire in one, two or three years.
- (8) If the petition was filed by registered voters or by a governing body, a request that the question be submitted to the qualified voters within the limits of the proposed District whether they will establish a transportation development district to develop a specified project or projects.
- (9) A proposal for funding the District initially, pursuant to the authority granted in the TDD Act, together with a request that the funding proposed be submitted to the qualified voters residing within the limits of the proposed District; provided, however, the funding method of special assessment may also be approved by a special assessment petition signed by the owners of record of all real property located within the District.
- (10) A statement that the proposed District shall not be an undue burden on any owner of property within the District and is not unjust or unreasonable.

**Alternative Petition by Joint Resolution of Two or More Local Transportation Authorities; Contents.** As an alternative to the method described above, if two or more local transportation authorities have adopted resolutions calling for the joint establishment of a District, the governing body of any once such local transportation authority may file a petition in the circuit court of any county in which the proposed project is located requesting creation of a District. The proposed District shall be contiguous and may contain all or any portion of one or more municipalities and counties. Property separated only by public streets, easements or rights-of-way or connected by a single public street, easement or right-of-way shall be considered contiguous. The petition shall set forth:

- (1) That the petitioner is the governing body of a local transportation authority acting in its official capacity;
- (2) The name of each local transportation authority within the proposed District. The resolution of the governing body of each local transportation authority calling for the joint establishment of the District shall be attached to the petition.
- (3) The name and address of each respondent. Respondents must include the Commission and each affected local transportation authority within the proposed District, except a petitioning local transportation authority.
- (4) A specific description of the proposed District boundaries including a map illustrating such boundaries.

- (5) A general description of each project proposed to be undertaken by the District, including a description of the approximate location of each project.
- (6) The name of the proposed District.
- (7) The number of members of the board of directors of the proposed District.
- (8) A request that the question be submitted to the qualified voters within the limits of the proposed District whether they will establish a transportation development district to develop the projects described in the petition.
- (9) A proposal for funding the District initially, pursuant to the authority granted in the TDD Act, together with a request that the imposition of the funding proposal be submitted to the qualified voters residing within the limits of the proposed District; provided, however, the funding method of special assessments may also be approved by a special assessment petition signed by the owners of record of all real property located within the District.
- (10) A statement that the proposed District shall not be an undue burden on any owner of property within the District and is not unjust or unreasonable.

**Court Hearing.** The Court shall hear the case without a jury. If the court shall thereafter determine the petition is defective or the proposed District is illegal or unconstitutional, or shall be an undue burden on any owner of property within the District or is unjust and unreasonable, it shall enter its declaratory judgment to that effect and shall refuse to make the certifications requested in the pleadings. If the court determines that any proposed funding method is illegal or unconstitutional, it shall enter its judgment striking that funding method in whole or in part. If the court determines the petition is not legally defective and the proposed District and method of funding are neither illegal nor unconstitutional, the court shall enter its judgment to that effect.

If the petition was filed by registered voters or by a governing body, the court shall then certify the questions regarding District creation, project development, and proposed funding for voter approval, as discussed in the following paragraphs. If the petition was filed pursuant to a joint resolution of two or more local transportation authorities, the court shall then certify the single question regarding District creation, project development and proposed funding for voter approval, as discussed in the following paragraphs. If the petition was filed by the owners of record of all of the real property located within the proposed District, the court shall declare the District organized and certify the funding methods stated in the petition for qualified voter approval; provided, however, the funding method of special assessment may also be approved by a special assessment petition signed by the owners of record of all real property located within the District. In either case, if no objections to the petition are timely filed, the court may make such certifications based upon the pleadings before it without any hearing.

**Notice to Public; Election.** If the petition was filed by registered voters or by the governing body of a local transportation authority, the circuit clerk in whose office the petition was filed shall give notice to the public by causing one or more newspapers of general circulation serving the counties or portions thereof contained in the proposed District to publish once a week for four consecutive weeks a notice providing information regarding the filing of the petition, including the name of the proposed District, a summary of the proposed transportation project or projects, and a description of the proposed funding methods. The notice shall also provide a date by which those wishing to support or oppose the creation of the District shall respond. The circuit court may also order a public hearing on the question of the creation and funding of the proposed District, if it deems such appropriate, under such terms and conditions as it deems appropriate. If a public hearing is ordered, notice of the time, date and place of the hearing shall also be given in the notice specified in this paragraph.

If, after the time provided for the public to respond, the circuit court certifies the petition for voter approval, it shall call an election to be held in accordance with the TDD Act. As discussed above, if the petition was filed by a joint resolution of two or more local transportation authorities, the court shall certify a single question regarding District creation, project development and proposed funding for voter approval; provided, however, that if the District desires to impose a funding mechanism other than a sales tax, the question regarding proposed funding shall require separate voter approval at a subsequent election.

The results of the election shall be entered upon the records of the circuit court of the county in which the petition was filed. Also, a certified copy thereof shall be filed with the county clerk of each county in which a portion of the District lies, who shall cause the same to be spread upon the records of the county commission. If the results show that a majority of the votes cast by the qualified voters were in favor of organizing the District, the circuit court having jurisdiction of the matter shall declare the District organized and certify the funding methods approved by the qualified voters. Pursuant to the TDD Act, “*qualified voters*” means: (1) if any persons are eligible to be registered voters reside within the proposed District, such persons who have registered to vote; or (2) if no persons eligible to be registered voters reside within the proposed District, the owners of real property located within the proposed District.

Notwithstanding the foregoing, if the election was held as a result of a petition that was filed pursuant to a joint resolution of two or more local transportation authorities, the results of the election shall be entered upon the records of the circuit court of the county in which the petition was filed. Also, a certified copy thereof shall be filed with the county clerk of each county in which a portion of the proposed District lies. If the results show that a majority of the votes cast by the qualified voters were in favor of the proposition, the circuit court having jurisdiction of the matter shall declare the District organized and the funding methods approved by the qualified voters to be in effect. Pursuant to the TDD Act, “*qualified voters*” means: (1) if any persons are eligible to be registered voters reside within the proposed District, such persons who have registered to vote; or (2) if no persons eligible to be registered voters reside within the proposed District, the owners of real property located within the proposed District.

**Election Procedures.** In order to call any election required or allowed under the TDD Act (with the exception of the election of the District’s Board), the circuit court shall: (1) order the county clerk to cause the questions to appear on the ballot on the next regularly scheduled general, primary or special election day; or (2) if the election is to be a mail-in election, specify a date on which ballots for the election shall be mailed, which date shall be a Tuesday and shall not be earlier than the eighth Tuesday from the issuance of the order, and shall not be on the same day as a general, primary or special election; or (3) if all the owners of property in the District joined in the petition for formation of the District, authorize such owners to cast their ballot by unanimous petition approving any measure submitted to them as voters pursuant to the TDD Act.

*Mail-In Election.* Application for a ballot for a mail-in election shall be conducted as follows:

- (1) Only qualified voters shall be entitled to apply for a ballot;
- (2) Such persons shall apply with the clerk of the circuit court in which the petition was filed;
- (3) Each person applying shall provide: (a) such person’s name, address, mailing address, and phone number; (b) an authorized signature; and (c) evidence that such person is entitled to vote, which, in the case of resident individuals, shall consist of proof of registration from the election authority for resident individuals or, in the case of owners of real property, a tax receipt or deed or other document which evidences ownership and identified real property by location; and
- (4) No person shall apply later than the fourth Tuesday before the date for mailing ballots specified in the circuit court’s order.

Each qualified voter in a mail-in election shall have one vote or, if no persons eligible to be registered voters reside within the proposed District, each acre of real property within the proposed District shall represent one share, and each owner may have one vote in person or by proxy for every acre of real property owned by such person within the proposed District. Each voter which is not an individual shall determine how to cast its vote as provided for in its articles of incorporation, articles of organization, articles of partnership, bylaws, or other document which sets forth an appropriate mechanism for the determination of the entity's vote. If a voter has no such mechanism, then its vote shall be cast as determined by a majority of the persons who run the day-to-day affairs of the voter. Each voted ballot shall be signed with the authorized signature.

Mail-in voted ballots shall be returned to the circuit court clerk's office by mail or hand delivery no later than 5:00 p.m. on the sixth Tuesday after the date for mailing the ballots as set forth in the circuit court's order. The circuit court's clerk shall transmit all voted ballots to a team of judges of not less than four, with an equal number from each of the two major political parties. The judges shall be selected by the circuit court from lists compiled by the election authority. Upon receipt of the voted ballots, the judges shall verify the authenticity of the ballots, canvass the votes and certify the results. Certification by the election judges shall be final and shall be immediately transmitted to the circuit court.

*Election by Unanimous Petition.* Each owner shall receive one voter per acre owned. Fractional votes shall be allowed. The petition shall be submitted to the circuit court clerk who shall verify the authenticity of all signatures thereon. The filing of a unanimous petition shall constitute an election under the TDD Act and the results of said election shall be entered upon the records of the circuit court and the county commission in the manner provided for all other elections under the TDD Act.

**Election of the District's Board of Directors.** The procedure for the election of the District's Board varies depending upon whether any persons eligible to be registered voters reside within the District.

If any persons eligible to be registered voters reside within the District, the following procedures shall be followed:

- (1) After the District has been declared organized, the court shall upon petition of any interested party order the county clerk to cause an election to be held in all areas of the District within one hundred twenty (120) days after the order establishing the District, to elect the District's Board;
- (2) Candidates shall pay the sum of five dollars as a filing fee to the county clerk and shall file with the election authority of the county a statement under oath that he possesses all of the qualifications set out in the TDD Act for a director. Thereafter, such candidate shall have his name placed on the ballot;
- (3) The director or directors to be elected shall be elected at large. The candidate receiving the most votes from the qualified voters shall be elected to the position having the longest term, the second highest total votes elected to the position having the next longest term, and so forth. Each initial director shall serve the one-, two-, or three-year term to which he was elected, and until his successor is duly elected and qualified. Each successor director shall serve a three-year term; and
- (4) Each director shall be a resident of the District and shall be registered voters at least twenty-one (21) years of age.

If no persons eligible to be registered voters reside within the District, the following procedures shall be followed:

- (1) Within thirty (30) days after the District has been declared organized, the circuit clerk of the county in which the petition was filed shall, upon giving notice by causing publication to be made once a week for two consecutive weeks in a newspaper of general circulation in the county, the last publication of which shall be at least ten (10) days before the day of the meeting required by this section, call a

meeting of the owners of real property within the District at a day and hour specified in a public place in the county in which the petition was filed for the purpose of electing a Board to be composed of owners or representatives of owners of real property in the District; provided that, if all the owners of property in the District joined in the petition for formation of the District, such meeting may be called by order of the court without further publication.

- (2) The property owners, when assembled, shall organize by the election of a chairman and secretary of the meeting who shall conduct the election. At the election, each acre of real property within the District shall represent one share and each owner may have one vote in person or by proxy for every acre of real property owned by such person within the District;
- (3) The one-third of the initial Board members receiving the most votes shall be elected to positions having a term of three years. The one-third of initial Board members receiving the next highest number of votes shall be elected to positions having a term of two years. The lowest one-third of initial Board members receiving sufficient votes shall be elected to positions having a term of one year. Each initial director shall serve the term to which he was elected, and until his successor is duly elected and qualified. Successor directors shall be elected in the same manner as the initial directors at a meeting of the real property owners called by the Board. Each successor director shall serve a three-year term; and
- (4) Directors shall be at least twenty-one (21) years of age.

If the petition for formation of the District was filed pursuant to a joint resolution of two or more local transportation authorities, the following procedures shall be followed:

- (1) If the District is comprised of four or more local transportation authorities, the Board shall consist of the presiding officer of each local transportation authority within the District. If the District is comprised of two or three local transportation authorities, the Board shall consist of the presiding officer of each local transportation authority within the District and one person designated by the governing body of each local transportation authority within the District;
- (2) Each director shall be at least twenty-one years of age and a resident or property owner of the local transportation authority the director represents. A director designated by the governing body of a local transportation authority may be removed by such governing body at any time with or without cause; and
- (3) Upon the assumption of office of a new presiding officer of a local transportation authority, such individual shall automatically succeed his predecessor as a member of the Board. Upon the removal, resignation or disqualification of a director designated by the governing body of a local transportation authority, such governing body shall designate a successor director.

**Appointment of Advisors.** The Commission shall appoint one or more advisors to the Board, who shall have no vote but shall have the authority to participate in all Board meetings and discussions, whether open or closed, and shall have access to all records of the District and its Board. If the proposed project is not intended to be merged into the state highways and transportation system under the Commission's jurisdiction, the local transportation authority that will assume maintenance of the project shall appoint one or more advisors to the Board who shall have the same rights as advisors appointed by the Commission. Any county or counties located wholly or partially within the District which is not a "local transportation authority" pursuant to the TDD Act, may appoint one or more advisors to the Board who shall have the same rights as advisors appointed by the Commission.

**Costs of Petition Process.** The costs of filing and defending the petition and all publication and incidental costs incurred in obtaining circuit court certification of the petition for voter approval shall be paid

by the petitioners. If a District is organized under the TDD Act, the petitioners may be reimbursed for such costs out of the revenues received by the District.

#### IV. FUNDING MECHANISMS

As noted previously, the District may use one or more of the taxes or other funding mechanisms specifically authorized by the TDD Act to fund a project or to repay any of the obligations identified in the previous paragraph. At any time during the existence of the District, the Board may submit or resubmit a proposed funding mechanism for a project to the District's qualified voters for approval. The election procedures discussed in detail in **Section III** apply to each proposed funding mechanism submitted to the qualified voters for approval. Such funding mechanisms include sales tax, property tax, special assessment and toll roads. Each of the funding mechanisms is separately addressed in this Section.

**Sales Tax.** Any District may by resolution impose a transportation development district sales tax (a "*TDD Sales Tax*") in increments of one-eighth of one percent up to a maximum of one percent on the receipts from all retail sales made in such District which are otherwise subject to taxation pursuant to Missouri law, except such TDD Sales Tax shall not apply to the sale or use of motor vehicles, trailers, boats or outboard motors nor to all sales of electricity or electrical current, water and gas, natural or artificial, nor to sales of service to telephone subscribers, either local or long distance. No TDD Sales Tax shall be effective unless the Board submits to the qualified voters of the District a proposal to authorize the Board to impose or increase the levy of an existing TDD Sales Tax or the voters approved the question certified by a petition filed pursuant to a joint resolution of two or more local transportation authorities. If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the resolution and any amendments thereto shall be in effect. The TDD Sales Tax shall become effective on the first day of the month following adoption of the tax by the qualified voters. Any TDD Sales Tax shall be imposed at a rate that shall be uniform throughout the District.

**Alternate Sales Tax.** In lieu of the TDD Sales Tax described in the preceding paragraph, a District which consists of all of one or more entire counties, all of one or more entire cities, or all of one or more entire counties and one or more entire cities which are totally outside the boundaries of those counties may by resolution impose a transportation development district sales tax (an "*Alternate TDD Sales Tax*") on all retail sales made in such District which are otherwise subject to taxation pursuant Missouri law. No resolution enacted in accordance with this paragraph shall be effective unless the Board submits to the qualified voters of the District a proposal to authorize the Board to impose or increase the levy of an existing Alternate TDD Sales Tax or the voters approved the question certified by a petition filed pursuant to a joint resolution of two or more local transportation authorities. If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the resolution and any amendments thereto shall be in effect. Within ten (10) days after the adoption of any resolution in favor of the adoption of a Alternate TDD Sales Tax which has been approved by the qualified voters of such District, the District shall forward to the Missouri Director of Revenue, by United States registered or certified mail, a certified copy of the resolution of the Board. The resolution shall reflect the effective date thereof. The Alternate TDD Sales Tax shall become effective on the first day of the second calendar quarter after the Missouri Director of Revenue receives notice of the adoption of such Alternate TDD Sales Tax. The Alternate TDD Sales Tax may be imposed at a rate of one-eighth of one percent, one-fourth of one percent, three-eighths of one percent, one-half of one percent or one percent and shall be uniform throughout the District.

**Property Tax.** If approved by at least four-sevenths of the qualified voters voting on the question in the District, the District may impose a property tax in an amount not to exceed the annual rate of ten (10) cents on the hundred dollars (\$100) assessed valuation. The property tax rate shall be uniform throughout the District. The county collector of each county in which the District is partially or entirely located shall collect the property taxes made upon all real property and tangible personal property within that county and the District, in the same manner as other property taxes are collected. Every county collector having collected or received District property taxes shall, on or before the fifteenth day of each month and after deducting his

commissions, remit to the treasurer of the District the amount collected or received by him prior to the first day of the month. The collector and District treasurer shall make final settlement of the District account and commissions owing, not less than once each year, if necessary.

**Special Assessments.** The District may make one or more special assessments for those project improvements which specially benefit the properties within the District if approved by: (1) a majority of the qualified voters voting on the question in the District; or (2) the owners of record of all the real property located within the District who shall indicate their approval by signing a special assessment petition. Improvements which may confer special benefits within a District include but are not limited to improvements which are intended primarily to serve traffic originating or ending within the District, to reduce local traffic congestion or circuitry of travel, or to improve the safety of motorists or pedestrians within the District. If a proposal for making a special assessment fails, the Board may, with the prior approval of the Commission or the local transportation authority which will assume ownership of the completed project, delete from the project any portion which was to be funded by special assessment and which is not otherwise required for project integrity.

**Toll Roads.** If approved by a majority of the qualified voters voting on the question in the District, the District may charge and collect tolls or fees for the use of a project. Toll rates or fees for the use of the same project may vary at the election of the Board, depending upon the type or nature of the user, or the type or nature of the use. To construct a toll facility, a District may relocate an existing state highway, subject to approval by the Commission, or an existing local public street or road, subject to approval by the local transportation authority having control and jurisdiction over such street or road. A District shall not incorporate an existing free public street, road, or highway into a District project that will be subject to tolls.

## **V. SPECIAL CONSIDERATIONS REGARDING TDD**

The use of TDD allows a great deal of flexibility for the qualified voters who establish the District and control its Board and for a city or county acting in its capacity as a local transportation authority. In addition to the general information provided above, qualified voters and local governments should consider the following when contemplating the use of TDD:

**Project Financing and Funding.** As a local transportation authority, a city or county has discretion to approve or disapprove projects presented to it as well as the plans and specifications for such projects. Pursuant to the TDD Act, a city or county may become an active participant in the creation of the District and the development of the project. Nonetheless, under the TDD Act, a District is a separate political subdivision governed by a Board elected by the District's qualified voters or selected in accordance with the procedures provided for a petition that was filed pursuant to a joint resolution of two or more local transportation authorities. As such, in those instances in which the Board is elected by the District's qualified voters, a city or county may lack direct control over the governance of the District, as well as certain decisions related to the financing and funding of the project. By the same token, the District (rather than a city or county) would be issuing the obligations and pledging its tax revenue to repayment of such obligations. Such a scenario may be attractive to a city or county that does not wish to issue additional obligations or impose additional taxes.

Nonetheless, a city or county may enter into one or more contracts with the District by which the city or county retains a certain level of involvement in the financing and funding of the project. If the proposed project is intended to be merged into a local transportation system for future maintenance under the local transportation authority's jurisdiction, the District may contract with the local transportation authority to assist it in issuing District revenue bonds or for the local transportation authority to issue the local transportation authority's revenue bonds. In such an instance, such bonds shall be issued subject to conditions applicable to bonds issued by the District but as determined by the local transportation authority rather than the District. Also, if the proposed project is not intended to be merged into the state highways and transportation system under the Commission's jurisdiction, the local transportation authority that will assume maintenance of the project may contract with the District receive any revenue received by the District and deposit such revenue

into a special trust account. Such revenue and interest therefrom shall be applied by the local transportation authority to project costs or debt service on revenue bonds issued by the District or the local transportation authority.

**Project Revisions; Transfer of Completed Project.** If the Board of a District proposes to discontinue a project, it shall first obtain approval from the local transportation authority if the proposed project is intended to be merged into a local transportation system under the local authority's jurisdiction. Furthermore, while the Board may modify the project previously approved by the District's qualified voters, such modification shall be approved by the Commission and, where appropriate, the local transportation authority. Finally, within six (6) months after development and initial maintenance costs of its completed project have been paid, the District shall pursuant to contract transfer ownership and control of the project to the commission or a local transportation authority which shall be responsible for all future maintenance.

## **VI. COMPARING TDD AND TIF**

**Primary Similarities and Distinctions.** Both TDD and TIF are premised on the philosophy that an investment in public improvements spurs economic development, which in the long run will pay for the public improvements and more. These two economic development vehicles differ primarily in how the burden of financing the improvements is distributed among the property owners, the municipality or other taxing jurisdictions including the District.

Both TDD and TIF are financed by the issuance of limited obligations. With TDD and TIF, the property owner/developer pays nothing for the publicly financed improvements, but is ultimately responsible to bondholders if the tax revenue generated by the improvements is insufficient to make the payments. On the other hand, a city (in the case of TIF) and a District (in the case of TDD) have no financial responsibility to the bondholders but "pay" for the improvements by pledging the increased tax revenue to repayment of the bonds. With TDD, a new taxing District is created to raise additional tax revenue to pay for the improvements. With TIF, a city and the other taxing jurisdictions forego a portion of the increased tax revenue to pay for the improvements.

Under TIF, the affected taxing jurisdictions can justify temporarily foregoing the increased tax revenue because the area being developed is declared by the city to be blighted and a finding is made that, but for financing the improvements, the development (and the resulting increase in tax revenues) would not occur. Under TDD, there is no requirement that a District be declared blighted or that a finding be made that the improvements would not likely be constructed without the TDD financing. Instead, TDD is limited in scope to transportation-related projects, as defined by the TDD Act.

**Use of TIF and TDD Together.** TDD has proven to be an effective complement to TIF under the appropriate circumstances. Where a project to be financed primarily by TIF includes various public improvements to streets, roads, interchanges, intersections, signing, signalization or parking lots, the use of TDD to finance those transportation-related portions of the project allows TIF revenues to be used to finance other public improvements identified as part of the TIF redevelopment project or to reduce the amount of TIF obligations needed to finance the project. The use of TDD in conjunction with TIF can also be extremely beneficial if there are additional transportation-related public improvements that would not otherwise be funded with TIF revenues, either because such improvements were not included as part of the TIF redevelopment project or because the budget limits identified in the TIF redevelopment plan preclude the use of TIF revenues to finance such improvements.

What is more, if a District is created within a TIF redevelopment area and imposes a TDD Sales Tax, such a TDD Sales Tax would be considered an additional economic activity tax, fifty percent (50%) of which would be captured by the TIF. For example, if the District imposes a one percent TDD Sales Tax within a TIF redevelopment area, one-half of the TDD Sales Tax would be captured by the TIF and deposited into the special allocation fund and one-half of the TDD Sales Tax would be utilized by the District to fund the

transportation-related portion of the project. In this manner, TDD and TIF create a unique synergy that not only generates TDD revenue to fund the District's portion of the project, but also generates additional TIF revenue to fund the TIF portion of the project.

## **VII. THE FUTURE OF TDD**

Currently, TDD is an extremely valuable means of encouraging economic development, since almost all publicly financed projects include a significant transportation-related component. Moreover, given the recent attention that the TDD Act has received throughout the State as a viable development tool for local governments, the future of TDD appears bright. As more familiarity is gained with the use of TDD as a financing vehicle, it is conceivable that TDD will be increasingly used not only for local transportation projects, but also for regional and state transportation projects involving multiple local governments and the Missouri Highways and Transportation Commission.