

# **Steps To Forming A Transportation Development District (TDD)**

## **Step 1 - File a Petition With the Circuit Court**

The petition can be filed in any county partially or totally within the proposed district by:

- At least 50 registered voters from each county within the proposed district, or
- the governing body of any local transportation authority within any county where the proposed project is to be located,
- all of the property owners within the proposed district, if no district residents are eligible to be registered voters, or
- two or more local transportation authorities adopting resolutions to form a district and then one authority may file.

The petition must contain:

- The name, voting residence and county of residence of each individual petitioner, or
- If no persons eligible to be registered voters reside in the district, the name and address of each owner of real property located within the proposed district, or
- The petitioner is the governing body of a local transportation authority and acting in official capacity or the name of each local transportation authority within the proposed district with the supporting resolutions attached.
- The name and address of the Missouri Highways and Transportation Commission (MHTC) and each affected local transportation authority within the proposed district (the respondents), unless already listed as a petitioner.
- A specific description of the proposed boundaries including a map of the district.
- A general description of each proposed project, including the location.
- The proposed district's name.
- The number of board of directors.
- The terms of office for the initial board will be staggered in equal numbers to expire in one, two or three years, unless the petitioners are two or more local transportation authorities.
- A request that the question be submitted to the voters within the proposed district whether to establish the district to develop certain project(s), if the petition was filed by registered voters or by a governing body.
- A proposal for funding the district and a request that the proposal be submitted to the proposed district's qualified voters and,
- A statement that the proposed district will not be an undue burden on any owner of property within the district and is not unjust or unreasonable.

## **District Shall Be Contiguous - When**

- The district area must be contiguous and may consist of all or a portion of one or more municipalities and counties.
- Properties within the district area that are separated by public streets, easements or right-of-way are considered contiguous.
- If property owners are forming the district, the district will be considered contiguous if the only funding is a sales tax; each parcel within the district is within five miles of every other parcel; and, all of the district property will benefit from the transportation project.
- If two or more local transportation authorities are forming the district, property separated or connected by public streets, easements or rights-of-way are considered contiguous.

## **Step 2 - Hearing on Petition**

- Within 30 days after filing the petition, the circuit court clerk will deliver the petition to the respondents.
- Respondents have 30 days to reply, either agreeing or opposing the creation of the district.
- If the court does not receive a timely response, it can certify the election without a hearing.
- If opposing the district, the respondent must indicate the following:
  - ♦ Why the petition was defective.
  - ♦ Why the district is illegal or unconstitutional.
  - ♦ Why the funding is illegal or unconstitutional.
  - ♦ Ask the court for a declaratory judgment.
- Each petitioner and respondent will receive a copy of each respondent's answer.
- The circuit clerk will publish notice of the intent to form the district and its funding methods in a local general circulation newspaper, once a week for four consecutive weeks, if the petition was filed by registered voters or by a governing body. The notice may include the time and place of a public hearing and must contain wording as proposed in Section 238.212, RSMo.
- Court will hear the case without a jury and declare its judgment.
- If the petition was filed by registered voters or by a governing body and if the court's judgment favors the creation of the district, the court will certify the questions of district creation, project development and funding for voter approval. To certify the questions will require more than one election.
- If all the proposed district's property owners filed the petition and if the court's judgment favors the creation of the district, the court will declare the district organized and certify the funding methods for qualified voter approval.

- If two or more local transportation authorities filed the petition, the court will certify one question for voter approval in regard to district creation, project development and funding, if the funding mechanism is a sales tax. To certify the one question will require only one election.
- The court's judgment can be appealed by anyone having filed an answer or petition, in the same manner as for other circuit court appeals.

### **Step 3 – Election, Vote on Projects and Funding**

If the court certifies the petition for voter approval, the district formation will be placed as a ballot issue on the next regularly scheduled election day during which each affected county is holding an election or meet the requirements for a mail-in election found in Section 238.216, RSMo. Each qualified voter (registered voters or, if none, property owners) shall have one vote. The ballot issue will:

- Identify the projects and funding methods.
- Require the voters to approve or disapprove of each project and funding method.
- Must receive a majority of the votes to pass.
- Contain language similar to Section 238.215 , RSMo.

If the issue fails, it cannot be resubmitted to the voters for two years. Expenses for the certification are the responsibility of the petitioners, but are reimbursable from the TDD revenues, if the ballot issue passes.

### **Step 4 – Election, Board of Directors**

If the formation of the district is approved and if registered voters reside within the district, an election will be held to elect the board of directors, as follows:

- An interested person must petition the circuit court for an election.
- The court orders the county clerk to hold an election in the district's area within 120 days after the district is established.
- The board must contain from 5 to 15 members.
- Directors will be elected at large.

- Terms will be based on number of votes, with initial terms staggered from one to three years (Successor directors will serve three-year terms).
- Candidates for the board of directors must pay \$5 and file a statement under oath with the county that he/she possesses the following qualifications:
  - ♦ Must be a resident of the district
  - ♦ Must be a registered voter
  - ♦ Must be at least 21 years of age

If the formation of the district is approved and if no registered voters reside within the district, an election will be held to elect the board of directors, as follows:

- Within 30 days of certifying the district formation, the circuit clerk will publish a district property owner meeting notice in a local general circulation newspaper for two consecutive weeks, once per week, the last publication occurring at least ten days prior to the date established for the meeting.
- A chairman and secretary elected by the property owners/representatives for the special meeting will conduct board election.
- The board will be composed of property owners or their representatives.
- The board must contain from 5 to 15 members.
- Directors must be at least 21 years of age.
- The number of votes available to property owners/representatives is based on the number of acres of property owned within the district.
- Initial directors' terms will be three, two or one year(s) duration, based respectively on the number of votes received, from highest to lowest count. The terms will be divided among board members, assigned to individual members based on their vote count placement, in increments of one-third of the total members.
- Successors will be elected in the same manner as the initial board and will serve three-year terms.
- The MHTC will appoint advisors to the board, who have no vote but can attend all meetings whether open or closed.
- Any county within the district may also appoint a non-voting advisor to the board.

If the petitioners were multiple local transportation authorities, the boards of directors are determined in the following manner:

- If there are four or more local transportation authorities in the district, each local transportation authority presiding officer will be on the board.
- If there are two to three local transportation authorities in the district, the board will consist of the local transportation authority presiding officer and one person appointed by each of the local transportation authorities.
- Each director shall be at least 21 years old and either a resident or property owner of the local transportation authority.

### **Step 5 - Duties of the Board**

- The board must meet within 30 days after the election or selection of the directors.
- The court, either upon petition or on its own, will designate the time and place of the first meeting.
- The board will elect a chairman at the first meeting from among its members.
- The board will also appoint an executive director, district secretary, treasurer and other officers/employees as necessary; adopt a fiscal year and adopt a corporate seal.
- A quorum is a simple majority and can act in the name of the board.
- Directors may be reimbursed for actual expenditures in performance of district duties.

### **Step 6 - Project Approval**

Preliminary plans and specifications must be submitted and approved prior to MoDOT entering into an agreement for the project.

MoDOT considers preliminary plans and specifications to show preliminary geometric details and included design criteria, proposed alignment, profile, tentative grade, tentative right of way, schematic intersection or interchange layouts, bypasses and pertinent topographic features. Detail plans are developed from these preliminary plans. Category 235 of the Engineering Policy Guide (EPG) addresses preliminary design. This category of the EPG can be downloaded from the following website:

[http://epg.modot.org/index.php?title=Category:235 Preliminary Plans](http://epg.modot.org/index.php?title=Category:235_Preliminary_Plans)

While the process proceeds more smoothly for all parties when plans and specifications are submitted at this point, when special circumstances require it, waivers to the requirement can be requested.

- The MHTC must approve project plans and specifications at a MHTC meeting before any construction or funding may begin, unless the MHTC determines it has no interest in the project. If the MHTC approves the project, the district and the commission must enter into a mutually satisfactory agreement regarding the development and future maintenance of the project.
- Once approved, any subsequent changes to the plans and specifications must have prior commission approval.

## **Step 7 - Project Financing**

The district has the authority to finance the project through the following mechanisms.

- Special Assessments:
  - ♦ Must either be approved by a majority vote of district voters, if any, or by the district property owners, who will indicate their approval by signing a special assessment petition.
  - ♦ There may be one or more assessments, which must apply to project improvements that specially benefit district properties.
  - ♦ The ballot issue must be similar to the language stated in Section 238.230, RSMo.
  - ♦ The petition must be similar in form to Section 238.230, RSMo.
  - ♦ If the proposal fails, the district may delete the portion of the project to be financed from the assessment, following commission or authority approval.
  - ♦ Special assessments will be collected by the county collector of each district county, business license taxes will be collected by the city treasurer of the city in which the district is located and both amounts collected for the previous month will be forwarded to the district treasurer, less the collector's commission (not to exceed one percent of the total amount collected), by the fifteenth day of the month following collection. The treasurer shall deposit appropriately and issue a receipt to the collector. They will reconcile their books at least once a year. As an alternative, the district may elect to collect their own revenues.
- Property Taxes:
  - ♦ Must be approved by four-sevenths of the qualified voters voting on the question within the district.
  - ♦ May not exceed an annual rate of ten cents per one hundred dollars assessed valuation.
  - ♦ The district may impose a tax lower than approved by the voters and increase later without voter approval.

- ♦ The imposed tax must be uniform within the district.
- ♦ The ballot issue must be similar to the language stated in Section 238.232, RSMo.
- ♦ Property taxes will be collected by the county collector of each district county and forwarded to the district treasurer, less the collector's commission (not to exceed one percent of the total), by the fifteenth day of the month following collection. The treasurer shall deposit appropriately and issue a receipt to the collector. The collector and treasurer will reconcile their books at least once a year. As an alternative, the district may elect to collect their revenues.
- Sales Tax
  - ♦ The sales tax is on all retail sales made in the district subject to taxation, with the exclusion of motor vehicles, trailers, boats, outboard motors and utilities.
  - ♦ The sales tax must be approved by a majority of district qualified voters voting in a general, primary or special election.
  - ♦ The ballot issue must be similar to the language in Section 238.235, RSMo.
  - ♦ The sales tax is effective on the first day of the month following adoption of the tax.
  - ♦ Based on brackets established by the transportation district, the tax shall be collected by the district retailers
  - ♦ Sales tax proceeds will be deposited into a special trust fund and used only for the project purposes and can be invested by the board, when not needed for current expenditures.
  - ♦ The sales tax rate can be one-eighth of one percent, one-fourth of one percent, three-eighths of one percent, one-half of one percent or one percent on the receipts from the sale at retail of all tangible personal property or taxable services at retail, excluding items previously mentioned in item number 1 and exemptions pursuant to 144.010 and 144.525, RSMo (agencies of government, organizations, etc.).
  - ♦ All TDD sales tax rates must be uniform within the district.
  - ♦ The tax will be reported, returned to, and collected by the district.
  - ♦ All applicable confidentiality provisions, discounts for collection and payment of, penalties for violation, and exemptions apply to the collection of the TDD tax, (per sections of the Revised Statutes of Missouri as identified in the TDD Act).
  - ♦ No additional permit or exemption or retail certificate is required, unless prescribed by the Secretary of State's Office.

- ♦ All retail sales, except motor vehicles, are viewed as occurring at the retailer's place of business, unless the property is delivered to an out-of-state destination. If the retailer has more than one place of business, the sale will be viewed as occurring where the initial order is taken.
- ♦ Taxes collected by the district will be deposited in a special fund and expended for the purposes authorized. Accurate records will be kept and made available to district officers and the general public.
- ♦ The repeal or amendment of a sales tax can be initiated by 10 percent of the qualified voters signing a petition to that effect and presenting it to the district board.
- ♦ If the repeal will not impair the district's ability to repay debt or borrowings related to the project, a vote will be taken of the qualified voters and pass with a majority.
- Toll Roads
  - ♦ Tolls or fees must be approved by a majority of the qualified district voters voting on the question.
  - ♦ Fees may vary depending on the users and the nature of the use.
  - ♦ The ballot issue is similar to the language contained in Section 238.237 , RSMo.
  - ♦ Tolls on existing state highways and roads require relocation of the highways or roads, subject to commission/authority approval.
  - ♦ An existing free public highway, road or street cannot be incorporated into a district project and be subject to tolls.
- *Debt Financing*
  - ♦ A district may contract and incur liabilities.
  - ♦ A district may lease or lease/purchase.
  - ♦ A district may borrow money at interest rates the district determines.
  - ♦ A district may issue bonds, notes or other obligations and secure the obligations.
  - ♦ Bonds will be issued as follows:
    - Principal will be payable out of the district revenues.
    - Bonds can be subordinated to previous bonds.
    - Issuance requires a resolution of the district.
    - Maturities set, must be 40 years or less.
    - The district may determine public or private sale, interest rates and bond price.
    - Bonds may be refunded.

- Refunding bonds may not exceed the amount needed to refund outstanding district bonds, including unpaid interest, premiums, commissions, service fees and other necessary expenses.
- Refunding bonds may be issued regardless of whether the bonds being refunded were issued in connection with the same project or a separate project, differences in due dates or differences in whether bonds were serial or otherwise.
- The MHTC may issue bonds for the district or assist the district in its issuance, if the project is to be merged into the state system.
- The local transportation authority may issue bonds for the district or assist the district in its issuance, if the project is to be merged into a local system.
- Bonds issued under the authority of the TDD Act are solely the responsibility of the district and are exempt from Missouri taxation, excluding state estate tax.

## **Step 8 - Purchases and Access Control of Property**

Subject to Commission approval, a district may:

- Purchase, receive donations of or receive cash for right of way.
- Limit and control access from adjacent property to a district property.
- Sell and convey excess right of way at fair market value to any person or entity.

## **Step 9 - Condemnation and Relocation**

- With prior condemnation approval of MHTC or the local transportation authority, the district may condemn lands for a project in the name of the state of Missouri pursuant to chapter 523, RSMo.
- Upon notice to the landowner, the district may survey the property for the most advantageous route and design.
- If relocation becomes necessary, the district will provide relocation assistance and make relocation payments to the displaced individuals and follow procedures established by the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

## **Step 10 - Increasing or Decreasing the Number of Projects**

- A district may increase the number of projects by submitting the question to the district voters.
- A district may decrease the number of projects by first obtaining MHTC approval and then submit the questions to the voters.

### **Step 11 - Property Conveyed to District by the State**

- Right-of-way or other easement necessary for the project development may be granted or conveyed to the district by an act of the general assembly, the MHTC or local authority.

### **Step 12 - Regulation of Projects**

- For purposes of law enforcement, projects will be treated as parts of the system to which they will be transferred, either as commission highways or streets of the local transportation authority.
- State laws pertaining to maintaining, signing, damaging and obstructing roads shall apply to the district projects. Powers for enforcement are vested in the district engineer or other designated employee.
- For outdoor advertising or junkyard control purposes, a project may be designated as part of the commission highway system or the local transportation authority system.

### **Step 13 - Audits**

- The state auditor shall audit the district at least once every three years. The district is responsible for the audit costs.

### **Step 14 - Transfer of Projects to the Commission or Authority and Abolishment of the District**

- Within six months following final payment of development and initial maintenance costs, ownership and control of the project will be transferred to the MHTC or the local transportation authority, by contract, which will assume responsibility for future maintenance costs.
- Following the transfer or if the district is unable to complete the project, the district board must submit to voters the question of whether to abolish the district. Prior to the election, the state auditor will audit the district to ensure it can legally dissolve, i.e. has no outstanding

claims or actions pending against it, liabilities do not exceed assets or it is not insolvent, in receivership or under the jurisdiction of the bankruptcy court. The ballot question should contain the relevant language contained in the TDD Act.

- If the abolishment question is passed, the district board will:
  - ♦ Sell any property it wishes and then transfer the remaining property and revenues to the MHTC or the local transportation authority assuming maintenance and control of the project.
  - ♦ Hold a public meeting to announce that the district has been abolished effective that date.
  - ♦ File copies of the resolution with the Secretary of State, the Director of Revenue, the Commission and each local transportation authority affected by the district.