



2023 ASSEMBLY BILL 96

March 8, 2023 - Introduced by Representatives PLUMER, ARMSTRONG, GUNDRUM, NOVAK, O'CONNOR, OHNSTAD and SPIROS, cosponsored by Senators FEYEN, COWLES and QUINN. Referred to Committee on Housing and Real Estate.

1 **AN ACT to amend** 66.1105 (4) (gm) 4. c. and 66.1105 (6) (c); and **to create** 60.23
2 (32) (bm), 66.1105 (2) (ak), 66.1105 (9) (a) 1m. and 66.1105 (21) of the statutes;
3 **relating to:** developer-financed tax incremental districts.

Analysis by the Legislative Reference Bureau

This bill allows cities, villages, and certain towns to create developer-financed tax incremental districts, which are excepted from the general rule that the equalized value of taxable property of a new or amended tax incremental district (TID) plus the value increment of all existing TIDs in a city or village may not exceed 12 percent of the total equalized value of taxable property in the city or village (12 percent rule) and the requirement that all areas of a TID be contiguous.

Under current law, cities and villages may use tax incremental financing (TIF) to encourage development in the city or village. In general, under TIF, a city or village pays for improvements in a TID and then collects tax moneys attributable to all taxing jurisdictions on the increased property value in the TID for a certain period of time to pay for the improvements. Ideally, after the period of time, the city or village will have been repaid for its initial investment and the property tax base in the TID will have permanently increased in value.

In general and in brief, a city or village makes use of TIF using the following procedure:

1. The city or village designates an area as a TID and creates a project plan laying out the expenditures that the city or village will make within the TID.

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2. The Department of Revenue establishes the “base value” of the TID. This value is the equalized value of all taxable property within the TID at the time of its creation.

3. Each year thereafter, the “value increment” of the property within the TID is determined by subtracting the base value from the current value of property within the TID. The portion of taxes collected on any positive value increment is collected by the city or village for use solely for the project costs of the TID. The taxes collected by the city or village on positive value increments include taxes that would have been collected by other taxing jurisdictions, such as counties or school districts, were the TID not created.

4. Tax increments are collected until the city or village has recovered all of its project costs or until the TID reaches its statutory termination date.

This bill allows a city or village to create a TID designated as a developer-financed TID. To create a TID as a developer-financed TID, the local legislative body must adopt a resolution making certain findings, and the joint review board must approve the creation of the TID as a developer-financed TID. The following are the findings that must be included in the resolution:

1. That all project costs of the TID will be paid directly from tax increments or financed by a developer.

2. That the aggregate of all payments made to a developer providing financing for a developer-financed TID will not exceed an amount equal to 90 percent of the estimated tax increments to be generated by the TID.

Under the bill, developer-financed TIDs differ from other TIDs in that:

1. The 12 percent rule does not apply.

2. A developer-financed TID may contain noncontiguous areas.

3. All project costs must be paid directly from value increments generated by the developer-financed TID or financed by the developer.

4. A city or village may share not more than 10 percent of the positive tax increments allocated for a developer-financed TID in a year with any other TID created by that city.

5. If a developer secures a loan from a private lender to finance project costs, the city and the parties to the loan must agree that the debt is the responsibility of the borrower and not the city.

6. The city may not issue tax incremental bonds or notes for financing a developer-financed TID.

Under current law, towns have much more limited authority to use TIF than do cities and villages. This bill allows towns that are adjacent to a city and that have a population of more than 4,000 to create developer-financed TIDs if the project costs are used solely for the construction of housing-related infrastructure.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 60.23 (32) (bm) of the statutes is created to read:

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1 60.23 **(32)** (bm) 1. In this paragraph:

2 a. “Developer-financed tax incremental district” has the meaning given in s.
3 66.1105 (2) (ak).

4 b. “Town” means a town that is adjacent to a city and that has a population of
5 more than 4,000.

6 2. Subject to subd. 3., a town may exercise all powers of cities under s. 66.1105
7 to create a developer-financed tax incremental district. If the town board exercises
8 the powers of a city under s. 66.1105, it is subject to the same duties as a common
9 council that has acted under s. 66.1105 and the town is subject to the same duties and
10 liabilities as a city that has acted under s. 66.1105 with regard to the
11 developer-financed tax incremental district.

12 3. The project costs for a developer-financed tax incremental district under this
13 paragraph may include only expenditures for the construction of housing-related
14 infrastructure, including highways and sewer and water facilities.

15 **SECTION 2.** 66.1105 (2) (ak) of the statutes is created to read:

16 66.1105 **(2)** (ak) “Developer-financed tax incremental district” means a tax
17 incremental district created under sub. (21) (a).

18 **SECTION 3.** 66.1105 (4) (gm) 4. c. of the statutes is amended to read:

19 66.1105 **(4)** (gm) 4. c. Except as provided in subs. (10) (c), (16) (d), (17), (18) (c)
20 3., (20) (b), ~~and (20m) (d) 1., and (21)~~, the equalized value of taxable property of the
21 district plus the value increment of all existing districts does not exceed 12 percent
22 of the total equalized value of taxable property within the city. In determining the
23 equalized value of taxable property under this subd. 4. c. or sub. (17) (c), the
24 department of revenue shall base its calculations on the most recent equalized value
25 of taxable property of the district that is reported under s. 70.57 (1m) before the date

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1 on which the resolution under this paragraph is adopted. If the department of
2 revenue determines that a local legislative body exceeds the 12 percent limit
3 described in this subd. 4. c. or sub. (17) (c), the department shall notify the city of its
4 noncompliance, in writing, not later than December 31 of the year in which the
5 department receives the completed application or amendment forms described in
6 sub. (5) (b).

7 **SECTION 4.** 66.1105 (6) (c) of the statutes is amended to read:

8 66.1105 (6) (c) Except for tax increments allocated under par. (d), (dm), (e), (f),
9 or (g), or erroneous reporting of value increments as described in par. (h), all tax
10 increments received with respect to a tax incremental district shall, upon receipt by
11 the city treasurer, be deposited into a special fund for that district. The city treasurer
12 may deposit additional moneys into such fund pursuant to an appropriation by the
13 common council. No moneys may be paid out of such fund except to pay project costs
14 with respect to that district, to reimburse the city for such payments, to pay project
15 costs of a district under par. (d), (dm), (e), (f), or (g) or sub. (21) (e), to pay property
16 tax reimbursements as described under par. (h), or to satisfy claims of holders of
17 bonds or notes issued with respect to such district. Subject to par. (d), (dm), (e), (f),
18 or (g), moneys paid out of the fund to pay project costs with respect to a district may
19 be paid out before or after the district is terminated under sub. (7). Subject to any
20 agreement with bondholders, moneys in the fund may be temporarily invested in the
21 same manner as other city funds if any investment earnings are applied to reduce
22 project costs. After all project costs and all bonds and notes with respect to the
23 district have been paid or the payment thereof provided for, subject to any agreement
24 with bondholders, if there remain in the fund any moneys that are not allocated
25 under par. (d), (dm), (e), (f), or (g), they shall be paid over to the treasurer of each

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1 county, school district or other tax levying municipality or to the general fund of the
2 city in the amounts that belong to each respectively, having due regard for that
3 portion of the moneys, if any, that represents tax increments not allocated to the city
4 and that portion, if any, that represents voluntary deposits of the city into the fund.

5 **SECTION 5.** 66.1105 (9) (a) 1m. of the statutes is created to read:

6 66.1105 (9) (a) 1m. Payment under sub. (21) (e) by the city from the special fund
7 of a developer-financed tax incremental district;

8 **SECTION 6.** 66.1105 (21) of the statutes is created to read:

9 66.1105 (21) DEVELOPER-FINANCED TAX INCREMENTAL DISTRICT. (a) A city may
10 create a tax incremental district as a developer-financed tax incremental district if
11 all of the following apply:

12 1. The local legislative body adopts a resolution finding all of the following:

13 a. That all project costs will be paid directly under sub. (9) (a) 1. or financed by
14 a developer and that any financing obtained by a developer to finance project costs
15 will be obtained through a private lender.

16 b. That the aggregate of all payments made to a developer providing financing
17 for a developer-financed tax incremental district will not exceed an amount equal
18 to 90 percent of the estimated tax increments generated by the developer-financed
19 tax incremental district.

20 2. The clerk of the local legislative body certifies the resolution under subd. 1.
21 and forwards a copy of the certified resolution to the department of revenue and the
22 joint review board.

23 3. The joint review board approves the creation of the tax incremental district
24 as a developer-financed tax incremental district.

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1 (b) 1. All project costs for a developer-financed tax incremental district shall
2 be paid directly under sub. (9) (a) 1. from tax increments generated by the
3 developer-financed tax incremental district or financed by a developer.

4 2. All payments made by a city to a developer for financing a
5 developer-financed tax incremental district shall be made under sub. (9) (a) 1.

6 (c) If a developer secures a loan from a private lender to finance the project costs
7 of a developer-financed tax incremental district, all of the following apply:

8 1. The city and the parties to the loan shall agree that the debt is the
9 responsibility of the borrower and not the city. Notwithstanding this subdivision, the
10 city may agree with the parties that, upon default by the developer of its loan under
11 this subdivision, the city will make payments owed by the city to the developer
12 directly to the private lender.

13 2. The city may agree with the parties to the loan that the city will not remove
14 properties from the developer-financed tax incremental district before the loan is
15 repaid or the developer-financed tax incremental district reaches its unextended
16 termination date, whichever is earlier.

17 3. The estimated payments to be made to a developer providing financing for
18 a developer-financed tax incremental district do not exceed an amount equal to 90
19 percent of the estimated tax increments generated by the developer-financed tax
20 incremental district.

21 (d) Notwithstanding sub. (3) (c), the city may not issue tax incremental bonds
22 or notes for financing a developer-financed tax incremental district.

23 (e) A city may share not more than 10 percent of the positive tax increments
24 allocated for a developer-financed tax incremental district in a year with any other
25 tax incremental district created by that city.

