

2005 DRAFTING REQUEST

Bill

Received: 10/11/2004

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Cathy Stepp (608) 266-1832**

By/Representing: **Jay**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact: **Bill Ford, Leg. Council
6-0680**

Addl. Drafters:

Subject: **Local Gov't - tax incr financing**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Stepp@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Technical changes to the TIF (tax incremental financing) statutes

Instructions:

See Attached. Technical changes to TIF

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 10/22/2004	lkunkel 11/10/2004 lkunkel 11/15/2004		_____			S&L
/1			rschluet 11/15/2004	_____	lnorthro 11/15/2004		S&L
/2	mshovers	lkunkel	rschluet	_____	lnorthro		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	02/01/2005	02/02/2005	02/02/2005	_____	02/02/2005		
/3	mshovers 02/03/2005	lkunkel 02/03/2005	pgreensl 02/03/2005	_____	mbarman 02/03/2005	sbasford 02/09/2005	

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/1			rschluet	_____	Inorthro		

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Page 2

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/? mshovers 11/11/10

11 MES 10/21/04

FE Sent For:

<END>

Shovers, Marc

From: Risch, Jay
Sent: Monday, October 04, 2004 3:47 PM
To: Shovers, Marc
Cc: Ford, William
Subject: TIF misc clean up bill draft request

Hi Marc,

Recently, we had it brought to our attention that there were some instances where the new TIF law has some glitches. These changes were suggested as technical in nature or in the spirit of what the legislature meant to do when it passed the TIF reform bills this session.

Would you draft up a bill making these changes? I have discussed this matter with Bill Ford. Feel free to contact him if you have detailed questions about what we are looking for here.

Thanks -

Jay Risch
Office of Senator Cathy Stepp
266-1832

UNRESOLVED TIF ISSUES

Draft 9/7/04

1.) EXPENDITURE PERIOD NOT EXTENDED TO PRE OCT 2004 TIF'S ?

(Sec. 66.1105 (6) (am) 1., & (7) (ak) & (am).)

It appears that the final text of the Statute dealing with expenditure periods may have failed to pick up the intent of the legislature regarding the extension of expenditure periods for all TIF districts to within 5 years of their original scheduled maximum life. In all of the Legislative Reference Bureau drafts of the legislation in their analysis section which precedes the language of the bill, the explanations make clear that the effect of the legislation is to "allow TIDs to make expenditures for project costs at any time up to five years before the TIDs mandatory termination date." (quoted directly from text of draft of Senate Substitute Amendment to 2003 Senate Bill 305, ultimately adopted as Act 126.) In addition, the Department of Revenue's grid published 6/15/04 and still found on the web site clearly indicates all districts are eligible for the extended expenditure period. We believe this may have been an inadvertent omission of the drafter that occurred in the followup legislation SB 428 (the "West Bend Bill") which became the final piece of TIF amendatory legislation as Act 194.

Due to the omission of reference to Section (7) (ak) in Section (6) (am) 1, this not only excludes pre 2004 districts from benefiting from extended expenditure periods, it also has eliminated all reference to expenditure periods for such districts thereby enabling the interpretation to either being interpreted such that :

- there are NO LIMITATIONS on expenditure periods for these districts or
- there are effectively NO EXPENDITURES that would be allowed at all.

We believe that this can be corrected by asking for the matter to be taken up as a technical correction as soon as possible.

2.) VACANT LAND TEST FOR MIXED USE DISTRICTS

(Sec. 66.1105 (4) (gm) 1. reference to sub 4

The intent of the new legislation was to enable new "Mixed Use" districts which could include any combination of Industrial, Commercial or Residential provided that the district met certain standards related to residential development and provided that at least 50% of area was suitable for Mixed Use Dev. Unfortunately, in the final drafting, the provisions of the "vacant land test" in (4) (gm) 1 excludes TID's created for industrial use (sub 4) but not those created for Mixed use.

The problem is that if you want to create a district which would contain Residential and Commercial, there may well be more than 25% of the land that was vacant for more than 7 years prior to the creation of the district, the only way, under the current law, that we can see mixed use working is if you create a district that has at least 50% Industrial (thereby exempting the district from the vacant land test) and then a residential or commercial component that meets the other tests of the law.

This can be corrected by simply adding reference to Mixed Use districts as an additional exclusion to the vacant land test in (4)(gm) 1.

3.) APPLICABILITY OF 12 % TEST, 50% REQUIREMENT FOR INDUSTRIAL, OR BLIGHT DISTRICTS and VACANT LAND TEST TO PROJECT PLAN & BOUNDARY AMENDMENTS.

(Sec 66.1105 (4) (h) , which requires same findings as Section (4) (g) and Section (4) (gm) 4. c. . Section (4) (g) requires that the plan be feasible and in keeping with the master plan and (gm) 4 c. is the 12% test requirement.)

Because of the specific references to Section (4)(gm) 4 c., Ehlers and other TIF practitioners are of the opinion that while the new law DOES require the application of the 12% test to boundary amendments and project plans, it does NOT require the application of the 50% test minimum requirement for industrial or blight nor the vacant land test for boundary amendments nor does the amendment of a project plan require application of any of these latter two tests. There appears to be no provision for the application of these latter two tests in the statute to boundary amendments or plan amendments. In fact, if these tests were required to be applied, it would severely limit if not eliminate in many cases the ability to subtract territory from a TID which was clearly authorized by the new law.

We are of the opinion that the intent of the legislation was not to make project plan amendments which did not alter the boundaries of a district subject to the 12% test. The intent we believe was to prohibit adding value to a district where a community was already over the 12% maximum allowed. Unfortunately, because both project plan and boundary amendments are found in the same section of the statute (4) (h) there was no differentiation made and the DOR would now be required to certify new value every time there is a project plan amendment, even if it is not for purposes of amending the boundary. The effect of this will be to preclude the ability of any community to amend their project plan to add a project if they are over the 12% limit.

We would suggest an amendment to the law to preclude the application of the 12% test to all project plans except those that are for the purpose of adding territory to the district as provided in (4) (h) 2. (ie make the 12% test apply only to amendments done per (4) (h) 2.).

With regard to the 50% industrial, blight and vacant land tests, we believe that this requires no action but just clarification in the DOR's manual that Project Plan and Boundary are not subject to the 50% industrial, blight, or vacant land tests .



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0511/2

MES/...

Handwritten initials: cmb, RMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Handwritten initials: gen

1 AN ACT ...; relating to: technical changes to the tax incremental financing law. ✓

Analysis by the Legislative Reference Bureau

Under the current tax incremental financing (TIF) program, a city or village may create a tax incremental district (TID) in part of its territory to foster development if at least 50 percent of the area to be included in the TID is blighted, in need of rehabilitation or conservation, suitable for industrial sites, or suitable for mixed-use development. Before a city or village may create a TID, several steps and plans are required. These steps and plans include public hearings on the proposed TID within specified time frames, preparation and adoption by the local planning commission of a proposed project plan for the TID, approval of the proposed project plan by the common council or village board, and adoption of a resolution by the common council or village board that creates the district as of a date provided in the resolution.

Also under current law, once a TID has been created, the Department of Revenue (DOR) calculates the "tax increment base value" of the TID, which is the equalized value of all taxable property within the TID at the time of its creation. If the development in the TID increases the value of the property in the TID above the base value, a "value increment" is created. That portion of taxes collected on the value increment in excess of the base value is called a "tax increment." The tax increment is placed in a special fund that may be used only to pay back the project costs of the TID. The costs of a TID, which are initially incurred by the creating city or village, include public works such as sewers, streets, and lighting systems; financing costs; site preparation costs; and professional service costs. DOR authorizes the allocation of the tax increments until the TID terminates or, generally,

20 years, 23 years, or 27 years after the TID is created, depending on the type of TID and the year in which it was created. Under certain circumstances, the life of the TID and the allocation period may be extended.

TIDs are required to terminate, under current law and with some exceptions, once these costs are paid back, 20 years, 23 years, or 27 years after the TID is created, depending on the type of TID and the year in which it was created, or when the creating city or village dissolves the TID, whichever occurs first. Under one of the exceptions, which is limited to certain circumstances, after a TID pays off its project costs, but not later than the date on which it must otherwise terminate, the planning commission may allocate positive tax increments generated by the TID (the "donor" TID) to another TID that has been created by the planning commission.

Under certain circumstances that affect some types of TIDs, the creating city or village may ask the joint review board to extend the TID's life for three or four years, depending on the type of TID. The city or village may provide the joint review board with an independent audit that demonstrates that the district is unable to pay off its costs within its original life span. The joint review board may choose to approve or deny a request to extend the life of such TIDs but, if accompanied by an audit, the board must approve a request for an extension. If the TID's life is extended, DOR may allocate tax increments to the district for additional years beyond the limit that otherwise applies.

~~Under this substitute amendment, subject to one exception, a blighted area or a rehabilitation or conservation TID that is created after September 30, 1995, and before October 1, 2004, ("1995-2004" TIDs) must terminate 27 years after its creation. Under the exception created in the substitute amendment, the city that created the TID may request that the joint review board extend the TID's life for four years. The city or village may provide the joint review board with an independent audit that demonstrates that the district is unable to pay off its costs within its original 27-year life span. The joint review board may choose to approve or deny a request to extend a TID's life for four years but, if accompanied by an audit, the board must approve a request for a four-year extension. If such an extension is granted, the substitute amendment authorizes DOR to allocate tax increments for 31 years.~~

~~Also under this substitute amendment a blighted area or rehabilitation or conservation TID that is created after September 30, 2004, must terminate 27 years after its creation, except that the city that created the TID may request that the joint review board extend the TID's life for three years. The audit provisions and joint review board provisions that apply to "1995 to 2004" TIDs apply to TIDs described under this paragraph.~~

Current law specifies that for certain TIDs, subject to a number of exceptions, the expenditure period to pay off project costs is limited to five years before the unextended termination date of the TID. This bill makes a technical change to clarify that the five-year expenditure period limit applies to all TIDs, subject to a number of exceptions. The bill also makes a technical change related to the amount of vacant land that a TID may contain if it is suitable for mixed-use development.

Currently, before a TID may be created or its project plan amended, the city or village must issue a finding that the equalized value of taxable property of the TID

plus the value increment of all existing districts does not exceed 12 percent of the total equalized value of taxable property in the city or village (the "12 percent test"), unless the amendment of the project plan subtracts territory from the TID. This bill clarifies that the 12 percent test only applies to TIDs that are being created or whose project plans are amended in a way that adds territory to the district.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 66.1105 (4) (gm) 1. of the statutes is amended to read:

66.1105 (4) (gm) 1. Describes the boundaries, which may, but need not, be the same as those recommended by the planning commission, of a tax incremental district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the district. The boundaries of the tax incremental district may not include any annexed territory that was not within the boundaries of the city on January 1, 2004, unless at least 3 years have elapsed since the territory was annexed by the city, unless the city enters into a cooperative plan boundary agreement, under s. 66.0307, with the town from which the territory was annexed, or unless the city and town enter into another kind of agreement relating to the annexation except that, notwithstanding these conditions, the city may include territory that was not within the boundaries of the city on January 1, 2004, if the city pledges to pay the town an amount equal to the property taxes levied on the territory by the town at the time of the annexation for each of the next 5 years. If, as the result of a pledge by the city to pay the town an amount equal to the property taxes levied on the territory by the town at the time of the annexation for each of the next 5 years, the city includes territory in a tax incremental district that was not within the boundaries of the city on January 1, 2004, the city's pledge is enforceable by the town

1 from which the territory was annexed. The boundaries shall include only those
 2 whole units of property as are assessed for general property tax purposes. Property
 3 standing vacant for an entire 7-year period immediately preceding adoption of the
 4 resolution creating a tax incremental district may not comprise more than ^{25 percent} ~~25%~~ of the
 5 area in the tax incremental district, unless the tax incremental district is suitable
 6 ~~for industrial sites~~ under subd. 4. a. for either industrial sites or mixed use
 7 development and the local legislative body implements an approved project plan to
 8 promote either industrial development within the meaning of s. 66.1101, or
 9 mixed-used development. In this subdivision, "vacant property" includes property
 10 where the fair market value or replacement cost value of structural improvements
 11 on the parcel is less than the fair market value of the land. In this subdivision,
 12 "vacant property" does not include property acquired by the local legislative body
 13 under ch. 32, property included within the abandoned Park East freeway corridor or
 14 the abandoned Park West freeway corridor in Milwaukee County, or property that
 15 is contaminated by environmental pollution, as defined in s. 66.1106 (1) (d).

History: 1975 c. 105, 199, 311; 1977 c. 29 ss. 724m, 725, 1646 (1), (3); 1977 c. 418; 1979 c. 221, 343; 1979 c. 361 s. 112; 1981 c. 20, 317; 1983 a. 27, 31, 207, 320, 405, 538; 1985 a. 29, 39, 285; 1987 a. 27, 186, 395; 1989 a. 31, 336; 1993 a. 293, 337, 399; 1995 a. 27 ss. 3330c to 3337, 9116 (5), 9130 (4); 1995 a. 201, 225, 227, 335; 1997 a. 3, 27, 237, 252; 1999 a. 9; 1999 a. 150 ss. 457 to 472; Stats. 1999 s. 66.1105; 2001 a. 5, 11, 16, 104; 2003 a. 34, 46, 126, 127, 194, 320, 326.

16 **SECTION 2. 66.1105 (4) (gm) 4. c. of the statutes is amended to read:**

17 66.1105 (4) (gm) 4. c. The equalized value of taxable property of the district plus
 18 the value increment of all existing districts does not exceed 12 percent of the total
 19 equalized value of taxable property within the city, ~~except if a city subtracts territory~~
 20 ~~from a district under par. (h) 2., the 12 percent limit does not apply to that finding.~~
 21 In determining the equalized value of taxable property under this subd. 4. c., the
 22 department of revenue shall base its calculations on the most recent equalized value

1 of taxable property of the district that is reported under s. 70.57 (1m) before the date
2 on which the resolution under this paragraph is adopted.

X
History: 1975 c. 105, 199, 311; 1977 c. 29 ss. 724m, 725, 1646 (1), (3); 1977 c. 418; 1979 c. 221, 343; 1979 c. 361 s. 112; 1981 c. 20, 317; 1983 a. 27, 31, 207, 320, 405, 538; 1985 a. 29, 39, 285; 1987 a. 27, 186, 395; 1989 a. 31, 336; 1993 a. 293, 337, 399; 1995 a. 27 ss. 3330c to 3337, 9116 (5), 9130 (4); 1995 a. 201, 225, 227, 335; 1997 a. 3, 27, 237, 252; 1999 a. 9; 1999 a. 150 ss. 457 to 472; Stats. 1999 s. 66.1105; 2001 a. 5, 11, 16, 104; 2003 a. 34, 46, 126, 127, 194, 320, 326.

3 **SECTION 3. 66.1105 (4) (h) 1.** of the statutes is amended to read:

4 66.1105 (4) (h) 1. Subject to subds. 2., 4., and 5., the planning commission may,
5 by resolution, adopt an amendment to a project plan. The amendment is subject to
6 approval by the local legislative body and approval requires the same findings as
7 provided in ~~par. (g)~~ ^{par.} and, if the amendment adds territory to a district under subd.
8 2., approval also requires the same findings as provided in par. (gm) 4. c. Any
9 amendment to a project plan is also subject to review by a joint review board, acting
10 under sub. (4m). Adoption of an amendment to a project plan shall be preceded by
11 a public hearing held by the plan commission at which interested parties shall be
12 afforded a reasonable opportunity to express their views on the amendment. Notice
13 of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall
14 include a statement of the purpose and cost of the amendment and shall advise that
15 a copy of the amendment will be provided on request. Before publication, a copy of
16 the notice shall be sent by 1st class mail to the chief executive officer or administrator
17 of all local governmental entities having the power to levy taxes on property within
18 the district and to the school board of any school district which includes property
19 located within the proposed district. For a county with no chief executive officer or
20 administrator, this notice shall be sent to the county board chairperson.

Strike para
X
History: 1975 c. 105, 199, 311; 1977 c. 29 ss. 724m, 725, 1646 (1), (3); 1977 c. 418; 1979 c. 221, 343; 1979 c. 361 s. 112; 1981 c. 20, 317; 1983 a. 27, 31, 207, 320, 405, 538; 1985 a. 29, 39, 285; 1987 a. 27, 186, 395; 1989 a. 31, 336; 1993 a. 293, 337, 399; 1995 a. 27 ss. 3330c to 3337, 9116 (5), 9130 (4); 1995 a. 201, 225, 227, 335; 1997 a. 3, 27, 237, 252; 1999 a. 9; 1999 a. 150 ss. 457 to 472; Stats. 1999 s. 66.1105; 2001 a. 5, 11, 16, 104; 2003 a. 34, 46, 126, 127, 194, 320, 326.

21 **SECTION 4. 66.1105 (6) (am) 1.** of the statutes is amended to read:

66.1105 (6) (am) 1. Except as otherwise provided in this paragraph, no expenditure may be made later than 5 years before the unextended termination date of a tax incremental district under sub. (7) (ak) or (am).

History: 1975 c. 105, 199, 311; 1977 c. 29 ss. 724m, 725, 1646 (1), (3); 1977 c. 418; 1979 c. 221, 343; 1979 c. 361 s. 112; 1981 c. 20, 317; 1983 a. 27, 31, 207, 320, 405, 538; 1985 a. 29, 39, 285; 1987 a. 27, 186, 395; 1989 a. 31, 336; 1993 a. 293, 337, 399; 1995 a. 27 ss. 3330c to 3337, 9116 (5), 9130 (4); 1995 a. 201, 225, 227, 335; 1997 a. 3, 27, 237, 252; 1999 a. 9; 1999 a. 150 ss. 457 to 472; Stats. 1999 s. 66.1105; 2001 a. 5, 11, 16, 104; 2003 a. 34, 46, 126, 127, 194, 320, 326.

SECTION 5. Initial applicability.

(1) This act first applies to a tax incremental district that is in existence on the effective date of this subsection or that is created on the effective date of this subsection. ✓

(END)

Shovers, Marc

From: Ford, William
Sent: Wednesday, January 12, 2005 11:14 AM
To: Shovers, Marc
Subject: FW:

Hi Marc. TIF season is once again upon us. In the spirit of the season, please draft the following for Sen. Stepp. Thank you.

-----Original Message-----

From: Manley, Scott
Sent: Wednesday, January 12, 2005 10:58 AM
To: Ford, William
Subject: RE:

Bill,

I agree that these instructions reflect the final decisions that were made last week. Would you like to submit the request to Marc Shovers, or is that something I should do?

Scott

-----Original Message-----

From: Ford, William
Sent: Wednesday, January 12, 2005 10:51 AM
To: Manley, Scott
Subject:

Hi Scott

As I promised, the following are drafting instructions to make one revision in, and 3 additions to, LRB-511/1, relating to tax incremental financing. I believe the drafting instructions described below reflect the decisions reached by the participants in our January 4th, 2005 meeting. Because no decision has been reached concerning whether to "quick-start" tax incremental base certification following an amendment to a TID that subtracts territory, no drafting instructions are made with respect to that potential revision.

Amend LRB-511/1 as follows:

1. Revise SECTION 1 so that the local legislative body must implement an approved project plan to promote industrial development within the meaning of s. 66.1101 if the TID has been designated as suitable for industrial sites and must implement an approved project plan to promote mixed-use development if the TID has been his designated as suitable for mixed-use development.
2. Add a provision that amends s.66.1105 (4) (h) to provide that no project plan amendment is required to a TID project plan if the only change in the project plan is to extend the period during which expenditures may be made under s. 66.1105 (6) (am) , as authorized by a change in state law that occurs after the TID project plan was adopted.
3. Add a provision that amends s. 66.1105 (5) (ce) by adding, after "taxable property" in the first sentence, the following underscored language: "and the value of real property owned by the city, other than property described in par. (bm),".
4. Add a provision that amends 66.1105 (4) (h) 2. to provide that, for purposes of determining the four amendment limit on the number of territorial amendments that may be adopted to a TID, an amendment that both adds territory and subtracts territory counts as one amendment.

Please contact me by e-mail or at 266-0680 with any questions or comments about these drafting instructions.

So if a new way to extend the exp. prd is created after the eff. date of the bill & that method is added to sub. (6)(am), the Am. of the proj. plan that only extends the exp. prd doesn't count in calculating the "4" limit



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0511/1
MES:lmk&cmh:rs
Keep
PMA

2005 BILL

SOON
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1 AN ACT to amend 66.1105 (4) (gm) 1., 66.1105 (4) (gm) 4. c., 66.1105 (4) (h) 1. and
2 66.1105 (6) (am) 1. of the statutes; relating to: technical changes to the tax
3 incremental financing law.

Analysis by the Legislative Reference Bureau

Under the current tax incremental financing program, a city or village may create a tax incremental district (TID) in part of its territory to foster development if at least 50 percent of the area to be included in the TID is blighted, in need of rehabilitation or conservation, suitable for industrial sites, or suitable for mixed-use development. Before a city or village may create a TID, several steps and plans are required. These steps and plans include public hearings on the proposed TID within specified time frames, preparation and adoption by the local planning commission of a proposed project plan for the TID, approval of the proposed project plan by the common council or village board, and adoption of a resolution by the common council or village board that creates the TID as of a date provided in the resolution.

Also under current law, once a TID has been created, the Department of Revenue (DOR) calculates the "tax increment base value" of the TID, which is the equalized value of all taxable property within the TID at the time of its creation. If the development in the TID increases the value of the property in the TID above the base value, a "value increment" is created. That portion of taxes collected on the value increment in excess of the base value is called a "tax increment." The tax increment is placed in a special fund that may be used only to pay back the project costs of the TID. The costs of a TID, which are initially incurred by the creating city

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or village, include public works such as sewers, streets, and lighting systems; financing costs; site preparation costs; and professional service costs. DOR authorizes the allocation of the tax increments until the TID terminates or, generally, 20 years, 23 years, or 27 years after the TID is created, depending on the type of TID and the year in which it was created. Under certain circumstances, the life of the TID and the allocation period may be extended.

TIDs are required to terminate, under current law and with some exceptions, once these costs are paid back, 20 years, 23 years, or 27 years after the TID is created, depending on the type of TID and the year in which it was created, or when the creating city or village dissolves the TID, whichever occurs first. Under one of the exceptions, which is limited to certain circumstances, after a TID pays off its project costs, but not later than the date on which it must otherwise terminate, the planning commission may allocate positive tax increments generated by the TID (the “donor” TID) to another TID that has been created by the planning commission.

Under certain circumstances that affect some types of TIDs, the creating city or village may ask the joint review board to extend the TID’s life for three or four years, depending on the type of TID. The city or village may provide the joint review board with an independent audit that demonstrates that the TID is unable to pay off its costs within its original life span. The joint review board may choose to approve or deny a request to extend the life of such TIDs but, if accompanied by an audit, the board must approve a request for an extension. If the TID’s life is extended, DOR may allocate tax increments to the TID for additional years beyond the limit that otherwise applies.

Current law specifies that for certain TIDs, subject to a number of exceptions, the expenditure period to pay off project costs is limited to five years before the unextended termination date of the TID. This bill makes a technical change to clarify that the five-year expenditure period limit applies to all TIDs, subject to a number of exceptions. The bill also makes a technical change related to the amount of vacant land that a TID may contain if it is suitable for mixed-use development.

Currently, before a TID may be created or its project plan amended, the city or village must issue a finding that the equalized value of taxable property of the TID plus the value increment of all existing TIDs does not exceed 12 percent of the total equalized value of taxable property in the city or village (the “12 percent test”), unless the amendment of the project plan subtracts territory from the TID. This bill clarifies that the 12 percent test applies only to TIDs that are being created or whose project plans are amended in a way that adds territory to the district.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 66.1105 (4) (gm) 1. of the statutes is amended to read:

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1 66.1105 (4) (gm) 1. Describes the boundaries, which may, but need not, be the
2 same as those recommended by the planning commission, of a tax incremental
3 district with sufficient definiteness to identify with ordinary and reasonable
4 certainty the territory included in the district. The boundaries of the tax incremental
5 district may not include any annexed territory that was not within the boundaries
6 of the city on January 1, 2004, unless at least 3 years have elapsed since the territory
7 was annexed by the city, unless the city enters into a cooperative plan boundary
8 agreement, under s. 66.0307, with the town from which the territory was annexed,
9 or unless the city and town enter into another kind of agreement relating to the
10 annexation except that, notwithstanding these conditions, the city may include
11 territory that was not within the boundaries of the city on January 1, 2004, if the city
12 pledges to pay the town an amount equal to the property taxes levied on the territory
13 by the town at the time of the annexation for each of the next 5 years. If, as the result
14 of a pledge by the city to pay the town an amount equal to the property taxes levied
15 on the territory by the town at the time of the annexation for each of the next 5 years,
16 the city includes territory in a tax incremental district that was not within the
17 boundaries of the city on January 1, 2004, the city's pledge is enforceable by the town
18 from which the territory was annexed. The boundaries shall include only those
19 whole units of property as are assessed for general property tax purposes. Property
20 standing vacant for an entire 7-year period immediately preceding adoption of the
21 resolution creating a tax incremental district may not comprise more than 25% 25
22 percent of the area in the tax incremental district, unless the tax incremental district
23 is suitable ~~for industrial sites~~ under subd. 4. a. for either industrial sites or mixed
24 use development and the local legislative body implements an approved project plan
25 to promote ~~either~~ industrial development within the meaning of s. 66.1101, or

if the district was been designated as suitable for industrial sites

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SECTION 1

if the district has been designated as suitable for mixed-use development

1 mixed-used development. In this subdivision, "vacant property" includes property
2 where the fair market value or replacement cost value of structural improvements
3 on the parcel is less than the fair market value of the land. In this subdivision,
4 "vacant property" does not include property acquired by the local legislative body
5 under ch. 32, property included within the abandoned Park East freeway corridor or
6 the abandoned Park West freeway corridor in Milwaukee County, or property that
7 is contaminated by environmental pollution, as defined in s. 66.1106 (1) (d).

8 **SECTION 2.** 66.1105 (4) (gm) 4. c. of the statutes is amended to read:

9 66.1105 (4) (gm) 4. c. The equalized value of taxable property of the district plus
10 the value increment of all existing districts does not exceed 12 percent of the total
11 equalized value of taxable property within the city, ~~except if a city subtracts territory~~
12 ~~from a district under par. (h) 2., the 12 percent limit does not apply to that finding.~~
13 In determining the equalized value of taxable property under this subd. 4. c., the
14 department of revenue shall base its calculations on the most recent equalized value
15 of taxable property of the district that is reported under s. 70.57 (1m) before the date
16 on which the resolution under this paragraph is adopted.

17 **SECTION 3.** 66.1105 (4) (h) 1. of the statutes is amended to read:

18 66.1105 (4) (h) 1. Subject to subds. 2., 4., ~~and 5.~~ ^{and 6.} the planning commission may,
19 by resolution, adopt an amendment to a project plan. The amendment is subject to
20 approval by the local legislative body and approval requires the same findings as
21 provided in ~~par. (g) and~~, if the amendment adds territory to a district under
22 subd. 2., approval also requires the same findings as provided in par. (gm) 4. c. Any
23 amendment to a project plan is also subject to review by a joint review board, acting
24 under sub. (4m). Adoption of an amendment to a project plan shall be preceded by
25 a public hearing held by the plan commission at which interested parties shall be

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1 afforded a reasonable opportunity to express their views on the amendment. Notice
2 of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall
3 include a statement of the purpose and cost of the amendment and shall advise that
4 a copy of the amendment will be provided on request. Before publication, a copy of
5 the notice shall be sent by 1st class mail to the chief executive officer or administrator
6 of all local governmental entities having the power to levy taxes on property within
7 the district and to the school board of any school district which includes property
8 located within the proposed district. For a county with no chief executive officer or
9 administrator, this notice shall be sent to the county board chairperson.

10 **SECTION 4.** 66.1105 (6) (am) 1. of the statutes is amended to read:

11 66.1105 (6) (am) 1. Except as otherwise provided in this paragraph, no
12 expenditure may be made later than 5 years before the unextended termination date
13 of a tax incremental district under sub. (7) (ak) or (am).

14 **SECTION 5. Initial applicability.**

15 (1) This act first applies to a tax incremental district that is in existence on the
16 effective date of this subsection or that is created on the effective date of this
17 subsection.

18 (END)

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FROM THE
LEGISLATIVE REFERENCE BUREAU

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Under current law, a planning commission may adopt an amendment to a project plan, which requires the approval of the common council or village board and the same findings that current law requires for the creation of a new TID. Current law also authorizes the amendment of a project plan up to 4 times during a TID's existence to change the district's boundaries by adding or subtracting territory. This bill clarifies that if a single amendment to a project plan both adds and subtracts territory, this amendment counts as only one amendment of the plan in counting toward the allowable maximum of 4 amendments to the TID's boundaries.

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SECTION 1. 66.1105 (4) (h) 2. of the statutes is amended to read:

66.1105 (4) (h) 2. Except as provided in subs. 4. and 5., the planning commission may adopt an amendment to a project plan under subd. 1. to modify the district's boundaries, not more than 4 times during the district's existence, by subtracting territory from the district in a way that does not remove contiguity from the district or by adding territory to the district that is contiguous to the district and that is served by public works or improvements that were created as part of the district's project plan. A single amendment to a project plan that both adds and subtracts territory shall be counted under this subdivision as one amendment of a project plan.

History: 1975 c. 105, 199, 311; 1977 c. 29 ss. 724m, 725, 1646 (1), (3); 1977 c. 418; 1979 c. 221, 343; 1979 c. 361 s. 112; 1981 c. 20, 317; 1983 a. 27, 31, 207, 320, 405, 538; 1985 a. 29, 39, 285; 1987 a. 27, 186, 395; 1989 a. 31, 336; 1993 a. 293, 337, 399; 1995 a. 27 ss. 3330c to 3337, 9116 (5), 9130 (4); 1995 a. 201, 225, 227, 335; 1997 a. 3, 27, 237, 252; 1999 a. 9; 1999 a. 150 ss. 457 to 472; Stats. 1999 s. 66.1105; 2001 a. 5, 11, 16, 104; 2003 a. 34, 46, 126, 127, 194, 320, 326.

SECTION 2. 66.1105 (4) (h) 6. of the statutes is created to read:

66.1105 (4) (h) 6. Notwithstanding par. (h) 1., a project plan may be amended by resolution of the planning commission, subject to approval by the local legislative body, without any of the other procedures required under par. (h) 1., if the only change contained in the amendment is to extend the period during which expenditures may be made under sub. (6) (am) 2., as authorized under that

subdivision by a provision of state law that takes effect after ^athe tax incremental district's project plan is first adopted under par. (f).

SECTION 3. 66.1105 (5) (ce) of the statutes is amended to read:

66.1105 (5) (ce) If the city adopts an amendment, to which sub. (4) (h) 2., 4., or 5. applies, the tax incremental base for the district shall be redetermined, either by subtracting from the tax incremental base the value of the taxable property and the value of real property owned by the city, other than property described under par. (bm), that is subtracted from the existing district or by adding to the tax incremental base the value of the taxable property and the value of real property owned by the city, other than property described in par. (bm), that is added to the existing district under sub. (4) (h) 2., 4., or 5., as of the January 1 next preceding the effective date of the amendment if the amendment becomes effective between January 2 and September 30, as of the next subsequent January 1 if the amendment becomes effective between October 1 and December 31 and if the effective date of the amendment is January 1 of any year, the redetermination shall be made on that date. With regard to a district to which territory has been added, the tax incremental base as redetermined under this paragraph is effective for the purposes of this section only if it exceeds the original tax incremental base determined under par. (b).

History: 1975 c. 105, 199, 311; 1977 c. 29 ss. 724m, 725, 1646 (1), (3); 1977 c. 418; 1979 c. 221, 343; 1979 c. 361 s. 112; 1981 c. 20, 317; 1983 a. 27, 31, 207, 320, 405, 538; 1985 a. 29, 39, 285; 1987 a. 27, 186, 395; 1989 a. 31, 336; 1993 a. 293, 337, 399; 1995 a. 27 ss. 3330c to 3337, 9116 (5), 9130 (4); 1995 a. 201, 225, 227, 335; 1997 a. 3, 27, 237, 252; 1999 a. 9; 1999 a. 150 ss. 457 to 472; Stats. 1999 s. 66.1105; 2001 a. 5, 11, 16, 104; 2003 a. 34, 46, 126, 127, 194, 320, 326.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0511/2
MES:lmk&cmh:gf

RMR

2005 BILL

WANTED:
NOON

regen

1 AN ACT *to amend* 66.1105 (4) (gm) 1., 66.1105 (4) (gm) 4. c., 66.1105 (4) (h) 1.,
2 66.1105 (4) (h) 2., 66.1105 (5) (ce) and 66.1105 (6) (am) 1.; and *to create* 66.1105
3 (4) (h) 6. of the statutes; **relating to:** technical changes to the tax incremental
4 financing law.

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Under the current tax incremental financing program, a city or village may create a tax incremental district (TID) in part of its territory to foster development if at least 50 percent of the area to be included in the TID is blighted, in need of rehabilitation or conservation, suitable for industrial sites, or suitable for mixed-use development. Before a city or village may create a TID, several steps and plans are required. These steps and plans include public hearings on the proposed TID within specified time frames, preparation and adoption by the local planning commission of a proposed project plan for the TID, approval of the proposed project plan by the common council or village board, and adoption of a resolution by the common council or village board that creates the TID as of a date provided in the resolution.

Also under current law, once a TID has been created, the Department of Revenue (DOR) calculates the "tax increment base value" of the TID, which is the equalized value of all taxable property within the TID at the time of its creation. If the development in the TID increases the value of the property in the TID above the base value, a "value increment" is created. That portion of taxes collected on the value increment in excess of the base value is called a "tax increment." The tax increment is placed in a special fund that may be used only to pay back the project

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costs of the TID. The costs of a TID, which are initially incurred by the creating city or village, include public works such as sewers, streets, and lighting systems; financing costs; site preparation costs; and professional service costs. DOR authorizes the allocation of the tax increments until the TID terminates or, generally, 20 years, 23 years, or 27 years after the TID is created, depending on the type of TID and the year in which it was created. Under certain circumstances, the life of the TID and the allocation period may be extended.

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3 same as those recommended by the planning commission, of a tax incremental
4 district with sufficient definiteness to identify with ordinary and reasonable
5 certainty the territory included in the district. The boundaries of the tax incremental
6 district may not include any annexed territory that was not within the boundaries
7 of the city on January 1, 2004, unless at least 3 years have elapsed since the territory
8 was annexed by the city, unless the city enters into a cooperative plan boundary
9 agreement, under s. 66.0307, with the town from which the territory was annexed,
10 or unless the city and town enter into another kind of agreement relating to the
11 annexation except that, notwithstanding these conditions, the city may include
12 territory that was not within the boundaries of the city on January 1, 2004, if the city
13 pledges to pay the town an amount equal to the property taxes levied on the territory
14 by the town at the time of the annexation for each of the next 5 years. If, as the result
15 of a pledge by the city to pay the town an amount equal to the property taxes levied
16 on the territory by the town at the time of the annexation for each of the next 5 years,
17 the city includes territory in a tax incremental district that was not within the
18 boundaries of the city on January 1, 2004, the city's pledge is enforceable by the town
19 from which the territory was annexed. The boundaries shall include only those
20 whole units of property as are assessed for general property tax purposes. Property
21 standing vacant for an entire 7-year period immediately preceding adoption of the

BILL**SECTION 1**

1 resolution creating a tax incremental district may not comprise more than ~~25%~~ 25
2 percent of the area in the tax incremental district, unless the tax incremental district
3 is suitable ~~for industrial sites~~ under subd. 4. a. for either industrial sites or mixed
4 use development and the local legislative body implements an approved project plan
5 to promote industrial development within the meaning of s. 66.1101 if the district has
6 been designated as suitable for industrial sites, or mixed-used development if the
7 district has been designated as suitable for mixed-use development. In this
8 subdivision, “vacant property” includes property where the fair market value or
9 replacement cost value of structural improvements on the parcel is less than the fair
10 market value of the land. In this subdivision, “vacant property” does not include
11 property acquired by the local legislative body under ch. 32, property included within
12 the abandoned Park East freeway corridor or the abandoned Park West freeway
13 corridor in Milwaukee County, or property that is contaminated by environmental
14 pollution, as defined in s. 66.1106 (1) (d).

15 **SECTION 2.** 66.1105 (4) (gm) 4. c. of the statutes is amended to read:

16 66.1105 (4) (gm) 4. c. The equalized value of taxable property of the district plus
17 the value increment of all existing districts does not exceed 12 percent of the total
18 equalized value of taxable property within the city, ~~except if a city subtracts territory~~
19 ~~from a district under par. (h) 2., the 12 percent limit does not apply to that finding.~~
20 In determining the equalized value of taxable property under this subd. 4. c., the
21 department of revenue shall base its calculations on the most recent equalized value
22 of taxable property of the district that is reported under s. 70.57 (1m) before the date
23 on which the resolution under this paragraph is adopted.

24 **SECTION 3.** 66.1105 (4) (h) 1. of the statutes is amended to read:

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1 66.1105 (4) (h) 1. Subject to subds. 2., 4., and 5., and 6., the planning
2 commission may, by resolution, adopt an amendment to a project plan. The
3 amendment is subject to approval by the local legislative body and approval requires
4 the same findings as provided in ~~par.~~ par. (g) and, if the amendment adds territory
5 to a district under subd. 2., approval also requires the same findings as provided in
6 par. (gm) 4. c. Any amendment to a project plan is also subject to review by a joint
7 review board, acting under sub. (4m). Adoption of an amendment to a project plan
8 shall be preceded by a public hearing held by the plan commission at which
9 interested parties shall be afforded a reasonable opportunity to express their views
10 on the amendment. Notice of the hearing shall be published as a class 2 notice, under
11 ch. 985. The notice shall include a statement of the purpose and cost of the
12 amendment and shall advise that a copy of the amendment will be provided on
13 request. Before publication, a copy of the notice shall be sent by 1st class mail to the
14 chief executive officer or administrator of all local governmental entities having the
15 power to levy taxes on property within the district and to the school board of any
16 school district which includes property located within the proposed district. For a
17 county with no chief executive officer or administrator, this notice shall be sent to the
18 county board chairperson.

19 **SECTION 4.** 66.1105 (4) (h) 2. of the statutes is amended to read:

20 66.1105 (4) (h) 2. Except as provided in subds. 4. and 5., the planning
21 commission may adopt an amendment to a project plan under subd. 1. to modify the
22 district's boundaries, not more than 4 times during the district's existence, by
23 subtracting territory from the district in a way that does not remove contiguity from
24 the district or by adding territory to the district that is contiguous to the district and
25 that is served by public works or improvements that were created as part of the

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1 district's project plan. A single amendment to a project plan that both adds and
2 subtracts territory shall be counted under this subdivision as one amendment of a
3 project plan.

4 **SECTION 5.** 66.1105 (4) (h) 6. of the statutes is created to read:

shall be considered to have been

5 66.1105 (4) (h) 6. Notwithstanding subd. 1., a project plan ~~may be~~ amended by
6 ~~resolution of the planning commission, subject to approval by the local legislative~~
7 ~~body,~~ without compliance with any of the ~~other~~ procedures required under subd. 1.,
8 if the only change ^{to the project plan} contained in the amendment is ^{the extension of} to extend the period during which
9 expenditures may be made under sub. (6) (am) 2., as authorized under that
10 subdivision by a provision of state law that takes effect after a tax incremental
11 district's project plan is first adopted under par. (f).

12 **SECTION 6.** 66.1105 (5) (ce) of the statutes is amended to read:

13 66.1105 (5) (ce) If the city adopts an amendment, to which sub. (4) (h) 2., 4., or
14 5. applies, the tax incremental base for the district shall be redetermined, either by
15 subtracting from the tax incremental base the value of the taxable property and the
16 value of real property owned by the city, other than property described under par.
17 (bm), that is subtracted from the existing district or by adding to the tax incremental
18 base the value of the taxable property and the value of real property owned by the
19 city, other than property described in par. (bm), that is added to the existing district
20 under sub. (4) (h) 2., 4., or 5., as of the January 1 next preceding the effective date
21 of the amendment if the amendment becomes effective between January 2 and
22 September 30, as of the next subsequent January 1 if the amendment becomes
23 effective between October 1 and December 31 and if the effective date of the
24 amendment is January 1 of any year, the redetermination shall be made on that date.
25 With regard to a district to which territory has been added, the tax incremental base

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1 as redetermined under this paragraph is effective for the purposes of this section only
2 if it exceeds the original tax incremental base determined under par. (b).

3 **SECTION 7.** 66.1105 (6) (am) 1. of the statutes is amended to read:

4 66.1105 (6) (am) 1. Except as otherwise provided in this paragraph, no
5 expenditure may be made later than 5 years before the unextended termination date
6 of a tax incremental district under sub. (7) (ak) or (am).

7 **SECTION 8. Initial applicability.**

8 (1) This act first applies to a tax incremental district that is in existence on the
9 effective date of this subsection or that is created on the effective date of this
10 subsection.

11 (END)

Basford, Sarah

From: Manley, Scott
Sent: Tuesday, February 08, 2005 4:26 PM
To: LRB.Legal
Subject: Draft review: LRB 05-0511/3 Topic: Technical changes to the TIF (tax incremental financing) statutes

It has been requested by <Manley, Scott> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-0511/3 Topic: Technical changes to the TIF (tax incremental financing) statutes