

State of Wisconsin



2015 Senate Bill 50

Date of enactment: **March 1, 2016**
Date of publication*: **March 2, 2016**

2015 WISCONSIN ACT 256

AN ACT *to repeal* 66.1105 (4m) (b) 2m., 66.1105 (5) (bg), 66.1105 (5) (cf), 66.1105 (6) (am) 4., 66.1105 (6) (dm) 1., 66.1105 (6) (dm) 3. a., 66.1105 (6) (dm) 4., 66.1105 (6) (e) 1. c. and 66.1106 (14); and *to amend* 60.85 (4) (b) 2., 66.0602 (3) (dm), 66.1105 (4) (gm) 5., 66.1105 (4) (h) 1., 66.1105 (4e) (b) 3., 66.1105 (4m) (b) 2., 66.1105 (6) (a) 7., 66.1105 (6) (a) 8., 66.1105 (6) (e) 1. b., 66.1105 (7) (am) 2., 66.1105 (7) (am) 3. and 66.1106 (3) (b) 2. of the statutes; **relating to:** industrial zoning requirements in tax incremental districts, planning commission notice for tax incremental district amendments, obsolete references relating to tax incremental districts, allocation of tax increments, joint review board review, and calculation of levy limits following dissolution of a tax incremental district.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Review of Tax Incremental Financing.

Industrial Zoning Requirements in Tax Incremental Districts

Under current law, a resolution to create a tax incremental district (TID) must include a finding that not less than 50 percent, by area, of the real property within the district is at least one of the following: a blighted area; in need of rehabilitation or conservation work; suitable for industrial sites and zoned for industrial use; or suitable for mixed-use development. The resolution must also confirm that any real property within the district that is found suitable for industrial sites and is zoned for industrial use will remain zoned for industrial use for the life of the tax incremental district, and must declare that the district is a blighted area district, a rehabilitation or conservation district, an industrial district, or a mixed-use district based on the identification and classification of the property included within the district.

The bill specifies that the requirement related to maintenance of industrial zoning applies only to districts that are declared to be industrial districts.

Planning Commission Notice for TID Amendments

Under current law, a TID's project plan may be amended for several reasons, including modification of the expendi-

tures allowed in a TID's project plan, addition or subtraction of territory to the TID's boundaries, extension of the TID's lifespan, and donation of tax increments to another TID.

Generally, the process to amend a TID's project plan is similar to the process of creating a TID, requiring a public hearing held by the planning commission and adoption of resolutions by the planning commission, municipality, and joint review board (JRB) to approve the plan or amendment. As part of this process, the planning commission must publish a class 2 notice of its public hearing. The JRB must publish notice of its meeting as a class 1 notice, at least five days before the meeting.

Under current law, a class 2 notice consists of insertions of the notice for two consecutive weeks, with the last insertion at least a week prior to the meeting date, in the appropriate newspaper of record under ch. 985, stats. A class 1 notice, unless otherwise specified (for example, the requirement that the JRB must publish a notice five days before its meeting), requires a single insertion of the notice, at least a week prior to the meeting date, in the appropriate newspaper of record.

The bill amends the notice requirement of the planning commission from a class 2 notice to a class 1 notice with regard to notices relating to the TID amendment process.

Obsolete References

Over time, the statutes relating to tax incremental financing have been amended to include numerous provisions that are significantly limited in their scope, often relating to a single municipality or a particular TID. Often, these amend-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

ments offer special statutory authorization regarding creation, amendment, or lifespan of a particular district or class of districts, or to TIDs in a particular municipality.

The bill repeals certain provisions of the statutes relating to tax incremental financing that the Department of Revenue (DOR) identified as obsolete.

Timing Penalty

Under current law, certain statutory and administrative deadlines relating to the allocation of positive tax increments to a TID combine to result in variation in the maximum number of positive increments that may be allocated to a TID, depending on the date on which a municipality acted to create the TID and its project plan. In particular, the maximum number of positive increments that a TID may receive is one fewer for a TID and project plan created after September 30 and before May 15 than for TIDs created on or after May 15 and before October 1.

For newly created TIDs, the bill extends a TID's lifespan and allocation period of positive tax increments by one year if the municipality that creates the TID adopts the project plan for the TID after September 30 and before May 15.

Joint Review Board Review Period

Before a municipality's resolution to create a TID, amend a TID's project plan, or require DOR to redetermine a TID's base value may take effect, several steps are required. One of these steps is JRB approval of a municipality's TID resolution. A JRB consists of members who represent the overlying taxation districts. In general, the JRB must approve the resolution by a majority vote within 30 days after receiving the resolution. The review period applicable to an industry-specific TID located in a town and an environmental remediation TID is not less than 10 days nor more than 30 days.

The bill amends the maximum review period the JRB has to approve a municipality's TID resolution from 30 days to 45 days after receiving the resolution.

Calculation of Levy Limit Exception

Generally, under the current local levy law, and subject to a number of exceptions, a city, village, town, or county (political subdivision) may not increase its base levy (the prior year's actual levy) in any year by more than the percentage change in the political subdivision's equalized value due to new construction, less improvements removed, including new construction that occurs in a TID between the previous year and the current year, but not less than 0 percent. Also, when determining its levy limit, a municipality must exclude the amount of any tax increment generated by property in a TID located in the municipality.

There are numerous exceptions that may be used to adjust a political subdivision's levy limit. One exception authorizes an increase in a municipality's levy limit for the year that a TID terminates. If DOR does not certify a TID as a result of the district's termination, the levy limit otherwise applicable is increased by an amount equal to the municipality's maximum allowable levy for the preceding year, multiplied by a percentage equal to 50 percent of the amount determined by dividing the terminated TID's value increment by the municipality's equalized value, as determined by DOR. The increase must be applied to the municipality's levy limit in the year that the TID terminates.

The bill specifies that the municipality's equalized value for the preceding year, as used in the calculation of the levy limit exception for the year that a TID terminates, excludes the value of any TID value increments.

SECTION 1. 60.85 (4) (b) 2. of the statutes is amended to read:

60.85 (4) (b) 2. No tax incremental district may be created and no project plan may be amended unless the joint review board approves the resolution adopted under

sub. (3) (h) or (j) 1. by a majority vote not less than 10 days nor more than ~~30~~ 45 days after receiving the resolution.

NOTE: This SECTION extends the maximum review period that the JRB has to approve the creation or amendment of an industry-specific town TID from 30 days to 45 days.

SECTION 2. 66.0602 (3) (dm) of the statutes is amended to read:

66.0602 (3) (dm) If the department of revenue does not certify a value increment for a tax incremental district for the current year as a result of the district's termination, the levy increase limit otherwise applicable under this section in the current year to the political subdivision in which the district is located is increased by an amount equal to the political subdivision's maximum allowable levy for the immediately preceding year, multiplied by a percentage equal to 50 percent of the amount determined by dividing the value increment of the terminated tax incremental district, calculated for the previous year, by the political subdivision's equalized value, exclusive of any tax incremental district value increments, for the previous year, all as determined by the department of revenue.

NOTE: This SECTION excludes the value of any TID increments from the calculation of the levy limit exception that applies for the year a TID terminates.

SECTION 3. 66.1105 (4) (gm) 5. of the statutes is amended to read:

66.1105 (4) (gm) 5. ~~Confirms~~ If the district is declared to be an industrial district under subd. 6., confirms that any real property within the district that is found suitable for industrial sites and is zoned for industrial use under subd. 4. a. will remain zoned for industrial use for the life of the tax incremental district.

NOTE: This SECTION specifies that maintenance of industrial zoning requirements applies only to districts that are declared to be industrial districts.

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

66.1105 (4) (h) 1. Subject to subds. 2., 4., 5., and 6., the planning commission may, by resolution, adopt an amendment to a project plan. The amendment is subject to approval by the local legislative body and approval requires the same findings as provided in par. (g) and, if the amendment adds territory to a district under subd. 2., approval also requires the same findings as provided in par. (gm) 4. c. Any amendment to a project plan is also subject to review by a joint review board, acting under sub. (4m). Adoption of an amendment to a project plan shall be preceded by a public hearing held by the plan commission at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment. Notice of the hearing shall be published as a class ~~2~~ 1 notice, under ch. 985. The notice shall include a statement of the purpose and cost of the amendment and shall advise that a copy of the amendment will be provided on request. Before publication, a copy of the notice

shall be sent by 1st class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property within the district and to the school board of any school district which includes property located within the proposed district. For a county with no chief executive officer or administrator, this notice shall be sent to the county board chairperson.

NOTE: This SECTION amends the notice a planning commission must provide with regard to consideration of a TID amendment.

SECTION 5. 66.1105 (4e) (b) 3. of the statutes is amended to read:

66.1105 (4e) (b) 3. A resolution adopted under par. (a) 1. may not take effect unless the joint review board approves, by resolution, the designation under subd. 2. The joint review board shall approve or deny the designation within ~~30~~ 45 days after receiving the resolution under subd. 2.

NOTE: This SECTION extends the review period that the JRB has to approve the designation of a TID as distressed or severely distressed from 30 days to 45 days.

SECTION 6. 66.1105 (4m) (b) 2. of the statutes is amended to read:

66.1105 (4m) (b) 2. ~~Except as provided in subd. 2m.,~~ ~~no~~ No tax incremental district may be created and no project plan may be amended unless the board approves the resolution adopted under sub. (4) (gm) or (h) 1., and no tax incremental base may be redetermined under sub. (5) (h) unless the board approves the resolution adopted under sub. (5) (h) 1., by a majority vote within ~~30~~ 45 days after receiving the resolution. With regard to a multijurisdictional tax incremental district created under this section, each public member of a participating city must be part of the majority that votes for approval of the resolution or the district may not be created. The board may not approve the resolution under this subdivision unless the board's approval contains a positive assertion that, in its judgment, the development described in the documents the board has reviewed under subd. 1. would not occur without the creation of a tax incremental district. The board may not approve the resolution under this subdivision unless the board finds that, with regard to a tax incremental district that is proposed to be created by a city under sub. (17) (a), such a district would be the only existing district created under that subsection by that city.

NOTE: This SECTION extends the review period that the JRB has to approve the creation or amendment of a TID located in a city or village from 30 days to 45 days.

SECTION 7e. 66.1105 (4m) (b) 2m. of the statutes is repealed.

NOTE: This SECTION repeals an obsolete reference.

SECTION 8. 66.1105 (5) (bg) of the statutes is repealed.

NOTE: This SECTION repeals an obsolete reference.

SECTION 8m. 66.1105 (5) (cf) of the statutes is repealed.

NOTE: This SECTION repeals an obsolete reference.

SECTION 9. 66.1105 (6) (a) 7. of the statutes is amended to read:

66.1105 (6) (a) 7. Twenty years after the tax incremental district is created if the district is created on or after October 1, 2004, and if the district is at least predominantly suitable for mixed-use development or industrial sites under sub. (4) (gm) 6., except that if the life of the district is extended under sub. (7) (am) 2. an allocation under this subdivision may be made 23 years after such a district is created. For a tax incremental district created after the effective date of this subdivision ... [LRB inserts date], the period during which a tax increment may be allocated under this subdivision shall be increased by one year if that district's project plan is adopted under sub. (4) (g) after September 30 and before May 15.

SECTION 10. 66.1105 (6) (a) 8. of the statutes is amended to read:

66.1105 (6) (a) 8. Twenty-seven years after the tax incremental district is created if the district is created on or after October 1, 2004, and if the district is a district specified under sub. (4) (gm) 6. other than a district specified under subd. 7., except that if the life of the district is extended under sub. (7) (am) 3. an allocation under this subdivision may be made 30 years after such a district is created. For a tax incremental district created after the effective date of this subdivision ... [LRB inserts date], the period during which a tax increment may be allocated under this subdivision shall be increased by one year if that district's project plan is adopted under sub. (4) (g) after September 30 and before May 15.

NOTE: These SECTIONS extend a TID's lifespan and allocation period for tax increments if a TID project plan is adopted after September 30 and before May 15.

SECTION 11. 66.1105 (6) (am) 4. of the statutes is repealed.

SECTION 12. 66.1105 (6) (dm) 1. of the statutes is repealed.

SECTION 13. 66.1105 (6) (dm) 3. a. of the statutes is repealed.

SECTION 14. 66.1105 (6) (dm) 4. of the statutes is repealed.

SECTION 15. 66.1105 (6) (e) 1. b. of the statutes is amended to read:

66.1105 (6) (e) 1. b. Except as provided in subd. 1. e. and e., the donor tax incremental district and the recipient tax incremental district have been created before October 1, 1995.

SECTION 16. 66.1105 (6) (e) 1. c. of the statutes is repealed.

NOTE: These SECTIONS repeal obsolete references.

SECTION 17. 66.1105 (7) (am) 2. of the statutes is amended to read:

66.1105 (7) (am) 2. For a district that is created after September 30, 2004, about which a finding is made under sub. (4) (gm) 4. a. that not less than 50 percent, by area,

of the real property within the district is suitable for industrial sites or mixed-use development, 20 years after the district is created, except that the city that created the district may, subject to sub. (8) (e), request that the joint review board extend the life of the district for an additional 3 years. Along with its request for a 3-year extension, the city may provide the joint review board with an independent audit that demonstrates that the district is unable to pay off its project costs within the 20 years after the district is created. The joint review board may deny or approve a request to extend the life of the district for 3 years if the request does not include the independent audit, and the board shall approve a request to extend the life of the district for 3 years if the request includes the audit. If the joint review board extends the district's life, the district shall terminate at the earlier of the end of the extended period or the period specified in par. (a). For a tax incremental district created after the effective date of this subdivision [LRB inserts date], the termination date for a district to which this subdivision applies shall either be increased by one year beyond the otherwise applicable termination date under this subdivision if that district's project plan is adopted under sub. (4) (g) after September 30 and before May 15, or shall be the period specified in par. (a), whichever is earlier.

SECTION 18. 66.1105 (7) (am) 3. of the statutes is amended to read:

66.1105 (7) (am) 3. For a district that is created after September 30, 2004, about which a finding is made under sub. (4) (gm) 4. a. that not less than 50 percent, by area, of the real property within the district is a blighted area or in need of rehabilitation, 27 years after the district is created, except that the city that created the district may, subject to sub. (8) (e), request that the joint review board extend the life of the district for an additional 3 years. Along with its request for a 3-year extension, the city may provide the joint review board with an independent audit that demonstrates that the district is unable to pay off its project costs within the 27 years after the district

is created. The joint review board may deny or approve a request to extend the life of the district for 3 years if the request does not include the independent audit, and the board shall approve a request to extend the life of the district for 3 years if the request includes the audit. If the joint review board extends the district's life, the district shall terminate at the earlier of the end of the extended period or the period specified in par. (a). For a tax incremental district created after the effective date of this subdivision [LRB inserts date], the termination date for a district to which this subdivision applies shall either be increased by one year beyond the otherwise applicable termination date under this subdivision if that district's project plan is adopted under sub. (4) (g) after September 30 and before May 15, or shall be the period specified in par. (a), whichever is earlier.

NOTE: These SECTIONS extend a TID's lifespan and allocation period for TID increments if a TID project plan is adopted after September 30 and before May 15.

SECTION 19. 66.1106 (3) (b) 2. of the statutes is amended to read:

66.1106 (3) (b) 2. No written application may be submitted under sub. (4) unless the board approves the written proposal under sub. (2) by a majority vote not less than 10 days nor more than ~~30~~ 45 days after receiving the proposal.

NOTE: This SECTION extends the maximum review period that the JRB has to approve the written proposal and statement required for the creation of an environmental remediation TID.

SECTION 20m. 66.1106 (14) of the statutes is repealed.

NOTE: This SECTION repeals an obsolete reference.

SECTION 20p. Initial applicability.

(1) This act first applies to a tax incremental district that is created on, or whose project plan is amended on, October 1, 2015, except that the treatment of section 66.0602 (3) (dm) of the statutes first applies to a tax incremental district that is created on, or whose project plan is amended on, October 1, 2016.