



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 437

Senate Substitute Amendment 1

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Assembly Bill 437 grants towns limited authority to create tax incremental financing (TIF) districts.

Under **current law**, cities and villages may use TIF to create tax incremental districts (TIDs) if at least 50% of the area to be included in the TID is blighted, in need of rehabilitation, or suitable for industrial sites. Current law authorizes towns to use TIF to create environmental remediation TIDs, in which the project financed under a TID is restricted to the remediation of environmental pollution.

Senate Substitute Amendment 1 to Assembly Bill 437 provides as follows:

1. **Allowable Projects.** The substitute amendment authorizes a town to use the TIF law to expend money or incur monetary obligations, other than tax incremental bonds or notes, as project costs for projects related to agriculture, forestry, manufacturing, or tourism. The limited types of TIF projects authorized by the substitute amendment are as follows:

- Agricultural projects, defined as agricultural activities classified in the North American Industry Classification System (NAICS), 1997 Edition, under the following industry codes: (a) 111 Crop production; (b) 112 Animal production; (c) 1151 Support activities for agriculture; and (d) 1152 Support activities for animal production.
- Forestry projects, defined as forestry activities classified in the NAICS, 1997 Edition, under the following industry codes: (a) 113 Forestry and logging; and (b) 1153 Support activities for forestry.
- Manufacturing projects, defined as manufacturing activities classified in the NAICS, 1997 Edition, under the following industry codes: (a) 3116 Animal slaughtering and processing; (b) 321 Wood product manufacturing; (c) 322 Paper manufacturing; and (d) 325193 Ethyl alcohol manufacturing.

- Tourism projects, defined as activities that involve retailers classified in the NAICS, 1997 Edition, under the following industry numbers: (a) 721214 Recreational and vacation camps; (b) 721211 Recreational vehicle parks and campgrounds; (c) 711212 Racetracks; (d) Dairy product stores included in 445299 NAICS; and (e) Public golf courses included in 71391 NAICS.
- Residential development, defined as sleeping quarters, within a proposed TID, for employees who work for an employer engaged in a project related to agriculture, forestry, manufacturing, or tourism, but does not include hotels, motels, or general residential housing development within a proposed TID. Residential development is authorized only to the extent that it has a necessary and incidental relationship to a project related to agriculture, forestry, manufacturing, or tourism.
- Retail development that is limited to the retail sale of products that are produced due to a project developed for agriculture, forestry, or manufacturing.

2. **Extraterritorial Zoning.** The substitute amendment provides that no town may exercise any power under its TIF authority within the extraterritorial zoning jurisdiction of a city or village, unless the city's or village's governing body adopts a resolution which approves the town's exercise of power within the extraterritorial zoning jurisdiction.

3. **Creation of a TID.** Before a town may create a TID, several steps and plans are required. These include adoption by the town planning commission of a proposed project plan for the TID. The town board must also approve the proposed project plan and adopt a resolution that creates the TID.

Among other things, the resolution adopted by the town board must declare that the district is either an agricultural project district, forestry project district, manufacturing project district, or tourism project district, and identify the NAICS industry number of each activity under each project for which project costs are to be expended.

In addition, the resolution must contain a finding that at least 75% of the proposed district's area is intended for agricultural, forestry, manufacturing activities, or tourism activities, and that either the equalized value of the proposed TID plus all existing TIDs in that town does not exceed 7% of the total equalized value of the town; or the equalized value of the proposed TID plus the value increment of all existing TIDs in the town does not exceed 5% of the total equalized value of the town.

4. **Amendments to TIDs.** The substitute amendment provides that a town may amend the project plan of an existing TID not more than once during the five years after a TID is created and generally requires the same process and findings as for creating a new TID. Expenditures for project costs that occur because of an amendment to a project plan may be made not more than two years after the date on which the amendment is approved. Such an amendment does not extend the maximum life of a TID.

5. **Joint Review Board Membership.** Under the substitute amendment, each proposed town TID is reviewed by a joint review board consisting of a representative of each of the following taxing jurisdictions within whose boundaries the TID would be created: the school district, the technical college district, the county, and the town. The joint review board also includes one public member

selected by the four representatives of the taxing jurisdictions. The substitute amendment includes the following provisions relating to joint review boards:

- Requires the school district representative to a joint review board to be the school board president, or the president's designee. In appointing a designee, the school board president would be required to give preference to appointing the finance director for the school system or another person with knowledge of local government finances.
- Requires the county representative to the joint review board to be the county executive in counties with a county executive or, in counties without any county executive, the chairperson of the county board, or that person's designee. In appointing a designee, the county executive or county board chairperson would be required to give preference to appointing the county treasurer or another person with knowledge of local government finances.
- Requires the town representative to be the town board chairperson, or that person's designee. In appointing a designee, the town board chairperson would be required to give preference to appointing the person in charge of administering economic development programs for the town, the town treasurer, or another person with knowledge of local government finances.
- Requires that the technical college representative to the joint review board be the director, or the director's designee. In appointing a designee, the director would be required to give preference to the district's chief financial officer or another person with knowledge of local government finances.
- Specifies that no TID may be created by a town and no project plan may be amended unless it is approved by a majority of the joint review board. A joint review board is required to approve a resolution creating or amending a TID not less than 10 days nor more than 30 days after receiving the resolution from the town.
- Provides for shared school board representation on the joint review board if a union high school district and an elementary district each have authority to impose property taxes within the TID. The high school district and the elementary school district each have a member of the joint review board under this provision, with each member having 1/2 of one vote.

6. ***Determination of the Tax Incremental Base, Reporting Requirements, and Fee.*** The substitute amendment provides that the Department of Revenue (DOR) must determine the tax incremental base of a newly created TID or upon any amendment to a TID project plan as soon as reasonably possible. However, if the town does not submit a report on a terminated TID to the DOR by the deadline specified in the substitute amendment, which includes a financial accounting of all expenditures made by the town, the total amount of project costs incurred by the town, and the total amount of positive tax increments received by the town, DOR is prohibited from certifying the tax incremental base for a future town TID until the report is sent to DOR.

Under the substitute amendment, the DOR is authorized to impose a \$1,000 fee on a town to determine or redetermine a TID's incremental base.

7. ***DOR Certification of the Tax Incremental Base.*** Under the substitute amendment, the DOR may not certify the tax incremental base of a proposed town TID until DOR determines that each of the required procedures and documentation have been timely completed and all required notices were timely given. The facts supporting any document or action taken by the town to comply with the procedural requirements in the substitute amendment are not subject to DOR review. However, DOR may not certify the tax incremental base of a proposed town TID until it reviews and approves all of the following:

- The findings of the resolution adopted by the town board declaring the TID to be an agricultural, forestry, manufacturing, or tourism district and identifying the NAICS industry classifications of the project; and
- Either the equalized value of taxable property of the district plus all existing districts does not exceed 7% of the total equalized value of taxable property within the town, or the equalized value of the taxable property of the district plus the value increment of all existing TIDs in the town does not exceed 5% of the total equalized value of the town.

8. ***List of Expenditures.*** The substitute amendment provides that no later than May 15 of every year, the town must file with DOR, on a form provided by the department, a list of the expenditures made for the TID in the previous year.

9. ***Annexation.*** The substitute amendment provides that after January 1, if a city or village annexes territory from a town that contains part of a town TID, the DOR must redetermine the tax incremental base of the district by subtracting the value of the taxable property that is annexed from the existing district as of the following January 1 from the district's tax incremental base. If the annexation becomes effective on January 1 of any year, the redetermination must be made as of that date.

The substitute amendment further provides that if a city or village annexes territory from a town and if all or part of the annexed territory is part of a town TID, the city or village must pay the town the portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, must negotiate an agreement on the amount that must be paid to the town to compensate for the annexation.

10. ***Request for DOR Review.*** The substitute amendment authorizes owners of taxable property located in a town that created the district, in a taxing jurisdiction overlying the town in which the district is located, in a city or village that borders the town in which the district is located, or a taxing jurisdiction overlying the town in which the district is located, or a city or village that borders the town in which the district is located to request that DOR review whether the town TID expended money or incurred monetary obligations for an allowable project (i.e., an agriculture, forestry, manufacturing, or tourism project) in the previous year.

The DOR may deny the request for review if the DOR believes that insufficient grounds exist to support the alleged noncompliance. However, if the DOR grants the request for review, the Secretary of Revenue, or the Secretary's designee, must hold a hearing and make a determination as to whether the town is in compliance with the law or has made expenditures or incurred debts that are not allowed. If the secretary determines that the town has acted improperly, the secretary must either order the town to pay back all ineligible costs to the district's overlying taxing jurisdictions on a proportional basis according to each jurisdiction's share of the tax increment, or order the district to be terminated. If the

secretary orders the district to be terminated, the town is liable for all unpaid project costs actually incurred. Any person or governmental unit that received notice of the hearing as provided in the substitute amendment may appeal the secretary's decision to Dane County Circuit Court.

11. **Maximum Life of TIDs.** The substitute amendment provides that a town TID is terminated when sufficient tax increments have been received to pay off the TID project costs, when the TID has reached the end of its designated maximum life, or the town board, by resolution, dissolves the district, whichever is sooner. Under the substitute amendment, the maximum life of a TID is 16 years.

12. **TID Project Expenditure Period.** Under the substitute amendment, expenditures for project costs may be made no later than five years after the town TID is created. If an amendment to a TID project plan is adopted, expenditures for project costs may be made no later than seven years after creation of the TID.

13. **Substantial Compliance.** The substitute amendment provides that if a town substantially complies with the procedures in the substitute amendment and the DOR determines that any error, irregularity, or informality in the town's attempt to comply with the substitute amendment's procedures does not affect substantial justice, the DOR is then required to approve the TID.

14. **Initial Applicability.** The provisions in the substitute amendment first apply to town TIDs created on October 1, 2004.

Legislative History

On November 12, 2003, the Assembly passed Assembly Bill 437 on a vote of Ayes, 69; Noes, 27.

On January 30, 2004, the Senate Committee on Economic Development, Job Creation and Housing recommended concurrence in the bill by a vote of Ayes, 4; Noes, 1.

Senate Substitute Amendment 1 was introduced by Senator Kedzie on March 4, 2004. On the same date, the Senate adopted the substitute amendment on a voice vote, and concurred in the bill, as amended, by a vote of Ayes; 26; Noes, 7.

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