

**2001 DRAFTING REQUEST**

**Bill**

Received: 01/25/2001

Received By: shoveme

Wanted: As time permits

Identical to LRB:

For: Michael Lehman (608) 267-2367

By/Representing: Andrew

This file may be shown to any legislator: NO

Drafter: shoveme

May Contact:

Addl. Drafters:

Subject: Muns - tax incrmntal financing

Extra Copies:

Submit via email: NO

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Tax incremental financing, policy changes

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**Instructions:**

See Attached. Policy recommendations from Governor's Working Group on TIF

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**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>
/P1	shoveme 05/25/2001	csicilia 06/05/2001	jfrantze 06/05/2001	_____	gretskl 06/05/2001		S&L
/1	shoveme 09/10/2001	csicilia 09/10/2001	jfrantze 09/11/2001	_____	lrb_docadmin 09/11/2001		S&L
/2	shoveme 09/21/2001	csicilia 09/21/2001	kfollet 09/21/2001	_____	lrb_docadmin 09/21/2001	lrb_docadmin	S&L 09/21/2001

FE Sent For: 09/21/2001.

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/1	shoveme 09/10/2001	csicilia 09/10/2001	jfrantze 09/11/2001	_____	lrb_docadmin 09/11/2001		S&L

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Hoch  
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Michael (Mickey)  
**Lehman**

State Representative  
58th Assembly District

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Committee Chair: Ways and Means

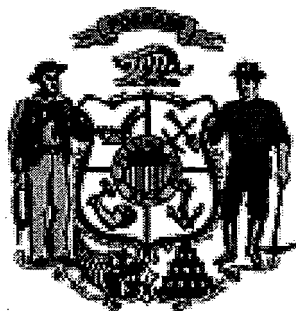
## Memorandum

To: Marc Shovers  
From: Rep. Mickey Lehman  
Date: January 24<sup>th</sup>, 2001  
Re: TIF Drafting Request

This memo is a formal request for a legislative draft regarding Tax Incremental Financing (TIF). The draft will be based on the policy recommendations of the Governor's Working Group on TIF. I have enclosed with this memo a summary of the Group's recommended policy changes. The full report can be found on the web at <http://www.dor.state.wi.us/html/tifreprt.pdf> I would be happy to meet with you regarding this drafting request to discuss any questions you may have.



Report of the  
**Governor's Working Group**  
**On**  
**Tax Incremental Finance (TIF)**



**December 2000**

# Report of the GOVERNOR'S WORKING GROUP ON TAX INCREMENTAL FINANCE

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*This report was prepared by John Reinemann, Division of State and Local Finance  
Wisconsin Department of Revenue*



## Background

Tax incremental financing is a mechanism for funding of development and redevelopment projects by cities and villages. Simply, Tax Incremental Financing (TIF) allows an eligible municipality to fund improvements in a limited area of its jurisdiction, by earmarking a defined portion of future tax revenues from that limited area as an income stream to pay off the costs of making the improvement.

More specifically, use of TIF to finance improvements requires municipalities to establish a Tax Increment District or TID, in which TIF financing will be used to pay for improvements. Establishment of a TID is subject to approval by a Joint Review Board, or JRB. The JRB is composed of one member from each taxing jurisdiction that can levy taxes on property within the TIF district. This includes K-12 school districts and technical college districts, the county, and the city or village establishing the TID. A public member is also included.

When a Joint Review Board approves a TID, the plan for the TID is forwarded to the Wisconsin Department of Revenue (DOR). DOR oversees the use of TIF in Wisconsin. Once the TID has been created, a "tax incremental base value" is established for property within the TID district at the time the TID was created. The base value includes the equalized value of all taxable property and the value of municipally-owned property, as determined by DOR. Increases in property values in subsequent years (above the tax incremental base value) are known as "value increment." The amount of all property taxes levied on the value of the TID, over and above its base value, is known as the "tax increment."

In succeeding years after a TID is created, as property values rise in the TID, DOR each year certifies a new equalized value for all eligible property in the TID. Property taxes generated on the value of all property up to the tax incremental base value, are dispersed among taxing jurisdictions in the usual manner. However, taxes generated on the value increment, are allocated to the city or village that created the TID. These funds are used to pay for the improvements to the TID.

Use of TIF is subject to many detailed regulations. An excellent summary of current TIF law in Wisconsin is produced biennially by the Wisconsin Legislative Fiscal Bureau (LFB). Their informational paper #17 for January 1999, entitled "Tax Incremental Financing," is a good summary of major TIF provisions. This summary is available online at the Fiscal Bureau Website, <http://www.legis.state.wi.us/lfb>

Observers agree that a principal motive for creation of the TIF program was a determination by the Legislature that all taxing jurisdictions benefiting from urban redevelopment should share in its cost. Improvements in public usually result in an expanded property tax base; however, prior to TIF the cost of these improvements was normally financed entirely out of municipal revenue. (This is often still the case in most non-TIF-funded public improvements.) It can be argued that non-municipal taxing jurisdictions also benefit from the expanded tax base and should therefore contribute to public development of the tax base in some circumstances.

Tax Incremental Financing has facilitated many development success stories in Wisconsin since its introduction in 1975. However, the program has also generated suggestions for improvement, as well as comment from some who question the degree of need for TIF as it has sometimes been used in the state.

- Some cities and villages found that TIF law did not allow them to pay for the improvements they had made to a TID in the time allowed. There are many possible reasons for such a circumstance, which may be specific to a particular TID or which may be part of the TIF system. Whatever the reasons, many cities and villages have sought exceptions and changes to TIF law since its inception. (See below)
- Suggestions for improving the technical operation of TIF have been made by municipalities as well as by the Department of Revenue.
- Some of the suggestions for changing TIF have gone beyond mere technical improvements, and instead have been aimed at making changes in the role played by TIF in economic development. Critics of TIF have charged that the program may be overused: in some cases, these critics assert, TIF has been used to promote development with taxpayer assistance, in cases where such assistance was not needed and / or where the development undertaken was not desirable for a majority of the community.

These issues surrounding TIF began to be spoken of more frequently as TIF approached its 25-year anniversary. In 1999 these issues precipitated the creation of the Governor's Working Group on Tax Incremental Finance.

## **Governor's Working Group on Tax Incremental Finance (TIF)**

In 1999 Governor Thompson requested creation of a Working Group on Tax Incremental Finance (TIF). This request came in response to many proposals for changes to the TIF program during the mid and late 1990s. In particular, this period saw a succession of bills presented to the Governor for his signature which would have created various exceptions to TIF law; usually these changes were quite narrow. The 1999-2001 biennial state budget contained two items which would have created changes or exceptions to TIF law.

In his veto message of the 1999 budget, the Governor requested that the Department of Revenue (DOR) create a working group on TIF staff and asked the group to list and evaluate the many proposed changes to TIF law being sought by various groups.

## **TIF Working Group -- Originating Language**

**From Governor Thompson's veto message on the 1999-2001 Biennial State Budget, 1999 Assembly Bill 133 (1999 Wisconsin Act 9)**

(From the opening or summary section, page xvii)

**6. TIF Laws** – I am concerned with the frequency of case-by-case exemptions from the tax incremental financing (TIF) law contained in this budget and in prior legislation. Resorting to such case-by-case exceptions and exemptions undermines the serious purpose of the original law – targeted and focused economic development. Such frequent tampering with the law's general provisions suggests the tax incremental finance law needs reform. I am requesting the Department of Revenue secretary to convene a working group to study the TIF law and recommend needed revisions.

(From Section A, Education and Training, page 8 of the section)

**9. Revenue Limit Increase for Positive Tax Increment of a Tax Incremental District**

Sections 2108m, 2126m, 2135t, 2139 and 2158m

These provisions allow an annual revenue limit exemption for school districts that include within their boundaries a Tax Incremental District (TID) that is terminated prior to its expiration date. The provisions allow a school board to create a capital improvement fund and to deposit in the fund the school district's portion of the positive tax increment of a TID that is terminated prior to the maximum number of years for the TID. The school district could deposit this sum each year beginning in the year TID is terminated until the year after the year the TID would have terminated if it had existed for the maximum number of years allowable under law. The school district's revenue limit would be increased by a sum equal to the positive tax increment that is deposited in the fund.

I am partially vetoing sections 2108m, 2135t and 2139, and vetoing sections 2126m and 2158m in their entirety to eliminate these provisions. I object to these provisions because the revenue limit exemption they create is too broad. A technical error in the language would create a general revenue limit exemption rather than the limited exemption intended by the Legislature. I also object to the broad applicability of the provision. Notwithstanding these objections, I support legislation that is crafted to address the specific school construction needs of the Kenosha Unified School District and I will work with legislative leaders to address this issue. The impact of TIDs and tax incremental financing (TIF) plans on school district financing is a complex issue that requires a comprehensive review. The impact of TIF law on school districts should be included in the work plan of the working group that the Department of Revenue secretary convenes to study the TIF law.

TIF is administered by DOR's Division of State and Local Finance (SLF). Several SLF staff are involved in the Governor's Working Group on TIF. The Secretary of Revenue asked John Rader, SLF Division Administrator, to chair the group. The Secretary then appointed 15 representatives of local governments and other interested parties to the working group. Several staff from DOR / SLF and from DOR's Division of Research and Analysis provided support for the work of the group; cooperation was also obtained from the Department of Commerce.

**Membership, Governor's Working Group on TIF**

John W. Rader, Wisconsin Department of Revenue (Chairman)

The Honorable Peter Bock, State Representative (D-Milwaukee)

Andy Bruce, Mooney Lesage Group (Brookfield)

Douglas Bunton, Director of Business Services, Janesville School District

Linda Carlson, Western Wis. Technical College Board (Onalaska)

David Cieslewicz, 1000 Friends of Wisconsin (Madison)

David DeAngelis, Mayor, City of Muskego

Joe Gromacki, TIF Coordinator, City of Madison

The Honorable Michael Lehman, State Representative (R-Hartford)

Michael Miller, Washburn County Coordinator (Shell Lake)

Tom Neujahr, Urban Land Interests (Madison)

Jim Scherer, City of Milwaukee

Donald Rahn, Virchow Krause & Co. LLP (Madison)

Rick Stadelman, Wisconsin Towns Association

Douglas Venable, City of Janesville

The membership of the working group was diverse, and represented many different interests in the TIF process. Whatever their background and position, group members tended to have considerable experience in TIF. This experience lent depth to the group's discussions.

The working group met six times, monthly from April through September of 2000. The working group began with a review of TIF as it operates in Wisconsin. Material for this review was compiled by DOR staff with assistance from members of the working group. The group also reviewed TIF law in nearby states, focusing primarily on adjoining Great Lakes states. These efforts helped members acquire perspective on possible changes to TIF law in Wisconsin, and allowed the group to begin thinking about issues that were of concern to the TIF community in the state. In some cases, members asked DOR staff to provide additional information on particular aspects of TIF in Wisconsin and in nearby states. Staff recorded these requests and presented the requested information at meetings of the working group. Much of the information presented to the group was made available on the DOR website, via a page dedicated to the working group and its proceedings.

As the group's discussions progressed, members began to list specific aspects of TIF that they felt merited discussion by the group. As consensus positions began to evolve on some proposals, these were noted and compiled by staff. Eventually staff began preparing for each meeting, a list of proposals discussed by the group, with the status of each proposal shown. These lists were also published on the website as they became available.

The mission and final goal of the group were a matter of some discussion. The Governor's charge to the group (in his veto message) included a call for reforms to TIF law that would obviate the steady stream of special-case legislation that would create exceptions to TIF law in Wisconsin. The working group acknowledged this charge. The group also looked at many proposals that were intended to make TIF work more efficiently.

It was also noted that, when TIF was begun in Wisconsin in 1975, the intent of the program was to encourage and enable local governments to work with the private sector and with each other to facilitate economic development efforts. The legislative declaration included in Chapter 105, Laws of 1975 stated that the "accomplishment of the vital and beneficial public purposes of sections ---- 66.52 (Promotion of Industry) of the statutes is being frustrated because of a lack of incentives and financial resources."

Much of the interest in TIF at its creation (and since) has been in the potential of TIF to finance development (or re-development) in economically disadvantaged or blighted areas. However, the language of the 1975 law makes it clear that TIF was also created for and intended to be used by communities for other types of development, including industrial development. Members of the working group all felt that these goals remains a worthy one, and that there continue to be areas of the state which could benefit from such development assistance.

A central focus of the group's discussions was the type of development that has been promoted with TIF. Some group members felt that the record of TIF use in Wisconsin has been consistent with the original intent of the legislation, and has been generally been in the best interest of affected communities. Other group members felt that TIF has come to be used for development that need not receive such incentives, and that when TIF is used to promote such development, this results in a loss of opportunity for other types of development which more often require financial incentives.

- Some members voiced concern at the fact that TIF has been used not merely for re-development of areas entering a second or third succession of development, but also for the development of land that had never previously been built on or improved. Such development came to be referred to as "greenfield development" and / or "greenfield TIFs."
- Other members of the group expressed the opinion that the use of TIF for development of undeveloped areas, was and is a desirable outcome of TIF law and should not be curtailed.

This dichotomy was at the heart of several proposals discussed by members of the working group. Often, a particular proposal was discussed in terms of the effect it would have on "greenfield TIF," with group members supporting or opposing the proposal based on this criteria.

While a rough consensus was attained by the group on most of the recommendations included in this report, this was not true for every proposal. On two items, consensus proved elusive and a final position was only obtained by a vote of the working group members. In addition, not every member of the group agreed with every proposal that was arrived at via consensus; it is important to remember this when considering support for a particular proposal. When possible, this report will reflect comments made by members when discussing such proposals.

The proposals discussed by the working group can be categorized into two main groups.

- Several of the proposals can be characterized as attempts to correct technical problems or oversights in the administration of TIF. These were generally non-controversial and were agreed to by all group members; they are listed here as "technical" proposals.
- The majority of proposals considered, had policy implications that went beyond mere correction of technical problems in the TIF program. Some of these proposals were not controversial, but others were. Regardless of the level of contention surrounding any particular proposal, the proposals with policy implications are listed here as "policy" proposals.

Following is the list of proposals discussed by the group, with notes on discussions and opinions as relevant.

**"TECHNICAL" or NON-CONTROVERSIAL PROPOSALS**

1. Problem: Base value limits and consequences for exceeding

This item was brought to the attention of the working group by DOR staff. The situation is as follows:

- Wisconsin Statutes 66.45 (4)(gm)4.c. requires that the base value of a TID "does not exceed 7% of the total equalized value of taxable property..... or the equalized value of taxable property... plus the value increment of all existing districts... does not exceed 5%of the total equalized value..."
- Equalized values are not available until August 15<sup>th</sup> of each year.
- Statutes require a municipality to contain this finding in their creation resolution; however, DOR does not judge the facts supporting a creation resolution, or action taken in approving such a resolution. Therefore, DOR does not deny certification due to the 5% or 7% base value being exceeded; the Department simply writes a letter to the municipality reminding them of the situation, and copies the overlying jurisdictions.

Resolved: The Working Group will recommend to

- Amend the statutes to prohibit DOR from certifying a new TID or an expansion of a TID unless the proposal falls within current statutory limits on TID values for each municipality. The standard for this measure is to be the most recently-available DOR-certified values for the municipality, as of the date a creation or amendment resolution is adopted by the municipal governing body.
- Amend the statutes to require (during the process of forming and / or expanding a TID) a positive assertion by the municipality that the limits imposed on TID values within the municipality are not exceeded by the proposal. The findings supporting the creation or amendment resolution shall include a positive assertion that the creation or amendment will not violate statutory limits on TID values. → The standard for this measure is to be the most recently-available DOR-certified values as of the year a creation or amendment resolution is adopted by the Municipal Governing Body.

This recommendation was accepted by the group on consensus. Members of the group felt that this change would help keep use of TIF within some limit of the total tax base, as originally anticipated when the program was created.

2. Problem: Territory amendments have no value limit restrictions, nor does municipally-owned property get a value

*this is already req'd by D.C. 6.11.05 (4) (gm) 4.c. The bill Am. to include the new stand*

*see Am. of (5) (d)*

*see Am. of (4) (gm) 4.c.*

This item was brought to the attention of the working group by DOR staff. The situation is as follows:

06.11.05 (4)(h) 2

- Wisconsin Statutes 66.46(4)(h)2 permits the municipality to modify a TIF district's boundaries by adding territory not more than once during the 1<sup>st</sup> 7 years to the district that is contiguous to the district.
- City-owned property is only valued for the creation base value, and not for territory amendments.

Resolved: The Working Group will recommend to

*Amended*

- Amend the statutes to specify that territory amendments to TIDs will be subject to the value limit restrictions now required for new TIDs *This already the case -- 06.11.05(4)(h)2 says an am. of a Proj. Plan requires findings under par. (g) which reqs a resolution and a pak. (am) + the value limits are in 06.11.05(4)(g) 4.c.*
- Amend the statutes to specify that the requirement that municipally-owned property affected by a TID creation resolution, also applies to TID territory amendment resolutions

This recommendation was accepted by the group on consensus. The group felt that it would be desirable to extend the same procedure to territory amendments as to TID creation resolutions; this would eliminate an inconsistency in the TIF program and better account for property included in territory amendments.

*AM, A. 06.11.05 (5)(c) & (e)*

3. Problem: Special-purpose districts (Lake, Sewerage, Sanitary) share in the TIF tax apportionment but do not have voting rights on the Joint Review Board (JRB); some TIDs are composed of an elementary & union high school district, but only one gets a vote

This item was brought to the attention of the working group by DOR staff. The situation is as follows:

- TIF creation resolutions require an assertion that, without the use of TIF on the development proposed, such development would not occur. This is known colloquially as the "But for" criteria ("But for the use of TIF, would not occur.") Concern has arisen that the "But for" criteria may not be specific enough, or may not be well-enough known to JRBs in some cases. This may bring the result that the requirement does not have the intended effect of directing TIF to areas where it is most needed.
- TIDs are only reviewed in the budgeting (or planning) stage; actual (incurred) costs for the projects are not required to be reviewed by the JRB

Resolved: The Working Group will recommend to

*CP, 06.11.05(4m)(am)*

- Amend the statutes to specify that, in cases of a TID being organized which involve a union high school district, the Joint Review Board will include a member from the elementary and union HS districts, but they will have one vote between them
- Amend the statutes to require that special-purpose districts be informed prospectively of meetings and actions by the Joint Review Board

This recommendation was accepted by the group on consensus. The group felt that these mechanisms for greater participation on the Joint Review Board, and the continued updates to

*CP, 06.11.05 (4m)(b) 5.*

special-purpose districts of JRB actions, would bring more input to the TIF process and thereby better ensure that concerns such as the "But for" clause would be given proper weight.

In the budget veto language that led to creation of the working group, the Governor noted that:

The impact of TIF law on school districts should be included in the work plan of the working group that the Department of Revenue secretary convenes to study the TIF law.

The group discussed its charge early in its proceedings, including this clause. However, this proposal is the only change to TIF law affecting school districts, which the group discussed. It is noted that, except for the effect of TIF on school district levies, TIF law does not often closely affect the operation or administration of school districts. This effect is significant, but does not affect district operations directly.

4. Problem: No due date for amendment packets to be sent to DOR

This item was brought to the attention of the working group by DOR staff. The situation is simply that no due date has been designated for submission of amendment packets to DOR. It was suggested that a concrete deadline would assist municipalities in timely filing of amendment packages. This would be desirable from a Department of Revenue standpoint, as such late filings can complicate oversight and calculations by DOR.

Resolved: The Working Group will recommend to

- Amend the statutes to require that applications for amendments must also be filed with DOR by December 31<sup>st</sup> of the year in which they are to take effect. Currently base years must be filed by December 31<sup>st</sup>. This should simply be expanded to include all amendment forms.

Am; 661105 (5)(b)

This recommendation was accepted by the group on consensus. The group felt a deadline as described, would be conducive to efficiency by municipalities and by the DOR.

5. Problem: Newly platted residential property cannot incur TID eligible project costs in newly created TIDs. However, it appears that residential property project costs for amendments may be incurred. This seems to be inconsistent. Statutes do not define "newly platted residential property".

This item was brought to the attention of the working group by DOR staff. The situation is as described above: an inconsistency in the ability of property to incur TID-eligible project costs.

Resolved: The Working Group will recommend to

Am; 661105 (2)(A)3



- Amend the statutes to stipulate that newly-platted residential property cannot incur TID-eligible project costs in territory amendments to TIDs, just as it cannot incur such costs in newly-created TIDs

The working group agreed on consensus that this inconsistency should be eliminated, and that a reasonable way to do so would be to remove cost eligibility to residential property on newly-platted land. The group acknowledged that the term "newly platted residential property" is not defined in statute at present. Possible definitions were discussed, but the group also noted that this lack of definition has apparently not caused problems under current law, and there has been no request made to DOR for a definition of the term. Accordingly the group opted to make no recommendation on a definition.

6. Problem: DOR does not know when the last project expenditure is made. This knowledge is needed for DOR to determine the maximum TID life, and final project costs

This item was brought to the attention of the working group by DOR staff. It was noted that

- Wisconsin Statutes 66.46<sup>1105</sup>(7) specify that the termination date for TIDs created after Sept. 30, 1995 is 16 years after the last expenditure is made.
- Regarding termination / dissolution of a TID, there is not currently a protocol for resolution or reporting of final project costs for the TID, nor for reporting to DOR final revenues received from levies on TID properties.

Resolved: The Working Group will recommend to

- Amend the statutes to require that DOR be provided with final accountings of project expenditures, and that on dissolution of a TID, DOR will be notified of final total project costs and TIF revenues, using DOR prescribed format (a draft of a proposed format will be attached to the report)
- Amend the statutes to state that if a municipality does not provide the information required, in the format required, no further TIDs or amendments to TIDs will be certified by DOR until the filing is made

CP's  
66.1105(9)(c)  
CP's  
66.1105(8)(d)  
+ Admin sub.  
66.1105(5)(a)  
(b)

The working group agreed on consensus that such a reporting would be desirable. DOR staff prepared a preliminary draft of a reporting form, which the working group discussed. Suggestions were made for changes and additions; it was agreed that DOR staff would contact interested members of the working group for their input as the form is finalized.

**"POLICY" PROPOSALS**

## 1. How much "leeway" or discretion should DOR have on TIF requirements?

This issue was brought up by several members of the working group. Currently, municipalities are required to include several findings to DOR in their TID creation resolution. These include the "But For" clause discussed earlier; an assertion that the values limits in place for TIF are being complied with; and a statement that due process of notices and hearings has been followed in creation of the TID. However, DOR does not judge the facts supporting a creation resolution, or action taken in approving such a resolution. The main issue discussed in regard to this topic was the level of oversight (of the findings) that would be desirable for DOR to conduct.

The discussion by group members indicated that many felt some stronger form of oversight or monitoring would be useful in some cases. However, this was balanced with a reluctance to expand DOR's role into a significant "audit and policing" function of TIF findings.

Discussion eventually came to be centered on a possible standard of "substantial compliance" with the regulations on TIF findings: should "substantial compliance" (rather than absolute compliance) be DOR's acceptable standard for certifications and other actions pertaining to TIDs? This standard exists in statutes and is currently applied to several state programs. Some alternative definitions or scenarios of "substantial compliance" were discussed. For example: should DOR be able / required to certify that a city or village is in "substantial compliance" with the various TIF laws, especially the "mechanical" details of declaring a TID (notice requirements, time elapsed, etc.) before a TID is declared? Alternatively, might it be desirable to amend the statutes to specify that "substantial compliance" is adequate for certain TIF laws, with no direct requirement that DOR makes any judgement or ruling in the matter?

The group noted that one factor in the formation of the working group, was the series of special-purpose legislation to create narrow exceptions to TIF law. The working group and the Department acknowledged that a standard of "substantial compliance" would have enabled DOR to facilitate several of the legislated TIDs without a need for Legislative action. Members of the working group were generally in favor of such a standard. Department staff agreed that such a standard could be useful, but expressed caution that the standard would need to clearly define DOR's role and abilities in the process.

Resolved: The Working Group will recommend to

- Amend the statutes to specify that DOR will not certify a new or amended TID if the base value restrictions are exceeded. The standard of measure to be used will be the most recently-available DOR-certified value for the municipality, as of the year the resolution is adopted by the municipal governing body. (Same as Technical item #1)

See Am) 4  
6.11.05  
(5) (d)

P. 6

- Amend the statutes to expressly state that substantial compliance with the requirements of TIF creation laws is sufficient to give effect to any TIF proceedings, including public hearings and filings; and any error, irregularity or informality not affecting substantial justice does not affect the validity of the proceedings. The effect of this would be to allow DOR to certify a newly created or amended TID if, in its judgement, the municipality is in substantial compliance with the requirements for public notice and filings related to creation of the TID. (The goal of the working group is to create wording like that found in s.62.71)

see CR's 6.6.11.05 (45)

The working group agreed on consensus that these steps, and the details of them, would aid in the efficient administration of TIF by DOR, and therefore would be of value to municipalities as well. Such a standards would also help reduce or eliminate the need for narrow "exceptions to TIF law" legislation, which was a goal of the working group.

2. How much actual review or "policing" of TIF filing requirements by DOR is appropriate?

This discussion arose as an outgrowth of discussion on Policy Item #1, above. While the group agreed that "substantial compliance" with TIF requirements has merits as a standard, there was interest in adding to the list of items that would be enumerated as requirements. Discussion focused on the question of what items (besides value limits) should be reviewed, by what mechanisms, and how often? Items mentioned in the discussion included

- zoning status over time
- value of tax base over time
- allowable expenses
- annual reports and final audits: verification of filing

Some of these items are addressed by other recommendations of the working group; on some, the group opted to make no addition to the requirements.

Resolved: The Working Group will recommend to

- Amend the statutes to require (during the process of forming and / or expanding a TID) a positive assertion by the municipality that the limits imposed on TID values within the municipality are not exceeded by the proposal. The standard for this measure is to be the most recently-available DOR-certified values as of the year a project plan is adopted by the Joint Review Board

see Am. of (4)(gm) 4.c.

- (Provide for a state review process for newly-created TIDs and for territory amendments to existing TIDs. Specifically, allow any member of a TIF Joint Review Board to request review by DOR of the objective facts and findings required of a TIF filing. Working group discussions indicated that intended subject for state review include issues of district value limits; due notice provided to affected jurisdictions, affected property owners, and the public; publication of meeting notice; identification of affected properties; and proper procedures by the Joint Review Board. All requests for review are to be filed with DOR

already req'd  
This is the same as Tech proposal on page 6  
see init. app

CR's 6.6.11.05 (4)(m) (b) 4. d D-note

and the municipality within 5 (five) working days of a decision on the TIF proposal by the Joint Review Board. A request for review must specify which fact(s) included in the TIF proposal are believed suspect by the Board member requesting the review. Items eligible for DOR review will include all statutorily-required conditions and findings for a new TID; also, review may be requested on grounds of insufficient information presented to the Board. If a request for review is properly presented, DOR shall investigate the issues listed and inform the Board of its findings. DOR shall respond to the Board within 5 (five) working days of the presentation of a request for review. In cases where DOR discovers errors or ambiguities in a TIF filing, DOR shall return the TIF filing to the Joint Review Board for correction and /or clarification, after which the original filing shall be able to be resubmitted.

Dr;  
P.06-1105(4m)(b)4  
&  
o-note

The members of the working group broadly supported the concept of an appeal system for TIF requirements, based on an assertion that review is needed. This was selected in preference to a system of extensive tracking by DOR of the several requirements of TIF. The proposal for an "appeal and review by DOR" was approved by the working group on consensus. Details of the proposal were discussed at length, and the recommendation above is the conclusion arrived at by a majority of the group. DOR staff noted that the process of review (and particularly the timeframes prescribed) would place an added responsibility on DOR. These functions will be reviewed to determine if they can be accomplished without additional resources for the Department. Some members of the working group shared these concerns, but seemingly most felt that the creation of the "appeal and review" process merited resources if a need is established.

3. What penalties (if any) should be put in place for failure to comply with requirements of the TIF program?

This concern arose largely from anecdotal instances of infractions under the TIF program by municipalities. The most-often cited example was a failure to file annual TID reports with DOR, either at all or to file them timely. Under other recommendations of the working group, failure to file a final report on a TID could also qualify as an infraction.

Several possible penalties were discussed, including the loss of shared revenues or other state aids. The logistics of such a step were also discussed, as were the proportion or relation of such penalties to the infraction.

Resolved: The Working Group will recommend no changes to statute in this area

DOR staff reported to the working group that the current *de facto* penalty for a non-filed annual report, is the non-certification of the value for that year. This satisfied most members, and accordingly no recommendation was made in this area.

4. How can communications be improved between the actors in TIF, i.e. DOR, municipalities, and consultants?

It was suggested by several group members that DOR could attempt to play a more proactive role in alerting the League of Municipalities, Alliance of Cities, and other entities on topics including

- TIF rules and changes to them
- Common pitfalls to the use of TIF, and to the use of consultants in creating a TID;
- Possible effects of TIF on state aids. One example: the state shared revenue formula treats manufacturing property differently than other types of property. If a municipality is highly dependent on shared revenue, this treatment will have an effect on a municipality's shared revenues under a TID, based on the presence or lack of manufacturing property in the TID. Some group members felt that the state (DOR) should make this clear to municipalities starting TIDs.

It was also suggested that DOR produce a TIF manual, perhaps in conjunction with affected group such as the League of Municipalities and / or Alliance of Cities, on proper use of TIF. Finally, it was noted that if DOR begins receiving annual TID reports and final reports (final reports being another suggestion of the working group), it might be desirable to for DOR to produce summaries of the data in these reports. These functions will be reviewed to determine if they can be accomplished without additional resources for the Department.

Resolved: The Working Group will recommend that

- CP 3 (5)  
93.07
- *DOR prepare a TIF Manual for the use of municipalities and others, which will compile available information on TIF. DOR is to select material for inclusion in the manual, in consultation from interested individuals. The working group envisions that the types of entities represented on the present working group will be invited to participate in this process. The group understands that this endeavor will require significant preparation time*

The working group agreed on consensus that a TIF manual would be useful. It was noted that DOR currently has on hand, many of the resources that would be included in such a manual. Further, the primary effort of creating a TIF manual would be in the creation: maintenance of such a manual once created would be relatively easy. DOR staff asked members of the working group for their support and cooperation in the preparation of such a manual; members agreed that this assistance would be provided. It is hoped that work on a manual could begin in 2001.

#### 5. Infrastructure costs: timeframes

At the request of several members of the working group, possible changes to the timeframe for allowable TIF costs were discussed. It was noted that currently, a limit exists whereby TIF-eligible projects costs must be substantially completed within seven years of the creation of the TID. When TIF was created, a limit was established in order to prevent project costs from being incurred continuously and without end. There were apparently two reasons for this:

- Such a limit would presumably have the effect of encouraging municipalities to set boundaries on the use of TIF. With a limit in place, TIF would not become an endless source of funding for costs incurred in a TID, but would be used only for some finite period. This would presumably spur redevelopment and also assist in fiscal prudence.
- Limits would also mean that, as project costs came to an end, those costs (or the borrowing that paid for them) would eventually be repaid -- meaning that the property in the TID would return fully to the tax rolls as an asset to all overlying jurisdictions, most particularly school districts.

Resolved: The Working Group will recommend to

- Amend the statutes to require TIF-eligible project costs to be substantially completed within 10 (ten) years from the start of a TID, rather than limiting such costs to a total limit of 7 (seven) years as under current law; however, this change will not result in the total lifespan of a TID extending beyond current spans
- Amend the statutes to clarify that escrows of funds for infrastructure expenses beyond the applicable schedule are not TIF-eligible expenditures

The working group agreed on consensus that these changes would be desirable in allowing more flexibility for municipalities to repay project costs, without lengthening the time that TID property was partially removed from the tax rolls.

R.A.  
 66.1105(6)(am) 1. → 10  
 CP; 66.1105(6)(am) 1. → 10  
 CP; 66.1105(2)(A) 2. d.

6. Increase time allowed for Joint Review Board to review proposed TID

This discussion grew out of a desire on the part of some group members, to ensure that adequate time was allowed for all affected actors and jurisdictions in a TIF process to review the findings and assertions included in a TIF plan, and to consider adequately the implications for affected units of government and taxpayers. However, as the group discussed possible extensions or increases to the JRB review process, it became apparent that most group members felt that in most cases, current timeframes and notice requirements already provide adequate time for review. Anecdotal cases were cited where one or more actors would have wished more time for some portion of the process, the group concluded that such cases were exceptions to the norm. There was also some apprehension that expanding timeframes would unnecessarily lengthen the process of beginning a TIF, and that in some cases such delays might be harmful to the projects being contemplated.

Resolved: The Working Group will recommend no changes to statutes in this area

The working group agreed to this on consensus.

7. Allowable TIF expenses

The question was raised during the working group's discussions, "What expenses are allowable TIF expenses?" Inherent in this was another question: "What expenses have been claimed as TIF-eligible project expenses that perhaps ought not properly be claimed?" To some group members, more definition of this question seemed desirable, for reasons of equity and fairness. Others did not share the concern to such a degree. Anecdotal instances were cited, of claimed expenses that seemed inappropriate to one member or to several. It was noted that current oversight of "allowable expenses" was minimal, in large part because a list of such expenses is not currently filed in every case with DOR. The group did conclude that some definite means of listing project expenditures would be desirable.

Resolved: The Working Group will recommend to

*See item #6, tech - CR, 661105 (8)(c)*

Amend the statutes to require that DOR be provided with final accountings of project expenditures, and that on dissolution of a TID, DOR will be notified of final total project costs and TIF revenues, using DOR prescribed format (a draft of a proposed format will be attached to the report)

★ NOTE: This recommendation appeared previously under "technical" item #6

The working group agreed on this proposal on consensus.

8. TIF bonding debt

How do other states treat TIF bonding debt: is it general obligation debt or not? (Implicitly, should a change be made in how Wisconsin operates?)

This item is discussed under policy item #24, below

9. Related item: credits versus bonds

Might we look at arranging (instead of TIF bonds) an ongoing system of credits that can be committed against the bonds? (Neujahr)

A proposal of statutory language to allow TIF debt to be conditional, and thus exempt from the constitutional definition of "debt,"

This item is discussed under policy item #24, below

10. TIDs paid off versus TIDs whose debts are assumed by the municipality

The group noted that, when a TID is concluded and all debts and borrowings of the TID are repaid, in some cases the outstanding bonds or other loans used to pay for TIF improvements have not been paid for by tax increment. The effect of this is that the sponsoring municipality assumes responsibility for repayment of the debt directly from its general fund. The source of final payment of TIF obligations (whether by tax increment or by direct general fund expenditure) could be used a measure of the TID's success: ideally, a TIF would generate enough increment to meet its own obligations. In some cases, DOR learns the source of final payment – but the Department does not learn this in all cases. Receipt of final TID audits by DOR (with other information) might allow this to be tracked more completely, which (per many working group members) would be desirable

Resolved: The Working Group will recommend to

- Amend the statutes to require that DOR be provided with final accountings of project expenditures, and that on dissolution of a TID, DOR will be notified of final total project costs and TIF revenues, using DOR prescribed format (a draft of a proposed format will be attached to the report)

NOTE: This recommendation appeared previously under "technical" item #6 and "policy" item #7

11. One TID paying off the debts of another

The group noted that Wisconsin has basically come to allow one municipality's TID to help pay off another TID in the same municipality, as long as the two TIDs have the same overlying jurisdictions. However, there was some question whether this is always desirable. Specifically, this can cause a de facto "extension" of the "donor" TID, which presumably would return fully to the tax rolls sooner if it were not paying off the debts of another TID. A series of special-purpose legislation to allow such transfers was one factor in the formation of the present working group; it is hoped a change would reduce such legislation. It was also noted that such transfers have the effect of clouding the success of TIF in a community to some extent. Finally, it was felt by some members of the group that before one TID is called upon to meet obligations of another, it might be prudent to first require that the more successful "donor" TID have enough reserves on hand to meet all or most of its own obligations, rather than just the obligations of the current year as is now the case.

The working group noted that

1. such transfers can (under current law) only occur between TIDs sharing identical overlapping tax jurisdictions and created before 10/1/95
2. no requirement exists in current law that the "donor" TID have enough increment on reserve to meet its own TOTAL debt obligations before it begins "donating" to another TID; only the "donor's" obligations for the current year must be "met" before "donations" can begin

Resolved: The Working Group will recommend to



- cf; 6/6/11/05  
(b)(e) i.d.  
AP; (b)(e) 2.
- Amend the statutes to require that, before one TID can transfer increment to the obligations of another TID, the "donor" TID must have enough increment revenue on deposit to meet the entire remainder of its own obligations, not just the obligations of the current year as is currently allowed. This would only apply to TIDs currently eligible for increment transfer.

The working group agreed on this proposal on consensus.

## 12. Restrictions on "greenfield TIDs"

Some group members expressed an interest in preventing or reducing the extent to which TIF could be used to develop previously undeveloped land. Some members opposed all use of TIF for such development; others focused their concern on certain types of development, notably residential development and retail development. It must be noted that not all group members shared these concerns, and some opposed any such restrictions on use of TIF. (A related proposal is "policy" proposal #15, below)

Discussions on this issue were spirited and thorough. The group discussed the fact that, just as their perceptions differed on the desirability of TIF being used for "greenfield" development, so too did their definitions of what exactly such development consisted of. Group members also differed in their definitions of what types of development they were trying to prevent from benefiting from TIF (if any).

Interest was strong in making a recommendation in this area, but the group was initially unable to agree on definitions of "greenfield" development, nor could they initially agree on a proposal for limiting use of TIF in such projects.

It was asserted by some members that the greatest single initial intent of TIF law at its creation seemed to be the promotion of redevelopment of blighted areas, not the new development of unbuilt land. These members tended to argue that this should be the major focus of TIF today. The two types of development cited most often by group members as typical "greenfield" development were residential development on formerly unbuilt land, and retail development on such land. It was noted that retail development (funded by TIF or not) on unbuilt land usually includes larger retail establishments known by some as "big box" retailers, while retail development in existing buildings (such as a blighted urban area) usually focuses on smaller establishments. It was noted that industrial TIDs are often also "greenfield" developments, the best example being a new industrial park on unbuilt land.

Again, agreement among the group members on what to do, or how to do it, was not immediately achieved. Several members of the group reminded the body of the broad initial rationale for TIF as a means to promote development generally, not just redevelopment of blighted areas. At this point, Chairman Rader suggested that a subcommittee of the group assemble to offer a definition and a proposal for group approval. This suggestion was agreed to by group members; the subcommittee consisted of Rep. Lehman, Mr. Cieslewicz, and Mr. Scherer.

The subcommittee met and noted that in many cases, the type of development in question involved land that had been within the boundaries of a town, until it was annexed by a city or village which then used the land in a "greenfield" TID. The subcommittee recommended a proposal which dealt with the issue by addressing issues of TIF related to annexations and inter-municipal relations, rather than by creating a direct definition of "greenfield" development. The subcommittee also crafted a recommendation regarding use of TIF for retail development, which is discussed in Policy Proposal #15, below.

Resolved: The Working Group will recommend to amend the statutes to the effect that:

- Unless certain conditions are met, prohibit inclusion in a future TID or in an expansion to an existing TID, any land not within the boundaries of a city or village as of January 1, 2000. In order to include such land in a new TID or to add such land to an existing TID, one of the following conditions would have to be satisfied:

- a. The city or village seeking to include such (annexed) land into a new or expanded TID must enter into a border agreement with the town which contained the land prior to January 1, 2000. Such a boundary agreement could include compensation by the city or village to the town, for tax revenues lost as a result of annexation; this would be based upon assessed values and tax rates current at the time of annexation
- b. Three years have elapsed since annexation of the land

- Provide that, for industrial TIDs, the maximum life for such a TID shall be 15 years, not the longer period that would otherwise apply under current law. An extension of five additional years could be made by DOR upon recommendation of the Joint Review Board

These recommendations were not the product of group consensus. The subcommittee reported its recommendations to the full working group, which then discussed the proposals. However, the differences between members regarding the desirability of action in this area, and what such action should be, had not disappeared. When it became clear a consensus position could not be reached, it was decided to vote on the recommendations of the subcommittee. The proposal stated above, was the final result of this process; it was approved by the working group on a close vote.

Some members remain opposed to the group making this series of proposals, and comment was made by one member that he did not approved of the process used in this proposal, as it was his belief that the working group was not created to be a representative group. The boundary agreement clause described in "a" above was particularly controversial among group members, and several retain reservations about the desirability of such a law change. Most often cited is a fear that this clause would greatly restrict the effectiveness of TIF as a development tool. It was noted that TIF law is about development, not about land-use planning *per se* nor is it about relations between adjacent municipalities.

Ami;  
6.6.1105 (u)(gm)!

CR; 6.6.1105  
(7)(Cae),  
(4m)(d)  
Ami, sub. (b) (a) & CR; sub. (b)(a) 5.

### 13. The "But for" test

Current law on TID creation sets as a criterion for the use of TIF, that the development proposed in the TIF plan would not occur without use of TIF for the situation and parcels proposed in the plan approved by the Joint Review Board. However, current law does not require an explicit, positive assertion to this effect by the municipality. Several group members felt a stronger test of this criterion would be desirable; others opposed such a change. Discussed centered not only on the desirability of making this criterion stronger, but how best this might be done. The difficulties of making such a definitive statement, in a complex world of many actors and changing circumstances, were acknowledged. Most group members wished to strengthen the "But for" test without making such a test or statement impossibly all-encompassing.

Resolved: The Working Group will recommend to:

- Amend the statutes to require for creation and amendment (during the process of forming a TID) a positive assertion by the TIF Joint Review Board that, in its judgement, the development described in the TIF proposal would not have occurred in the absence of TIF support for the project

The working group agreed on this proposal on consensus.

### 14. Limiting TIF to blighted areas

It was noted in working group discussions that one of the original intended purposes for TIF was to encourage development (or, perhaps more accurately, redevelopment) of "blighted" areas that had not been successfully rehabilitated from an earlier, ended use. Group members agreed that this was a worthy focus for TIF and that more work of this nature remained to be done in the state. However, as discussions of possible recommendations progressed, it became clear that it would be difficult to create a useful definition of "blighted area" that could become a firm criteria for TIF creation, even if such a move were desirable in all cases. Several group members reminded the body of the broad initial rationale for TIF as a means to promote development generally, not just re-development of blighted areas; they questioned the desirability of creating limits on TIF in this manner.

Resolved: The Working Group will recommend no changes to statutes in this area

The working group agreed to this on consensus. One group member who supported the focus of TIF on re-developing blighted areas, commented that the recommendation of the group under "policy" proposal #12 above would have an effect of requiring TIF to be used more often for development that would not occur without TIF or some other incentive program.

*All new last sentence in Sub. (Hm) (b)2.*

15. Eliminate residential and retail property from industrial TIDs

A related proposal is "policy" proposal #12, above. The discussion on #12 also affected this policy proposal, and can be reviewed above. Again, while some group members supported some sort of action in this area varying degrees and circumstances, others opposed it in varying degrees and circumstances.

Resolved: The Working Group will recommend to:

- type of TID:  
66.1105 (1) (gm) b.  
AM; 66.1105 (2)  
(i) & (j)*
- Amend the statutes such that, for industrial TIDs, DOR shall exclude two types of property from its calculations of base and increment; all residential value is to be excluded, and also to be excluded is any value from any improved property on which more than 35% (thirty-five percent) of the improved square footage is devoted to retail operations. For purposes of this provision, "retail operations" shall include any storage areas or warehouses harboring merchandise that could be sold onsite at retail as part of the onsite retail operation

Again, this proposal was the result of work by a subcommittee of the working group, whose membership and role are discussed under policy proposal #12, above.

In discussing this proposal, the larger group noted that any threshold of retail development would be something of an arbitrary standard; it would be difficult to measure; and definitions of "retail" might be a matter of contention. Proposals were made to adjust the percentages of retail space in this proposal. The final proposal shown here, is the version approved by the larger working group on a narrow vote.

Group members favoring this recommendation noted that the change would not (and should not) apply to TIDs created for purposes of re-development of blighted areas; the recommendation is to apply only to industrial TIDs. At the same time, it must be said that while statutes require that a given TID be "industrial," "blighted," or "conservation" in purpose, many TIDs combine two or more of these three purposes. On the other hand, at least one of the three standards must be met by each TID, and in many cases a statement can be made that a given TID is mostly focused on one type of activity ("industrial," "blighted," or "conservation").

As with policy proposal #13 above, a vote was found necessary in order to achieve a recommendation in this area. This recommendation was not made on consensus.

DOR staff note that, for this proposal to be made workable, there is a need to make positive indication regarding which type of TID is being formed at the time the TIF is begin. Not all TIDs are exclusively industrial, blighted, or conservation; nor are all TIDs identified by type (industrial, blighted, or conservation) when creation documents are submitted to DOR. DOR staff also note that such designations would be useful for amendments to TIDs as well as for creation of new TIDs. It may be possible, staff note, that the purpose of an amendment (an expansion of a TID territory) may have a different focus than that of the original TID?

DOR staff also note that the "Commercial" class of real property established by the State Constitution and used in assessing real property, is different than any definition of "retail"

property. "Retail" is not a class of property and thus is not identified on the assessment roll. Commercial and manufacturing classes are different than "retail" but may include retail. When changes in the classification of a parcel occur, staff ask, what would determine timing for potential exclusion - would it be done only at base, or each year but included in base, or at any time during the life of the TID? On these questions, DOR staff feel that additional clarification will be necessary. They are apprehensive about the burden that these proposals might place on local assessors, to whom would presumably fall the role of reporting on the thresholds indicated.

DOR staff suggest that, instead of the potentially difficult "35% retail" threshold, a standard of "substantial or predominant use" could be applied. Such a standard is currently found in statute re: manufacturing assessment, at s. 70.995:

70.995(1)(a)

(a) In this section "manufacturing property" includes all lands, buildings, structures and other real property used in manufacturing, assembling, processing, fabricating, making or milling tangible personal property for profit. Manufacturing property also includes warehouses, storage facilities and office structures when the predominant use of the warehouses, storage facilities or offices is in support of the manufacturing property, and all personal property owned or used by any person engaged in this state in any of the activities mentioned, and used in the activity, including raw materials, supplies, machinery, equipment, work in process and finished inventory when located at the site of the activity. Establishments engaged in assembling component parts of manufactured products are considered manufacturing establishments if the new product is neither a structure nor other fixed improvement. Materials processed by a manufacturing establishment include products of agriculture, forestry, fishing, mining and quarrying. For the purposes of this section, establishments which engage in mining metalliferous minerals are considered manufacturing establishments.

## 16. Boundary agreements

As mentioned earlier, the working group was aware that many instances of TIF (particularly of "greenfield" TIF) involved unbuilt land obtained by a village or city, from a town as part of an annexation process. Concern was voiced by some members that this situation is unfair to towns, who lose the tax base that exists in the unbuilt land and would exist in a developed TID. It was acknowledged that laws regarding annexation and incorporation play a role in these issues, but the working group also acknowledged that discussions of such topics were beyond the scope of the group.

Some working group members noted that there may be potential for towns to obtain voluntary boundary agreements that would give towns a measure of control in annexation situations, in conjunction with adjacent incorporated municipalities, in cases where land is annexed for inclusion into a TID. It was noted that in some cases, such annexations result in cities or villages taking tax base from a town, but not accepting / assuming related expenses; e.g. a city may annex land but leave the adjacent roads in the town, leaving the town with the roads' upkeep. This was seen as undesirable, and a hope was expressed that border agreements between municipalities (cities and adjacent towns) could help alliviate such instances. Conversely, some group members did not feel that it

should be the role of the group to recommend changes that promote boarder agreements, which are occurring under current law.

Resolved: The Working Group will recommend to amend the statutes to the effect that:

■ *Unless certain conditions are met, prohibit inclusion in a future TID or in an expansion to an existing TID, any land not within the boundaries of a city or village as of January 1, 2000. In order to include such land in a new TID or to add such land to an existing TID, one of the following conditions would have to be satisfied:*

c. *The city or village seeking to include such (annexed) land into a new or expanded TID must enter into a border agreement with the town which contained the land prior to January 1, 2000. Such a boundary agreement could include compensation by the city or village to the town, for tax revenues lost as a result of annexation; this would be based upon assessed values and tax rates current at the time of annexation*

d. *Three years have elapsed since annexation of the land*

■ *Provide that, for industrial TIDs, the payback period for such a TID shall be 15 years, not the longer payback period that would otherwise apply. An extension of five additional years could be made by DOR upon recommendation of the Joint Review Board*

see p. 18

NOTE: This recommendation and the terms of its acceptance by the working group appeared previously under "policy" item #12

17. Allowing TIF for certain towns

In some very limited circumstances, areas of considerable size are unable to take advantage of TIF as a development tool because there is no incorporated municipality in the area. In particular, two Wisconsin counties lack any such advantage. The Menominee County task force of 1999 suggested allowing TIF authority to towns in counties which contain no incorporated unicipalities. This would be only Menominee and Florence Counties.

The following is the text from the final "Report of the Menominee County Management Review Task Force, June 1999" Pages 23-24

**Economic development: use of TIF to promote tax base growth in Menominee County**

As discussed, economic development is a priority need for Menominee County, not just for the tax base it would create but also for the jobs and income it would bring to individual residents and their families. Tax Incremental Financing (TIF) is one of the state's most-used tools for boosting economic development. However, TIF is not

available to promote economic development anywhere in Menominee County because the only municipality in the county is a town, the Town of Menominee.

The Task Force recommends that TIF authority be extended to towns located in counties which contain no incorporated municipalities. This would allow the Town of Menominee to use TIF to promote economic development in the county. Restricting this change to only those towns in counties containing no cities or villages would keep the scope of the change as narrow and create as few side effect as possible while providing a tool to the Town of Menominee. (This change would also allow TIF to be used by towns in Florence County.)

*CP; 60.23(32)  
Am. Laws of  
1975...*  
Resolved: The Working Group will recommend to:

- Amend the statutes to provide TIF authority to towns located in counties which contain no incorporated municipalities

The working group agreed on this proposal on consensus (without a vote). It should be noted that some members of the group were unhappy with this proposal. One said that he was not convinced that there is any demand for TIF authority in these two counties; others noted that this proposal could become a "foot in the door" towards allowing TIF authority for more towns.

18. Reductions, extensions and lifespans of TIDs

This topic is related to earlier discussions on the topic of "transfers" between TIDs ("policy" proposal #11, above); a concern expressed was the idea that at some point, property in a TID should be fully returned to the tax rolls, and extensions of a TID's lifespan delay this. Some group members feel that requiring a successful TID to "donate" increment to another, less-successful TID extends the life of the successful TID and may obscure the actual success rates of the two (or more) TIDs involved.

Resolved: The Working Group will recommend to:

- Amend the statutes to provide that, for industrial TIDs created in the future, the allowable expenditure period for such a TID shall be 10 (ten) years, not the 7 (seven) year period that would currently apply
- Further, that this change should not affect the current requirement that for amendments to such TIDs, eligible project spending occur within the first 3 (three) years

The working group agreed on this proposal on consensus.

DOR staff note that, in order to make this proposal workable, there is a need to have the original TIF creation resolution identify the type of TID: industrial, blight or conservation. Also, staff believe that clarification will be necessary on the issue of mixed-use TIDs: they ask what percentage of TID activity or expenditure will have to be industrial in nature, before this requirement would apply to the TID as an "industrial" TID.

*see  
206bill/05(6)(am)1/1  
exp. subd. 1.5.*

*nothing needed - - No changes made to sub. (4)(b) 1. ord.*

19. Expanding geographic boundaries of an existing TID

Under current law, municipalities are limited to one boundary amendment for TIDs during the first seven years of a district's lifespan, with spending in the new area limited to the next three years after the amendment to the boundaries is made. Working group members felt that this limits a municipality's flexibility, and noted that this requirement had led to the sort of narrow "exception to TIF law" legislation which gave rise to the existence of the working group. In this context, the group discussed a change to statute in this area.

Resolved: The Working Group will recommend to:

- Ami;  
6.11.05 (4) (h) D.
- Amend the statutes to provide that boundary amendments may be made once during the first TEN years of a district (The expenditure period for boundary amendments is to remain unchanged at three years from amendment.) This change is to apply only to those TIDs created prior to 10/1/1995 and have identical overlying taxing jurisdictions.
  - Amend the statutes to expressly state that boundary amendments to TIDs may decrease the size of the TID, as well as increase the size

The working group agreed on this proposal on consensus.

20. Should there be a limit on the size of a newly created TID?

Several group members noted that some newly created TIDs are very large in size, in proportion to the actual amount of development anticipated or the apparent demand for development in a community. Possible reasons for creating such large TIDs were mentioned. Some, it was speculated, are created large simply to avoid having to file possible future boundary changes to the TID. However, it was also noted that such large TIDs may be a means to have TIF finance infrastructure (such as streets and sanitary facilities) in an area that would otherwise have to be funded by general property taxes.

Resolved: The Working Group will recommend no changes to statutes in this area

The working group agreed to this on consensus.

No group member expressly advocated such a limit, but several mentioned that TIDs are often very large, perhaps larger than necessary / optimal / appropriate. Concern was expressed that use of TIF increment be restricted to directly TID-related improvements, in the interest of taxpayer accountability. After discussion, however, the difficulties and disadvantages of setting a limit or creating a system of limits became apparent. The group concluded that such limits might hamper effective use of TIF while providing no real benefits.



21. TID boundaries made coterminous

One group member commented that TIF is easier to administrate when the school districts affected by a TIF are completely contained within one municipality. It was suggested that it might be desirable for this reason to require that such coterminous boundaries might be a benefit to TIDs generally. However, discussion by group members revealed that in areas outside Milwaukee and Madison, the jurisdictional issues can become more complicated, as (for example) several municipalities may be involved in a TID that only includes one school district TID.

Resolved: The Working Group will recommend no changes to statutes in this area

The working group agreed to this on consensus.

22. Amend the 30 day period between approval of a Project Plan by the City Plan Commission and approval by the City Council

Current law requires a time lapse of 10 to 30 days from action on a proposed TID by the municipal planning body, and action by the municipal governing body. Some group members felt that, given the required notices to the taxing jurisdictions and affected property owners, as well as statutory open-meeting notice requirements, this built-in delay serves no purpose. Others felt that the required time was valuable for generation and collection of input from affected parties, including members of the public.

Resolved: The Working Group will recommend to:

- Amend the statutes to require a time lapse between action on a proposed TID by the municipal planning body, and action by the municipal governing body, of not less than 14 (fourteen) days

The working group agreed on this proposal on consensus.

Discussion on this proposal was wide-ranging and spirited. Most group members were supportive of the need for a time lapse, so as to allow community input and information. On the other hand, it was feared that too lengthy a lapse would create unnecessary delay in creation of TIDs and in the commencement of TIF projects. For these reasons, the group adopted the proposal shown here, which simplifies current requirements somewhat while still providing an adequate period of review.

Am; (4m) (b) 2  
But see D-note & 4\* note

Doesn't exist - 10-30 rule applies to approval by Int Rev Bd of common council's res. under sub. CA (gm)

Am; (4m) (b) 2  
But see D-note & 4\* note

23. Allow support for a Business Improvement District (BID)

It was suggested that payments to a business improvement district lying within a tax increment district should be included as an "eligible project cost." This would allow a city to combine the various redevelopment tools available to it. Such a combining is possible now, but only if the payment is administered through a redevelopment or community development authority.

Resolved: The Working Group will recommend no changes to statutes in this area

The working group agreed to this on consensus.

24. Create a constitutionally acceptable increment -based financing vehicle

One group member noted that, in *City of Hartford vs. Kirley*, the Supreme Court held that statutorily authorized tax increment revenue bonds would be an unconstitutional incurrence of debt. It was suggested that the group recommend modification of the statute to allow revenue bonds to be issued in a manner that overcomes this constitutional issue.

At the September meeting, the group was presented with draft statutory language to amend TIF law to permit issuance of TIF obligations that meet with the requirements in City of Hartford. The working group recommends that DOR pursue this proposal, and asks that the Department obtain an opinion on the draft language from its own legal staff.

It is the intention of DOR to adhere to this recommendation.

Nothing to be drafted

25. Values declining below the certified base

When municipalities acquire properties and demolish buildings to prepare sites for redevelopment, the process may take several years and often results in the value of the TIF district declining below the original base value. When new development in the TID does occur, the total increase in property value from the development does not generate new tax increment, because the total TIF District needs to get back to a positive TIF value to create a TIF property tax increment. Some members of the group asked if it would be possible to have the base value of a redevelopment TIF district lowered by DOR after creation of the TID, in cases where a municipality acquires and demolishes structures to prepare redevelopment sites.

Resolved: The Working Group will recommend no changes to statutes in this area

The working group agreed to this on consensus.

Advocates of this idea stated that, if the value of the demolished structure was removed from the base value of the TIF district, all of the increased property value from the development project would generate property tax increments, thus helping TIF cash flow, and allowing redevelopment TIF districts to break even more quickly. However, the difficulties of creating a fair and equitable way to reduce the base value in such cases, became apparent on discussion. It was also noted that such a procedure might be used for purposes not originally intended. For these reasons, the group opted not to make a recommendation in this area.

26. Standing Joint Review Boards

It was proposed that a municipality with one or more active TIDs be allowed the option to establish a standing Joint Review Board, which would serve over time as the body of review for all TIDs in the municipality. It was suggested that this option would relieve municipalities with TIF activity from constantly scheduling organizational meetings, appointing and re-appointing members or educating new members each time a TID created, amended or (as the TIF Group suggests) undergoes a periodic financial review. It would be easier to appoint a standing member from each jurisdiction and be able to notice meetings with more than one agenda item on them, including a financial review of all the active districts

Resolved: The Working Group will recommend to:

CP;  
6b.1105(3)(g)  
& Am; (4m)(a)

- Amend the statutes to allow any municipality with an active TIF, to establish a standing Joint Review Board. Such a board would be subject to all existing requirements for JRBs currently in effect regarding membership and operation.

The working group agreed on this proposal on consensus.

27. Multi-jurisdictional TIDs

A suggestion was made to the group that provision be made for two or more municipalities to jointly sponsor a TID. According to the suggestion, each participating municipality would / could share in planning and funding of the district and related improvements; and would then also share in tax increment. The suggestor noted that TIF projects may often have benefits beyond the borders of the community in which they are located, and thus it would be fair for beneficiary communities to share in the costs of the projects as well. Further, it was suggested that such an arrangement might allow municipalities to pool resources and risk when appropriate.

Resolved: The Working Group will recommend no changes to statutes in this area

The working group agreed to this on consensus.

The working group discussed this proposal. However, the many difficulties and complications of administering such a multi-jurisdictional TID quickly became apparent to the group. Further, the group did not collectively believe that the lack of such an option is currently a serious hindrance to use of TIF.

## The Next Steps

The recommendations of the working group have been discussed with the Department of Administration for possible inclusion in the 2001-2003 State Biennial Budget. It is anticipated that many of the group's proposals may be included when the budget is introduced.

Proposals not included in the budget are expected to be introduced as separate legislation during the 2001 Legislative Session. The two legislator members of the working group, Reps. Bock and Lehman, have each pledged to work with group members, associations, and with the Department of Revenue in the introduction of such legislation. The Department of Revenue has also pledged its assistance in the crafting of legislation reflecting the recommendations of the working group.

## Conclusion

The Governor's Working Group on TIF conducted a comprehensive review of Tax Incremental Finance law in Wisconsin. The review was conducted with a view towards making TIF work more efficiently and more effectively as a means of encouraging development in the state. The proceedings of the group included significant discussions of the purposes of the TIF program, as well as the relationship of TIF to the overall benefit of the communities using the program.

The group's many proposals for changes to TIF law, range from technical adjustments to significant policy changes. Because most of these proposals will require statutory changes, the legislative process will afford an opportunity for these proposals to be given additional discussion, public hearings, and consideration by lawmakers and agency staff.

The members of the working group are pleased to have been asked to participate, and look forward to continuing to improve TIF in Wisconsin.

### Attachment:

Draft version of the DOR form that will provide the Department final accountings of project expenditures, as well as final total project costs and TIF revenues

**Item 6: "Technical" or Non-Controversial proposals**  
 Example of final accounting  
 (Excerpt from 1993 guide and sample TID annual report & audit authored by Mr. Don Rahn of Virchow, Krause & Co.)

City or Village of \_\_\_\_\_  
 Tax Incremental District No. \_\_\_\_\_  
 Date of Termination Resolution \_\_\_\_\_

Final Summary of project costs, project revenues and net cost  
 recovered through Tax Increments  
 From Creation Date through \_\_\_\_\_

**Project Revenues**

Tax increments	\$	_____
Interest income		_____
Special assessments		_____
Sale of property		_____
Miscellaneous revenues		_____
Transfers from other funds		_____
Grants		_____
Transfer from other TIF's		_____
Total Revenues		_____

**Project Costs**

Capital expenditures	\$	_____
Administration		_____
Interest and fiscal charges		_____
Discount on long-term debt		_____
Debt issuance costs		_____
Refunding costs		_____
Transfers to other TIF's		_____
Total Costs		_____

Net Cost Recoverable through TIF increments -	\$	=====
Refund to overlying taxing jurisdictions	\$	=====

City or Village of \_\_\_\_\_  
Tax Incremental District No. \_\_\_\_\_

Final Summary of sources, uses, and status of funds  
From Creation Date through \_\_\_\_\_

Sources of Funds

Tax increments	\$ _____
Interest Income	_____
Special assessments	_____
Sales of property	_____
Miscellaneous revenues	_____
Transfers from other funds- gifts	_____
Proceeds from long-term debt	_____
Loans from other funds	_____
Total Sources	_____

Uses of Funds

Capital expenditures	\$ _____
Administration	_____
Interest and fiscal charges	_____
Discount on long-term debt	_____
Debt issuance costs	_____
Refunding costs	_____
Principal on long-term debt	_____
Principal on advances	_____
Total Uses	_____