

2003 Assembly Bill 437

Date of enactment: **April 13, 2004**
Date of publication*: **April 27, 2004**

2003 WISCONSIN ACT 231

AN ACT *to amend* 20.566 (1) (go); *to create* 60.85 of the statutes; and *to affect* Laws of 1975, chapter 105, section 1 (1) and (2); **relating to:** granting towns limited authority to create tax incremental financing districts.

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

SECTION 1. 20.566 (1) (go) of the statutes, as created by 2003 Wisconsin Act 127, is amended to read:

20.566 (1) (go) Administration of tax incremental financing program. All moneys received from the fees imposed under ~~s. ss. 60.85 (5) (a) and 66.1105 (5) (a)~~ to pay the costs of the department of revenue in providing staff and administrative services associated with tax incremental districts under ~~s. ss. 60.85 and 66.1105~~.

SECTION 2. 60.85 of the statutes is created to read:

60.85 Town tax increment law. (1) DEFINITIONS. In this section, unless a different intent clearly appears from the context:

(a) "Agricultural project" means agricultural activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 111 – Crop production
2. 112 – Animal production
3. 1151 – Support activities for agriculture.
4. 1152 – Support activities for animal production.

(b) "Environmental pollution" has the meaning given in s. 299.01 (4).

(c) "Forestry project" means forestry activities classified in the North American Industry Classification Sys-

tem, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 113 – Forestry and logging.
2. 1153 – Support activities for forestry.

(d) "Highway" has the meaning provided in s. 340.01 (22).

(e) "Manufacturing project" means manufacturing activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 3116 – Animal slaughtering and processing.
2. 321 – Wood product manufacturing
3. 322 – Paper manufacturing.
4. 325193 – Ethyl alcohol manufacturing.

(f) "Personal property" has the meaning prescribed in s. 70.04.

(g) "Planning commission" means a plan commission created under s. 62.23, if the town board exercises zoning authority under s. 60.62 or the town zoning committee under s. 60.61 (4) if the town board is not authorized to exercise village powers.

(h) 1. "Project costs" means, subject to sub. (2) (b), any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the town which are listed in a project plan as costs of public works or improvements within a tax incremental dis-

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

trict or, to the extent provided in subd. 1. j., without the district, plus any incidental costs, diminished by any income, special assessments, or other revenues, including user fees or charges, other than tax increments, received or reasonably expected to be received by the town in connection with the implementation of the plan. Only a proportionate share of the costs permitted under this subdivision may be included as project costs to the extent that they benefit the tax incremental district. To the extent the costs benefit the town outside the tax incremental district, a proportionate share of the cost is not a project cost. "Project costs" include:

a. Capital costs including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures other than the demolition of listed properties as defined in s. 44.31 (4); the acquisition of equipment to service the district; the removal or containment of, or the restoration of soil or groundwater affected by, environmental pollution; and the clearing and grading of land.

b. Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of the obligations because of the redemption of the obligations prior to maturity.

c. Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the town of real or personal property within a tax incremental district for consideration which is less than its cost to the town.

d. Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering, and legal advice and services.

e. Imputed administrative costs, including, but not limited to, reasonable charges for the time spent by town employees in connection with the implementation of a project plan.

f. Relocation costs, including, but not limited to, those relocation payments made following condemnation under ss. 32.19 and 32.195.

g. Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of tax incremental districts and the implementation of project plans.

h. Payments made, in the discretion of the town board, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans.

i. That portion of costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities on streets or the rebuilding or expansion of streets the

construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a district and is within the district.

j. That portion of costs related to the construction or alteration of sewerage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines, or amenities on streets outside the district if the construction, alteration, rebuilding or expansion is necessitated by the project plan for a district, and if at the time the construction, alteration, rebuilding or expansion begins there are improvements of the kinds named in this subdivision on the land outside the district in respect to which the costs are to be incurred.

k. Costs for the removal, or containment, of lead contamination in buildings or infrastructure if the town declares that such lead contamination is a public health concern.

L. A fee imposed by the department of revenue under sub. (5) (a).

2. Notwithstanding subd. 1., none of the following may be included as project costs for any tax incremental district:

a. The cost of constructing or expanding administrative buildings, police and fire buildings, libraries, community and recreational buildings and school buildings.

b. The cost of constructing or expanding any facility, if the town generally finances similar facilities only with utility user fees.

c. General government operating expenses, unrelated to the planning or development of a tax incremental district.

d. Cash grants made by the town to owners, lessees, or developers of land that is located within the tax incremental district.

(i) "Project plan" means the properly approved plan for the development or redevelopment of a tax incremental district, including all properly approved amendments thereto.

(j) "Real property" has the meaning prescribed in s. 70.03.

(k) "Residential development" means sleeping quarters, within a proposed tax incremental district, for employees who work for an employer engaged in a project that is allowed under sub. (2) (b) 1. to 4. but does not include hotels, motels, or general residential housing development within a proposed tax incremental district.

(L) "Tax increment" means that amount obtained by multiplying the total county, town, school, and other local general property taxes levied on all taxable property within a tax incremental district in a year by a fraction having as a numerator the value increment for that year in the district and as a denominator that year's equalized value of all taxable property in the district. In any year, a tax increment is "positive" if the value increment is positive; it is "negative" if the value increment is negative.

(m) "Tax incremental base" means the aggregate value, as equalized by the department of revenue, of all taxable property located within a tax incremental district on the date as of which the district is created, determined as provided in sub. (5) (b).

(n) "Tax incremental district" means a contiguous geographic area within a town defined and created by resolution of the town board, consisting solely of whole units of property as are assessed for general property tax purposes, other than railroad rights-of-way, rivers or highways. Railroad rights-of-way, rivers or highways may be included in a tax incremental district only if they are continuously bounded on either side, or on both sides, by whole units of property as are assessed for general property tax purposes which are in the tax incremental district. "Tax incremental district" does not include any area identified as a wetland on a map under s. 23.32.

(o) "Taxable property" means all real and personal taxable property located in a tax incremental district.

(p) "Tourism project" means activities that involve retailers classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 721214 — Recreational and vacation camps.
2. 721211 — Recreational vehicle parks and campgrounds.
3. 711212 — Racetracks.
4. Dairy product stores included in 445299.
5. Public golf courses included in 71391.

(q) "Value increment" means the equalized value of all taxable property in a tax incremental district in any year minus the tax incremental base. In any year "value increment" is positive if the tax incremental base is less than the aggregate value of taxable property as equalized by the department of revenue; it is negative if that base exceeds that aggregate value.

(2) POWERS OF TOWNS. (a) Subject to par. (b) and except as provided under par. (c) and in addition to any other powers conferred by law, a town may exercise any powers necessary and convenient to carry out the purposes of this section, including the power to:

1. Create tax incremental districts and define the boundaries of the districts.
2. Cause project plans to be prepared, approve the plans, and implement the provisions and effectuate the purposes of the plans.
3. Deposit moneys into the special fund of any tax incremental district.
4. Enter into any contracts or agreements, including agreements with bondholders, determined by the town board to be necessary or convenient to implement the provisions and effectuate the purposes of project plans. The contracts or agreements may include conditions, restrictions, or covenants which either run with the land or which otherwise regulate the use of land.

5. Designate, by ordinance or resolution, the town industrial development agency, as agent of the town, to perform all acts under this section.

(b) The only projects for which a town may expend money or incur monetary obligations as a project cost are the following:

1. Agricultural projects.
2. Forestry projects.
3. Manufacturing projects.
4. Tourism projects.
5. Residential development, but only to the extent that it has a necessary and incidental relationship to a project listed in subs. 1. to 4.
6. Retail development that is limited to the retail sale of products that are produced due to a project that is developed under subd. 1., 2. or 3.

(c) No town may exercise any power under this subsection within the extraterritorial zoning jurisdiction of a city or village, as that term is defined in s. 62.23 (7a) (a), unless the city's or village's governing body adopts a resolution which approves the town's exercise of power under this subsection within such an extraterritorial zoning jurisdiction.

(3) CREATION OF TAX INCREMENTAL DISTRICTS AND APPROVAL OF PROJECT PLANS. In order to implement the provisions of this section, the following steps and plans are required:

(a) Holding of a public hearing by the planning commission at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a tax incremental district and the proposed boundaries of the district. Notice of the hearing shall be published as a class 2 notice, under ch. 985. Before publication, a copy of the notice shall be sent by first class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property located within the proposed district and to the school board of any school district which includes property located within the proposed district. For a county with no chief executive officer or administrator, notice shall be sent to the county board chairperson.

(b) Designation by the planning commission of the boundaries of a tax incremental district recommended by it and submission of the recommendation to the town board.

(c) Identification of the specific property to be included in the proposed tax incremental district. Owners of the property identified shall be notified of the proposed finding and the date of the hearing to be held under par. (e) at least 15 days prior to the date of the hearing.

(d) Preparation and adoption by the planning commission of a proposed project plan for each tax incremental district.

(e) At least 30 days before adopting a resolution under par. (h), holding of a public hearing by the planning commission at which interested parties are afforded a

reasonable opportunity to express their views on the proposed project plan. The hearing may be held in conjunction with the hearing provided for in par. (a). Notice of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall include a statement advising that a copy of the proposed project plan will be provided on request. Before publication, a copy of the notice shall be sent by 1st class mail to the chief executive officer or administrator of all local governmental entities having the power to levy taxes on property within the district and to the school board of any school district which includes property located within the proposed district. For a county with no chief executive officer or administrator, notice shall be sent to the county board chairperson.

(f) Adoption by the planning commission of a project plan for each tax incremental district and submission of the plan to the town board. The plan shall include a statement listing the kind, number and location of all proposed public works or improvements within the district or, to the extent provided in sub. (1) (h) 1. j., outside the district, an economic feasibility study, a detailed list of estimated project costs, and a description of the methods of financing all estimated project costs and the time when the related costs or monetary obligations are to be incurred. The plan shall also include a map showing existing uses and conditions of real property in the district; a map showing proposed improvements and uses in the district; proposed changes of zoning ordinances, master plan, if any, map, building codes and town ordinances; a list of estimated nonproject costs; and a statement of the proposed method for the relocation of any persons to be displaced. The plan shall indicate how creation of the tax incremental district promotes the orderly development of the town. The town shall include in the plan an opinion of the town attorney or of an attorney retained by the town advising whether the plan is complete and complies with this section.

(g) Approval by the town board of a project plan prior to or concurrent with the adoption of a resolution under par. (h). The approval shall be by resolution which contains findings that the plan is feasible and in conformity with the master plan, if any, of the town.

(h) Adoption by the town board of a resolution which:

1. Describes the boundaries, which may, but need not, be the same as those recommended by the planning commission, of a tax incremental district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the district. The boundaries shall include only those whole units of property as are assessed for general property tax purposes.

2. Creates the district as of January 1 of the same calendar year for a resolution adopted before October 1 or as of January 1 of the next subsequent calendar year for a resolution adopted after September 30.

3. Assigns a name to the district for identification purposes. The first district created shall be known as "Tax Incremental District Number One, Town of in County". Each subsequently created district shall be assigned the next consecutive number.

4. Declares the district to be either an agricultural project district, forestry project district, manufacturing project district, or tourism project district, and identifies the North American Industry Classification System industry number of each activity under each project for which project costs are to be expended.

5. Contains all of the following findings:

a. That not less than 75 percent, by area, of the real property within the district is to be used for projects of a single one of the project types listed under sub. (2) (b) 1. to 4. and in accordance with the declaration under subd. 4.

b. That the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district. It is not necessary to identify the specific parcels meeting the criteria.

c. That the project costs of the district are limited to those specified under sub. (2) (b) and relate directly to promoting agriculture, forestry, manufacturing, or tourism development.

d. That either the equalized value of taxable property of the district plus all existing districts does not exceed 7 percent of the total equalized value of taxable property within the town or the equalized value of taxable property of the district plus the value increment of all existing districts within the town does not exceed 5 percent of the total equalized value of taxable property within the town.

6. Confirms that any real property within the district that is intended to be used for a manufacturing project is zoned for industrial use and will remain zoned for industrial use for the life of the tax incremental district.

(i) Review by a joint review board, acting under sub. (4), that results in its approval of the resolution under par. (h).

(j) 1. Subject to subd. 2., the planning commission may, by resolution, adopt an amendment to a project plan. The amendment is subject to approval by the town board and approval requires the same findings as provided in pars. (g) and (h). Any amendment to a project plan is also subject to review by a joint review board, acting under sub. (4). Adoption of an amendment to a project plan shall be preceded by a public hearing held by the plan commission at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment. Notice of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall include a statement of the purpose and cost of the amendment and shall advise that a copy of the amendment will be provided on request. Before publication, a copy of the notice shall be sent by 1st class mail to the chief executive offi-

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

2. Not more than once during the 5 years after the tax incremental district is created, the planning commission may adopt an amendment to a project plan under subd. 1. to modify the district's boundaries by adding territory to the district that is contiguous to the district and that is served by public works or improvements that were created as part of the district's project plan. Expenditures for project costs that are incurred because of an amendment to a project plan to which this subdivision applies may be made for not more than 2 years after the date on which the town board adopts a resolution amending the project plan.

(k) The town board shall provide the joint review board with the following information and projections:

1. The projects included in the district and the specific project costs, the total dollar amount of these project costs to be paid with the tax increments, and the amount of tax increments to be generated over the life of the tax incremental district.

2. The amount of the value increment when the project costs in subd. 1. are paid in full and the tax incremental district is terminated.

3. The reasons why the project costs in subd. 1. may not or should not be paid by the owners of property that benefits by improvements within the tax incremental district.

4. The share of the projected tax increments in subd. 1. estimated to be paid by the owners of taxable property in each of the taxing jurisdictions overlying the tax incremental district.

5. The benefits that the owners of taxable property in the overlying taxing jurisdictions will receive to compensate them for their share of the projected tax increments in subd. 4.

(L) Calculation by the local assessor of the value of all tax-exempt town-owned property, except property described in sub. (5) (c), in the proposed tax incremental district, as of the day of the district's creation. This information shall be sent to the department of revenue for inclusion in the tax incremental district's tax incremental base that is determined under sub. (5) (b) or (d) 1.

(4) JOINT REVIEW BOARD. (a) 1. Any town that seeks to create a tax incremental district or amend a project plan shall convene a joint review board to review the proposal. Except as provided in subd. 2., and subject to par. (am), the joint review board shall consist of one representative chosen by the school district that has power to levy taxes on the property within the tax incremental district, one representative chosen by the technical college district

that has power to levy taxes on the property within the tax incremental district, one representative chosen by the county that has power to levy taxes on the property within the tax incremental district, one representative chosen by the town and one public member. If more than one school district, more than one union high school district, more than one elementary school district, or more than one technical college district has the power to levy taxes on the property within the tax incremental district, the unit in which is located property of the tax incremental district that has the greatest value shall choose that representative to the joint review board. The public member and the joint review board's chairperson shall be selected by a majority of the other joint review board members before the public hearing under sub. (3) (a) or (j) 1. is held. All joint review board members shall be appointed and the first joint review board meeting held within 14 days after the notice is published under sub. (3) (a) or (j) 1. Additional meetings of the joint review board shall be held upon the call of any member. The town that seeks to create the tax incremental district or to amend its project plan shall provide administrative support for the joint review board. By majority vote, the joint review board may disband following approval or rejection of the proposal.

2. If a town seeks to create a tax incremental district that is located in a union high school district, the seat that is described under subd. 1. for the school district representative to the joint review board shall be held by 2 representatives, each of whom has one-half of a vote. One representative shall be chosen by the union high school district that has the power to levy taxes on the property within the tax incremental district and one representative shall be chosen by the elementary school district that has the power to levy taxes on the property within the tax incremental district.

(am) 1. A representative chosen by a school district under par. (a) 1. or 2. shall be the president of the school board, or his or her designee. If the school board president appoints a designee, he or she shall give preference to the school district's finance director or another person with knowledge of local government finances.

2. The representative chosen by the county under par. (a) 1. shall be the county executive or, if the county does not have a county executive, the chairperson of the county board, or the executive's or chairperson's designee. If the county executive or county board chairperson appoints a designee, he or she shall give preference to the county treasurer or another person with knowledge of local government finances.

3. The representative chosen by the town under par. (a) 1. shall be the town board chairperson, or his or her designee. If the town board chairperson appoints a designee, he or she shall give preference to the person in charge of administering the town's economic development pro-

grams, the town treasurer, or another person with knowledge of local government finances.

4. The representative chosen by the technical college district under par. (a) 1. shall be the district's director or his or her designee. If the technical college district's director appoints a designee, he or she shall give preference to the district's chief financial officer or another person with knowledge of local government finances.

(b) 1. The joint review board shall review the public record, planning documents and the resolution passed by the town board or planning commission under sub. (3) (h) or (j) 1. As part of its deliberations the joint review board may hold additional hearings on the proposal.

2. No tax incremental district may be created and no project plan may be amended unless the joint review board approves the resolution adopted under sub. (3) (h) or (j) 1. by a majority vote not less than 10 days nor more than 30 days after receiving the resolution.

3. The joint review board shall submit its decision to the town no later than 7 days after the board acts on and reviews the items in subd. 2.

(c) 1. The joint review board shall base its decision to approve or deny a proposal on the following criteria:

a. Whether the project costs to be expended in the tax incremental district comply with the limitations specified in sub. (2) (b).

b. Whether the development expected in the tax incremental district would occur without the use of tax incremental financing.

c. Whether the economic benefits of the tax incremental district, as measured by increased employment, business and personal income, and property value, are insufficient to compensate for the cost of the improvements.

d. Whether the benefits of the proposal outweigh the anticipated tax increments to be paid by the owners of property in the overlying taxing districts.

2. The joint review board shall issue either a written statement that, in its judgment, all of the criteria under subd. 1. have been met or a written explanation describing why any proposal it rejects fails to meet one or more of the criteria specified in subd. 1.

(5) DETERMINATION OF TAX INCREMENT AND TAX INCREMENTAL BASE. (a) Subject to sub. (10) (d), upon the creation of a tax incremental district or upon adoption of any amendment subject to par. (d) 1., its tax incremental base shall be determined as soon as reasonably possible. The department of revenue may impose a fee of \$1,000 on a town to determine or redetermine the tax incremental base of a tax incremental district under this subsection.

(b) Upon application in writing by the town clerk, in a form prescribed by the department of revenue, the department shall determine according to its best judgment from all sources available to it the full aggregate value of the taxable property and, except as provided in par. (c), of the town-owned property in the tax incremen-

tal district. Subject to sub. (10) (d), the department shall certify this aggregate valuation to the town clerk, and the aggregate valuation constitutes the tax incremental base of the tax incremental district. The town clerk shall complete these forms upon the creation of a tax incremental district or upon the amendment of a district's project plan and shall submit the application on or before December 31 of the year the tax incremental district is created, as defined in sub. (3) (h) 2. or, in the case of an amendment, on or before December 31 of the year in which the changes to the project plan take effect.

(c) The value of real property owned by a town and used for police and fire buildings, administrative buildings, libraries, community and recreational buildings, parks, streets and improvements within any street right-of-way, parking facilities and utilities shall not be included in the tax incremental base established under par. (b) or (d) 1.

(d) 1. If the town adopts an amendment to the original project plan under sub. (3) (j) for any district which includes additional project costs at least part of which will be incurred after the period specified in sub. (6) (b) 1., the tax incremental base for the district shall be redetermined by adding to the tax incremental base the value of the taxable property, and, except as provided in par. (c), of the town-owned property, that is added to the existing district as of the January 1 of the same calendar year for a resolution adopted before October 1 or as of January 1 of the next subsequent calendar year for a resolution adopted after September 30. The tax incremental base as redetermined under this subdivision is effective for the purposes of this section only if it exceeds the original tax incremental base determined under par. (b).

2. If after January 1 a city or village annexes town territory that contains part of a tax incremental district that is created by the town, the department of revenue shall redetermine the tax incremental base of the district by subtracting from the tax incremental base the value of the taxable property that is annexed from the existing district as of the following January 1, and if the annexation becomes effective on January 1 of any year, the redetermination shall be made as of that date. The tax incremental base as redetermined under this subdivision is effective for the purposes of this section only if it less than the original tax incremental base determined under par. (b).

(e) Annually, no later than May 15, the town clerk shall file with the department of revenue, on a form provided by the department, a list of the expenditures for the district that were made in the previous year.

(f) The town clerk shall annually, after May 1 but before May 21, by written notice, inform the department of revenue of any amendment to the project plan which has been adopted. The town clerk shall also give written notice of the adoption of an amendment to the department of revenue within 60 days after its adoption. The department of revenue may prescribe forms to be used by the

town clerk when giving notice as required by this paragraph.

(g) The department of revenue may not certify the tax incremental base as provided in par. (b) until it determines that each of the procedures and documents required by sub. (3) (a), (b), (h) or (j) and par. (b) has been timely completed and all notices required under sub. (3) (a), (b), (h) or (j) timely given. The facts supporting any document adopted or action taken to comply with sub. (3) (a), (b), (h) or (j) are not subject to review by the department of revenue under this paragraph, except that the department may not certify the tax incremental base as provided in par. (b) until it reviews and approves the findings made under sub. (3) (h) 4. and 5. d.

(h) The town assessor shall identify upon the assessment roll returned and examined under s. 70.45 those parcels of property which are within each existing tax incremental district, specifying the name of each district. A similar notation shall appear on the tax roll made by the town clerk under s. 70.65.

(i) The department of revenue shall annually give notice to the designated finance officer of all governmental entities having the power to levy taxes on property within each district as to the equalized value of the property and the equalized value of the tax increment base. The notice shall also explain that the tax increment allocated to a town shall be paid to the town as provided under sub. (6) (c) from the taxes collected.

(6) ALLOCATION OF POSITIVE TAX INCREMENTS. (a) If the joint review board approves the creation of the tax incremental district under sub. (4), positive tax increments with respect to a tax incremental district are allocated to the town which created the district for each year commencing after the date when a project plan is adopted under sub. (3) (g). The department of revenue may not authorize allocation of tax increments until it determines from timely evidence submitted by the town that each of the procedures and documents required under sub. (3) (d) to (f) has been completed and all related notices given in a timely manner. The department of revenue may authorize allocation of tax increments for any tax incremental district only if the town clerk and assessor annually submit to the department all required information on or before the 2nd Monday in June. The facts supporting any document adopted or action taken to comply with sub. (3) (d) to (f) are not subject to review by the department of revenue under this paragraph except as provided under par. (e). After the allocation of tax increments is authorized, the department of revenue shall annually authorize allocation of the tax increment to the town that created the district until the sooner of the following events:

1. The department of revenue receives a notice under sub. (10) and the notice has taken effect under sub. (10) (b).
2. Sixteen years after the tax incremental district is created.

(b) 1. No expenditure may be made for a tax incremental district that is created under this section later than 5 years after the tax incremental district is created.

2. The limitations on the period during which expenditures may be made under subd. 1. do not apply to expenditures to pay project costs incurred under ch. 32.

3. The limitations on the period during which expenditures may be made under subd. 1. do not apply to expenditures authorized by the adoption of an amendment to the project plan sub. (3) (j), except that in no case may the total number of years during which expenditures are made exceed 7 years.

(c) Every officer charged by law to collect and pay over or retain local general property taxes shall, on the settlement dates provided by law, pay over to the town treasurer out of all the taxes which the officer has collected the proportion of the tax increment due the town that the general property taxes collected in the town bears to the total general property taxes levied by the town for all purposes included in the tax roll, exclusive of levies for state trust fund loans, state taxes and state special charges.

(d) All tax increments received with respect to a tax incremental district shall, upon receipt by the town treasurer, be deposited into a special fund for that district. The town treasurer may deposit additional moneys into such fund pursuant to an appropriation by the town board. No moneys may be paid out of such fund except to pay project costs with respect to that district, to reimburse the town for such payments, or to satisfy claims of holders of bonds or notes issued with respect to such district. Moneys paid out of the fund to pay project costs with respect to a district may be paid out before or after the district is terminated under sub. (9). Subject to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other town funds if any investment earnings are applied to reduce project costs. After all project costs and all bonds and notes with respect to the district have been paid or the payment thereof provided for, subject to any agreement with bondholders, if there remain in the fund any moneys, they shall be paid over to the treasurer of each county, school district or other tax levying municipality or to the general fund of the town in the amounts that belong to each respectively, having due regard for that portion of the moneys, if any, that represents tax increments not allocated to the town and that portion, if any, that represents voluntary deposits of the town into the fund.

(e) 1. Any of the following persons may file a written request with the department of revenue requesting a review of a tax incremental district created under this section to determine whether money expended, or debt incurred, by the district in the prior year complied with the requirement under sub. (2) (b):

- a. An owner of taxable property that is located in the town that has created the district.

b. An owner of taxable property that is located in a taxing jurisdiction which overlies the town in which the district is located.

c. An owner of taxable property in a city or village that borders the town in which the district is located.

d. A taxing jurisdiction that overlies the town in which the district is located.

e. A city or village that borders the town in which the district is located.

2. A written request described under subd. 1. shall be on a form that is prescribed by the department of revenue, shall contain the grounds on which the request is based, and shall be filed with the department no later than July 1.

3. The department of revenue may deny any request for review that is made under this paragraph if the department believes, based on a review of the request, that insufficient grounds exist to support the alleged noncompliance with sub. (2) (b). The department shall send written notification of its decision to the person who made the request for review and to the town.

4. If the department of revenue grants a request for review that is made under this paragraph, it shall hold a hearing and it shall send written notification of the hearing to the clerk of the town that created the tax incremental district, the person who requested the review, the clerk of each overlying taxing jurisdiction, and the clerk of every city or village that borders the town. The written notification shall include the time, date, and location of the hearing.

5. The secretary of revenue, or the secretary's designee, shall preside at the hearing and shall receive testimony and evidence on all issues that are related to the request for review. Following the hearing, the secretary shall make one of the following determinations:

a. The town is in compliance with sub. (2) (b).

b. The town has made expenditures or incurred debts that are not allowed under sub. (2) (b). If the secretary makes this determination, the secretary shall either order the town to pay back all ineligible costs to the district's overlying taxing jurisdictions, on a proportional basis that relates to each jurisdiction's share of the tax increment, from funds other than tax increments allocated under this subsection, or shall order the district to be terminated. If the secretary orders the district to be terminated, the town becomes liable for all unpaid project costs actually incurred which are not paid from the special fund under sub. (6) (d).

6. Any person or unit of government that received a notice under subd. 4. may appeal the secretary's decision to the circuit court in Dane County.

(7) NOTIFICATION OF POSITION OPENINGS. (a) Any person who operates for profit and is paid project costs under sub. (1) (h) 1. a., d., i. and j. in connection with the project plan for a tax incremental district shall notify the department of workforce development and the local workforce

development board established under 29 USC 2832, of any positions to be filled in the county in which the town which created the tax incremental district is located during the period commencing with the date the person first performs work on the project and ending one year after receipt of its final payment of project costs. The person shall provide this notice at least 2 weeks prior to advertising the position.

(b) Any person who operates for profit and buys or leases property in a tax incremental district from a town for which the town incurs real property assembly costs under sub. (1) (h) 1. c. shall notify the department of workforce development and the local workforce development board established under 29 USC 2832, of any position to be filled in the county in which the town creating the tax incremental district is located within one year after the sale or commencement of the lease. The person shall provide this notice at least 2 weeks prior to advertising the position.

(8) REVIEW. (a) The town shall cause a certified public accountant to conduct audits of each tax incremental district to determine if all financial transactions are made in a legal and proper manner and to determine if the tax incremental district is complying with its project plan and with this section. Any town that creates a tax incremental district under this section and has an annual general audit may include the audits required under this subsection as part of the annual general audit.

(b) Audits shall be conducted at all the following times:

1. No later than twelve months after 30 percent of the project expenditures are made.

2. No later than twelve months after the end of the expenditure period specified in sub. (6) (b) 1.

3. No later than twelve months after the termination of the tax incremental district under sub. (9).

(c) The town shall prepare and make available to the public updated annual reports describing the status of each existing tax incremental district, including expenditures and revenues. The town shall send a copy of the report to each overlying district by May 1 annually.

(9) TERMINATION OF TAX INCREMENTAL DISTRICTS. A tax incremental district terminates when the earliest of the following occurs:

(a) That time when the town has received aggregate tax increments with respect to the district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan for the district.

(b) Eleven years after the last expenditure identified in the original, unamended project plan is made.

(c) The town board, by resolution, dissolves the district, at which time the town becomes liable for all unpaid project costs actually incurred which are not paid from the special fund under sub. (6) (d).

(d) The secretary of revenue determines that tax increments have been used to pay for ineligible costs and the secretary of revenue orders that the district be terminated under sub. (6) (e) 5. b.

(10) NOTICE OF DISTRICT TERMINATION. (a) A town which creates a tax incremental district under this section shall give the department of revenue written notice within 10 days of the termination of the tax incremental district under sub. (9).

(b) If the department of revenue receives a notice under par. (a) during the period from January 1 to May 15, the effective date of the notice is the date the notice is received. If the notice is received during the period from May 16 to December 31, the effective date of the notice is the first January 1 after the department of revenue receives the notice.

(c) Not later than February 15 of the year immediately following the year in which a town transmits to the department of revenue the notice required under par. (a) the town shall send to the department, on a form prescribed by the department, all of the following information that relates to the terminated tax incremental district:

1. A final accounting of all expenditures made by the town.
2. The total amount of project costs incurred by the town.
3. The total amount of positive tax increments received by a town.

(d) If a town does not send to the department of revenue the form specified in par. (c), the department may not certify the tax incremental base of a tax incremental district in the town under sub. (5) (a) and (b) until the form is sent to the department.

(11) FINANCING OF PROJECT COSTS. Payment of project costs may be made by any one or more of the following methods:

- (a) Payment by the town from the special fund of the tax incremental district.
- (b) Payment out of its general funds.
- (c) Payment out of the proceeds of the sale of bonds or notes issued by it under ch. 67.
- (d) Payment out of the proceeds of the sale of public improvement bonds issued by it under s. 66.0619.
- (e) Payment as provided under s. 66.0713 (2) and (4) or 67.16.
- (f) Payment out of the proceeds of revenue bonds or notes issued by it under s. 66.0621.
- (g) Payment out of the proceeds of revenue bonds issued by the town as provided by s. 66.1103, for a purpose specified in that section.

(12) OVERLAPPING TAX INCREMENTAL DISTRICTS. (a) Subject to any agreement with bondholders, a tax incremental district may be created, the boundaries of which overlap one or more existing districts, except that districts created as of the same date may not have overlapping boundaries.

(b) If the boundaries of 2 or more tax incremental districts overlap, in determining how positive tax increments generated by that area which is within 2 or more districts are allocated among the overlapping districts, but for no other purpose, the aggregate value of the taxable property in the area as equalized by the department of revenue in any year as to each earlier created district is that portion of the tax incremental base of the district next created which is attributable to the overlapped area.

(13) EQUALIZED VALUATION FOR APPORTIONMENT OF PROPERTY TAXES. With respect to the county, school districts and any other local governmental body having the power to levy taxes on property located within a tax incremental district, if the allocation of positive tax increments has been authorized by the department of revenue under sub. (6) (a), the calculation of the equalized valuation of taxable property in a tax incremental district for the apportionment of property taxes may not exceed the tax incremental base of the district until the district is terminated.

(14) DEPARTMENT OF COMMERCE REPORT. The department of commerce, in cooperation with other state agencies and local governments, shall make a comprehensive report to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), at the beginning of each biennium, beginning with the 2007 biennium, as to the effects and impact of town tax incremental financing projects socially, economically, and financially.

(16) USE OF TAX INCREMENTAL FINANCING FOR INLAND LAKE PROTECTION AND REHABILITATION PROHIBITED. Notwithstanding sub. (11), no tax incremental financing project plan may be approved and no payment of project costs may be made for an inland lake protection and rehabilitation district or a county acting under s. 59.70 (8).

(17) PAYMENT OF ELIGIBLE COSTS FOR ANNEXED TERRITORY, REDETERMINATION OF TAX INCREMENTAL BASE. If a city or village annexes territory from a town and if all or part of the territory that is annexed is part of a tax incremental district created by the town, the city or village shall pay to the town that portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, shall negotiate an agreement on the amount that must be paid under this subsection. The department shall redetermine the tax incremental base of any parcel of real property for which the tax incremental base was determined under sub. (5) if part of that parcel is annexed under this subsection.

(18) SUBSTANTIAL COMPLIANCE. Substantial compliance with subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b) by a town that creates, or attempts to create, a tax incremental district is sufficient to give effect to any proceedings conducted under this section if, in the opinion of the department of revenue, any error, irregularity, or informality that exists in the town's attempts to comply with subs. (2), (3) (a), (b), (c), (d), (e),

(f), and (j), (4), and (5) (b) does not affect substantial justice. If the department of revenue determines that a town has substantially complied with subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b), the department of revenue shall determine the tax incremental base of the district, allocate tax increments, and treat the district in all other respects as if the requirements under subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b) had been strictly complied with based on the date that the resolution described under sub. (3) (h) 2. is adopted.

SECTION 3. Laws of 1975, chapter 105, section 1 (1) and (2) are amended to read:

[Laws of 1975, chapter 105] Section 1 (1) The legislature finds that the existing system of allocating aggregate property tax revenues among tax levying municipalities has resulted in significant inequities and disincentives. The cost of public works or improvements within a city, town, or village has been borne entirely by the city, town, or village, while the expansion of tax base which is stimulated, directly or indirectly, by such improvements, benefits not only the city, town, or village

but also all municipalities which share such tax base. This situation is inequitable. Moreover, when the cost to a city, town, or village of a public improvement project exceeds the future benefit to the city, town, or village resulting therefrom, the city, town, or village may decide not to undertake such project. This situation has resulted in the postponement or cancellation of socially desirable projects.

(2) The legislature further finds that accomplishment of the vital and beneficial public purposes of sections 66.405 to 66.425, 66.43, 66.431, 66.435 and 66.52 of the statutes, is being frustrated because of a lack of incentives and financial resources. The purpose of this act is to create a viable procedure by which a city ~~or~~, village, or town, through its own initiative and efforts, may finance projects which will tend to accomplish these laudable objectives.

SECTION 4. Initial applicability.

(1) This act first applies to a tax incremental district that is created on October 1, 2004.
