

2005 ASSEMBLY BILL 147

March 3, 2005 – Introduced by Representatives GOTTLIEB, HUNDERTMARK, FRISKE, DAVIS, NISCHKE, GARD, HAHN, STONE, OTT, KRAWCZYK, GUNDERSON, PRIDEMORE, HINES, KAUFERT, BALLWEG, LOEFFELHOLZ and TOWNSEND, cosponsored by Senators STEPP, DARLING, KANAVAS, KEDZIE, ROESSLER, OLSEN, GROTHMAN, LEIBHAM and BRESKE. Referred to Committee on Ways and Means.

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

Analysis by the Legislative Reference Bureau

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 66.1105 (4) (h) 6. Notwithstanding subd. 1., a project plan shall be considered
6 to have been amended, without compliance with any of the procedures required
7 under subd. 1., if the only change to the project plan is the extension of the period
8 during which expenditures may be made under sub. (6) (am) 2., as authorized under
9 that subdivision by a provision of state law that takes effect after a tax incremental
10 district's project plan is first adopted under par. (f).

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

12 66.1105 (5) (ce) If the city adopts an amendment, to which sub. (4) (h) 2., 4., or
13 5. applies, the tax incremental base for the district shall be redetermined, either by
14 subtracting from the tax incremental base the value of the taxable property and the
15 value of real property owned by the city, other than property described under par.
16 (bm), that is subtracted from the existing district or by adding to the tax incremental
17 base the value of the taxable property and the value of real property owned by the
18 city, other than property described in par. (bm), that is added to the existing district
19 under sub. (4) (h) 2., 4., or 5., as of the January 1 next preceding the effective date
20 of the amendment if the amendment becomes effective between January 2 and
21 September 30, as of the next subsequent January 1 if the amendment becomes
22 effective between October 1 and December 31 and if the effective date of the
23 amendment is January 1 of any year, the redetermination shall be made on that date.
24 With regard to a district to which territory has been added, the tax incremental base

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

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

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

7 **SECTION 8. Initial applicability.**

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

11 (END)