



2009 ASSEMBLY BILL 426

September 22, 2009 – Introduced by Representatives MOLEPSKE JR., RIPP, RADCLIFFE, DAVIS, STASKUNAS, BROOKS, TOWNSEND, SOLETSKI, CLARK, ZEPNICK, HINTZ and PETERSEN, cosponsored by Senators SULLIVAN, SCHULTZ, HOLPERIN, KREITLOW and TAYLOR. Referred to Committee on Ways and Means.

1 **AN ACT** *to amend* 20.566 (2) (hm); and *to create* 66.1105 (4e), 66.1105 (6) (f) 2.
2 c. and 66.1105 (7) (au) of the statutes; **relating to:** authorizing the designation
3 of a tax incremental district as distressed and expanding the use of donor tax
4 incremental districts.

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. Currently, towns also have a limited ability to create a TID under certain circumstances. 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, approval of the city's or village's proposed TID by a joint review board that consists of members who represent the overlying taxation districts, 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 incremental 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

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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 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.

Under certain limited circumstances, a TID that has paid off all of its project costs but has not reached its mandatory termination date may become a donor TID, continue to receive tax increments, and forward those increments to a recipient TID created by the same city or village.

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 TID. Current law also authorizes the amendment of a project plan up to four times during a TID’s existence to change the district’s boundaries by adding or subtracting territory.

This bill authorizes a city or village to designate a TID that was created before October 1, 2008, as a distressed TID if a number of steps occur. The city or village must adopt a resolution finding that its project costs incurred on the TID exceed the revenues the city or village expects the TID to generate during its lifetime. If DOR prescribes any forms that the municipal clerk must complete as part of the distressed TID designation, the clerk shall complete and submit the forms to DOR. The municipal clerk must also send to DOR and the joint review board a copy of the resolution and the related financial data that the city or village used when it adopted its resolution.

Before the city or village may adopt the resolution concerning its project costs, the common council must hold a public hearing at which interested parties may express their views on the proposed distressed TID. Notice of the hearing must be sent to the overlying taxation districts. Following receipt of the resolution and financial data, the joint review board must evaluate the information to determine whether designating the TID as distressed or allowing increment sharing will likely enhance the ability of the city or village to pay its project costs. The resolution adopted by the city or village may not take effect without joint review board approval of the designation. The board may approve or deny the designation.

If the joint review board approves the designation, DOR must certify the designation and notify all overlying taxing jurisdictions of the certification. DOR may impose a \$500 fee on a city or village to administer the city’s or village’s TID that is so designated.

Under the bill, a distressed TID may continue to exist and receive tax increments, as well as contributions from a donor TID, for up to 40 years after the distressed TID was created. A distressed TID may not amend its project plan to add any additional project costs, add territory, become a donor TID, make any

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expenditures after its original expenditure period ends, or expend funds outside of the TID's boundaries. A distressed TID must terminate whenever all of its project costs have been paid off or 40 years after it was created, whichever occurs first. A donor TID must terminate upon the earlier of the distressed TID's termination or 40 years after the donor TID is created

The bill authorizes a mixed-use or industrial TID that has been designated as distressed to receive tax increments from a donor TID. Currently, the recipient TID must be a blighted area or an area in need of rehabilitation, or the project costs in the recipient TID must be used to rehabilitate low-income housing or for environmental contamination remediation.

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.** 20.566 (2) (hm) of the statutes, as affected by 2009 Wisconsin Act
2 28, is amended to read:

3 20.566 **(2)** (hm) *Administration of tax incremental, and environmental*
4 *remediation tax incremental, financing programs.* All moneys received from the fees
5 imposed under ss. 60.85 (5) (a) and (6) (am), 66.1105 (4e) (f), (5) (a), and (6) (ae), and
6 66.1106 (7) (am) and (13) (b) to pay the costs of the department of revenue in
7 providing staff and administrative services associated with tax incremental districts
8 under ss. 60.85, 66.1105, and 66.1106, and to reimburse a municipality for costs
9 incurred by the municipality related to the department's administration of the tax
10 incremental financing program.

11 **SECTION 2.** 66.1105 (4e) of the statutes is created to read:

12 66.1105 **(4e)** DISTRESSED TAX INCREMENTAL DISTRICTS. (a) Subject to the
13 limitations in this subsection, a city may designate a tax incremental district that
14 it created before October 1, 2008, as a distressed tax incremental district if all of the
15 following occur:

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1 1. The local legislative body adopts a resolution finding that its project costs
2 incurred, with regard to the tax incremental district, exceed the amount of revenues
3 from all sources that the city expects the district to generate to pay off such project
4 costs during the life of the district.

5 2. The clerk of the local legislative body certifies the resolution and forwards
6 a copy of the certified resolution and a copy of all of the financial data that the local
7 legislative body used in the adoption process under subd. 1. to the department of
8 revenue and the joint review board.

9 (b) 1. Adoption of a resolution under par. (a) 1. shall be preceded by a public
10 hearing held by the common council at which interested parties shall be afforded a
11 reasonable opportunity to express their views on the proposed designation of a
12 distressed tax incremental district. Notice of the hearing shall be published as a
13 class 2 notice under ch. 985. The notice shall describe the resolution and shall advise
14 that a copy of the resolution will be provided on request. Before publication, a copy
15 of the notice shall be sent by 1st class mail to the chief executive officer or
16 administrator of all local governmental entities having the power to levy taxes on
17 property within the district and to the school board of any school district that
18 includes property located within the proposed district. For a county with no chief
19 executive officer or administrator, this notice shall be sent to the county board
20 chairperson.

21 2. Following receipt of the resolution and the financial data under par. (a) 2.,
22 the joint review board shall evaluate the resolution and data to determine whether
23 the designation of the district as a distressed district or the sharing of tax increments
24 by a donor district with the distressed district is likely to enhance the ability of the
25 city to pay its project costs related to the district within the time specified in par. (d)

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1 2. The joint review board may approve or deny the designation and shall send a
2 written copy of its findings to the common council.

3 3. A resolution adopted under par. (a) 1. may not take effect unless the joint
4 review board approves, by resolution, the designation under subd. 2.

5 (c) If the department of revenue prescribes any forms that the city clerk must
6 complete as part of the designation of a distressed tax incremental district, the clerk
7 shall submit the forms to the department on or before December 31 of the year the
8 district is designated as distressed.

9 (d) 1. Notwithstanding the time limits for the allocation of positive tax
10 increments under sub. (6) (a), but subject to sub. (6) (a) 1., and notwithstanding the
11 requirement under sub. (6) (f) 1. b., the department of revenue shall allocate positive
12 tax increments to a distressed tax incremental district for up to 40 years after the
13 district is created.

14 2. Notwithstanding the time limits for termination under sub. (7) (ak) to (at),
15 but subject to sub. (7) (a) and (b), a distressed district may remain in existence for
16 up to 40 years after the district is created.

17 3. Notwithstanding the time limits and other provisions for termination under
18 sub. (7), a donor tax incremental district under sub. (6) (d), (dm), (e), and (f) may
19 continue to share tax increments with a distressed district until the earlier of the
20 following occurs:

21 a. The distressed district terminates under sub. (7) (a), (au), or (b).

22 b. Following its creation, the donor district has existed for 40 years.

23 (e) A distressed tax incremental district may not do any of the following:

24 1. Amend its project plan to add any new project costs.

25 2. Become part of a district with overlapping boundaries under sub. (10).

