State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–3849/1
MES:jld:rs

2009 ASSEMBLY BILL 611

December 8, 2009 – Introduced by Representatives POPE–ROBERTS, BROOKS, DEXTER, ZEPNICK and BERCEAU, cosponsored by Senators ERPENBACH, HOLPERIN, MILLER, PLALE and HARSDORF. Referred to Committee on Urban and Local Affairs.

AN ACT ***to amend*** 60.85 (6) (a) (intro.), 60.85 (6) (am), 66.1105 (4) (gm) 4. c., 66.1105 (5) (b), 66.1105 (6) (a) (intro.), 66.1105 (6) (ae), 66.1106 (7) (a) and 66.1106 (7) (am); and ***to create*** 66.1105 (4m) (e), 66.1105 (10) (c) and 66.1105 (12) of the statutes; **relating to:** changing certain administrative procedures under the tax incremental financing program.

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 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 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.

Currently, before a TID may be created or its project plan amended, the city or village must adopt a resolution containing 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"), subject to one exception. Under the exception, a city or village may simultaneously create a new TID and subtract territory from an existing TID without adopting a resolution containing the 12 percent test if the city or village demonstrates to DOR that the value of the territory that is subtracted at least equals the amount that DOR believes is necessary to ensure that, when the new TID is created, the 12 percent test is met. The city or village must also certify to DOR that no other district created under this exception currently exists in the city or village.

This bill changes a number of administrative procedures that apply to TIDs. Under the bill, in determining whether a city or village complies with the 12 percent test, DOR must exclude any parcel of land in a newly created TID that is located in an existing TID. If DOR determines that a city or village has violated the 12 percent test, it must notify the city or village in writing. The city or village must then either rescind its approval of the resolution creating a TID or notify DOR in writing that the county in which the TID is located approves of the city's or village's action related to the TID even though the 12 percent test is not met.

The bill also changes from December 31 to October 31 the date by which a city or village must submit certain completed forms to DOR and specifies that, in complying with meeting notice requirements, a city or village must use a newspaper that is in general circulation in the county in which the TID is located. With regard to meetings held by a joint review board, the bill requires all such meetings to be preceded by a class 2 notice.

Under current law, any city, village, town, or county (political subdivision) that receives a tax increment for a TID or an environmental remediation TID must pay DOR an annual administrative fee. Under this bill, if the political subdivision does

not pay the fee by May 15, DOR may not allocate a tax increment to that political subdivision.

The bill takes effect on October 1, 2010.

For further information see the ***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:

SECTION 1. 60.85 (6) (a) (intro.) of the statutes is amended to read:

60.85 **(6)** (a) (intro.) If the joint review board approves the creation of the tax incremental district under sub. (4), and subject to par. (am), 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:

SECTION 2. 60.85 (6) (am) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

60.85 **(6)** (am) With regard to each district for which the department of revenue authorizes the allocation of a tax increment under par. (a), the department shall charge the town that created the district an annual administrative fee of $150 that the town shall pay to the department no later than May 15. If the town does not pay the fee that is required under this paragraph, by May 15, the department may not authorize the allocation of a tax increment under par. (a) for that town.

SECTION 3. 66.1105 (4) (gm) 4. c. of the statutes is amended to read:

66.1105 **(4)** (gm) 4. c. Except as provided in ~~sub.~~ subs. (10) (c) and (17), the equalized value of taxable property of the district plus the value increment of all existing districts does not exceed 12 percent of the total equalized value of taxable property within the city. In determining the equalized value of taxable property under this subd. 4. c., the department of revenue shall base its calculations on the most recent equalized value of taxable property of the district that is reported under s. 70.57 (1m) before the date on which the resolution under this paragraph is adopted. If the department of revenue determines that a local legislative body exceeds the 12 percent limit described in this subd. 4. c., the department shall notify the city of its noncompliance, in writing, not later than December 31 of the year in which the department receives the completed application or amendment forms described in sub. (5) (b).

SECTION 4. 66.1105 (4m) (e) of the statutes is created to read:

66.1105 **(4m)** (e) Notice of all meetings held by a joint review board shall be published as a class 2 notice, under ch. 985.

SECTION 5. 66.1105 (5) (b) of the statutes is amended to read:

66.1105 **(5)** (b) Upon application in writing by the city 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. (bm), of the city−owned property in the tax incremental district. The application shall state the percentage of territory within the tax incremental district which the local legislative body estimates will be devoted to retail business at the end of the maximum expenditure period specified in sub. (6) (am) 1. if that estimate is at least 35%. Subject to sub. (8) (d), the department shall certify this aggregate valuation to the city clerk, and the aggregate valuation constitutes the tax incremental base of the tax incremental district. The city clerk shall complete these forms, including forms for the amendment of a project plan, and submit the completed application or amendment forms on or before ~~December~~ October 31 of the year the tax incremental district is created, as defined in sub. (4) (gm) 2. or, in the case of an amendment, on or before ~~December~~ October 31 of the year in which the changes to the project plan take effect.

SECTION 6. 66.1105 (6) (a) (intro.) of the statutes is amended to read:

66.1105 **(6)** (a) (intro.) If the joint review board approves the creation of the tax incremental district under sub. (4m), and subject to par. (ae), positive tax increments with respect to a tax incremental district are allocated to the city which created the district for each year commencing after the date when a project plan is adopted under sub. (4) (g). The department of revenue may not authorize allocation of tax increments until it determines from timely evidence submitted by the city that each of the procedures and documents required under sub. (4) (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 city 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. (4) (d) to (f) are not subject to review by the department of revenue under this paragraph. After the allocation of tax increments is authorized, the department of revenue shall annually authorize allocation of the tax increment to the city that created the district until the soonest of the following events:

SECTION 7. 66.1105 (6) (ae) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

66.1105 **(6)** (ae) With regard to each district for which the department of revenue authorizes the allocation of a tax increment under par. (a), the department shall charge the city that created the district an annual administrative fee of $150 that the city shall pay to the department no later than May 15. If the city does not pay the fee that is required under this paragraph, by May 15, the department may not authorize the allocation of a tax increment under par. (a) for that city.

SECTION 8. 66.1105 (10) (c) of the statutes is created to read:

66.1105 **(10)** (c) The department of revenue shall exclude any parcel in a newly created tax incremental district that is located in an existing district when determining compliance with the 12 percent limit described in sub. (4) (gm) 4. c.

SECTION 9. 66.1105 (12) of the statutes is created to read:

66.1105 **(12)** EQUALIZED VALUATION; THE 12 PERCENT LIMIT. If the department of revenue notifies a local legislative body that is not in compliance with the 12 percent limit described in sub. (4) (gm) 4. c., the local legislative body shall do one of the following:

(a) Rescind its approval of the project plan resolution described under sub. (4) (g).

(b) Not later than March 15 of the year immediately following the year in which the local legislative body receives the notice of noncompliance described in sub. (4) (gm) 4. c., the local legislative body sends the department of revenue by 1st class mail a copy of a resolution adopted by the county board in which the tax incremental district, or proposed district, is located stating that the county board accepts the project plan even if the 12 percent limit is exceeded. Notice of the county board meeting at which the board accepts the project plan shall be published as a class 2 notice under ch. 985, except that the notice shall be published in a newspaper having general circulation within the county in which the proposed district is to be created. The notice shall include information relating to the proposed boundaries of the district, the proposed project costs of the proposed project, and whether the project costs include cash grants from the local legislative body to the owners, developers, or lessees of the land that is located within the proposed district. If the district or proposed district is in more than one county, only the county that contains the largest portion of the district's value must adopt a resolution as described in this paragraph.

SECTION 10. 66.1106 (7) (a) of the statutes is amended to read:

66.1106 **(7)** (a) Subject to pars. (am), (b), (c) and (d), the department shall annually authorize the positive environmental remediation tax increment with respect to a parcel or contiguous parcels of property during the period of certification to the political subdivision that incurred the costs to remediate environmental pollution on the property, except that an authorization granted under this paragraph does not apply after the department receives the notice described under sub. (10) (b).

SECTION 11. 66.1106 (7) (am) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

66.1106 **(7)** (am) With regard to each district for which the department authorizes the allocation of a tax increment under par. (a), the department shall charge the political subdivision that created the district an annual administrative fee of $150 that the political subdivision shall pay to the department no later than May 15. If the political subdivision does not pay the fee that is required under this paragraph, by May 15, the department may not authorize the allocation of a tax increment under par. (a) for that political subdivision.

SECTION 12. Effective date.

(1) This act takes effect on October 1, 2010.

(END)