



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 437**

March 4, 2004 - Offered by Senator KEDZIE.

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

Analysis by the Legislative Reference Bureau

Under the current tax incremental financing (TIF) 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 suitable for industrial sites. 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 district 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 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, 23 years, or 27 years in certain cases, after the TID is created, whichever is sooner. TIDs are required to terminate, under current law and with one exception, once these costs are paid back, 16 years, or 20 years in certain cases, after the last expenditure identified in the project plan is made or when the creating city or village dissolves the TID, whichever occurs first. Under the exception, 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.

This substitute amendment authorizes towns to use tax incremental financing (TIF) for limited purposes. The town TIF authority that is created in this substitute amendment is based on current TIF law that applies to cities and villages, but is more limited in several respects, and imposes additional requirements on towns.

Under the substitute amendment, a town may use the town TIF law to expend money or incur monetary obligations, other than tax incremental bonds and notes, for a limited number of projects related to tourism, agriculture, manufacturing, or forestry. The allowable projects, and project costs, are limited to projects based on industrial classifications specified in the North American Industry Classification System published by the U.S. Office of Management and Budget. A town may also use the TIF law for residential projects, but only to the extent that the residential project has a necessary and incidental relationship to tourism, agriculture, manufacturing, or forestry. Under the bill, towns may also use the TIF law for retail projects to the extent that the retail development is related to the retail sale of a product that is produced due to an agriculture, manufacturing, or forestry project.

The town TIF law is more limited than the city and village TIF law and contains a number of other differences from current TIF law, including the following:

1. The expenditure period is 5 years, and the maximum life of a town TID is 16 years.
2. A project plan may be amended only once during the TID’s first 5 years of existence. Such an amendment may extend the expenditure period for an additional 2 years, but the amendment does not extend the maximum life of a town TID.
3. A town TIF proposal must contain findings that at least 75 percent of the real property within the district is to be used for one of the specified allowable projects.
4. DOR may impose on the town a \$1,000 fee to determine, or redetermine, a TID’s tax incremental base.
5. A town TID is subject to additional reporting requirements when the TID is terminated and must also report to DOR on annual expenditures.
6. Certain owners of taxable property located within or near a town that has created a TID, as well as cities and villages that border the town, and overlaying taxing districts, may request that DOR review whether the TID is expending money or incurring debt for an allowable project. If DOR grants the request for a review,

the secretary of revenue, or the secretary's designee, must hold a hearing and make a determination as to whether the town is in compliance with the law or has made expenditures or incurred debts that are not allowed. If the secretary determines that the town has acted improperly, the secretary may order that all ineligible costs be paid back or that the TID be terminated.

7. If a city or village annexes town territory that includes a TID, the city or village must pay the town the eligible costs that are attributable to the annexed territory.

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

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

3 20.566 (1) (go) Administration of tax incremental financing program. All
4 moneys received from the fees imposed under ~~s.~~ ss. 60.85 (5) (a) and 66.1105 (5) (a)
5 to pay the costs of the department of revenue in providing staff and administrative
6 services associated with tax incremental districts under ~~s.~~ ss. 60.85 and 66.1105.

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

8 **60.85 Town tax increment law. (1) DEFINITIONS.** In this section, unless a
9 different intent clearly appears from the context:

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

13 1. 111 - Crop production

14 2. 112 - Animal production

15 3. 1151 - Support activities for agriculture.

16 4. 1152 - Support activities for animal production.

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

1 (c) “Forestry project” means forestry activities classified in the North American
2 Industry Classification System, 1997 edition, published by the U.S. office of
3 management and budget, under the following industry numbers:

- 4 1. 113 – Forestry and logging.
- 5 2. 1153 – Support activities for forestry.

6 (d) “Highway” has the meaning provided in s. 340.01 (22).

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

- 10 1. 3116 – Animal slaughtering and processing.
- 11 2. 321 – Wood product manufacturing
- 12 3. 322 – Paper manufacturing.
- 13 4. 325193 – Ethyl alcohol manufacturing.

14 (f) “Personal property” has the meaning prescribed in s. 70.04.

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

19 (h) 1. “Project costs” means, subject to sub. (2) (b), any expenditures made or
20 estimated to be made or monetary obligations incurred or estimated to be incurred
21 by the town which are listed in a project plan as costs of public works or
22 improvements within a tax incremental district or, to the extent provided in subd.
23 1. j., without the district, plus any incidental costs, diminished by any income, special
24 assessments, or other revenues, including user fees or charges, other than tax
25 increments, received or reasonably expected to be received by the town in connection

1 with the implementation of the plan. Only a proportionate share of the costs
2 permitted under this subdivision may be included as project costs to the extent that
3 they benefit the tax incremental district. To the extent the costs benefit the town
4 outside the tax incremental district, a proportionate share of the cost is not a project
5 cost. “Project costs” include:

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

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

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

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

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

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

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

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

10 i. That portion of costs related to the construction or alteration of sewerage
11 treatment plants, water treatment plants or other environmental protection devices,
12 storm or sanitary sewer lines, water lines, or amenities on streets or the rebuilding
13 or expansion of streets the construction, alteration, rebuilding or expansion of which
14 is necessitated by the project plan for a district and is within the district.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (o) “Taxable property” means all real and personal taxable property located in
15 a tax incremental district.

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

- 19 1. 721214 — Recreational and vacation camps.
- 20 2. 721211 — Recreational vehicle parks and campgrounds.
- 21 3. 711212 — Racetracks.
- 22 4. Dairy product stores included in 445299.
- 23 5. Public golf courses included in 71391.

24 (q) “Value increment” means the equalized value of all taxable property in a tax
25 incremental district in any year minus the tax incremental base. In any year “value

1 increment” is positive if the tax incremental base is less than the aggregate value of
2 taxable property as equalized by the department of revenue; it is negative if that base
3 exceeds that aggregate value.

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

8 1. Create tax incremental districts and define the boundaries of the districts.

9 2. Cause project plans to be prepared, approve the plans, and implement the
10 provisions and effectuate the purposes of the plans.

11 3. Deposit moneys into the special fund of any tax incremental district.

12 4. Enter into any contracts or agreements, including agreements with
13 bondholders, determined by the town board to be necessary or convenient to
14 implement the provisions and effectuate the purposes of project plans. The contracts
15 or agreements may include conditions, restrictions, or covenants which either run
16 with the land or which otherwise regulate the use of land.

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

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

21 1. Agricultural projects.

22 2. Forestry projects.

23 3. Manufacturing projects.

24 4. Tourism projects.

1 5. Residential development, but only to the extent that it has a necessary and
2 incidental relationship to a project listed in subds. 1. to 4.

3 6. Retail development that is limited to the retail sale of products that are
4 produced due to a project that is developed under subd. 1., 2. or 3.

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

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

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

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

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

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

7 (e) At least 30 days before adopting a resolution under par. (h), holding of a
8 public hearing by the planning commission at which interested parties are afforded
9 a reasonable opportunity to express their views on the proposed project plan. The
10 hearing may be held in conjunction with the hearing provided for in par. (a). Notice
11 of the hearing shall be published as a class 2 notice, under ch. 985. The notice shall
12 include a statement advising that a copy of the proposed project plan will be provided
13 on request. Before publication, a copy of the notice shall be sent by 1st class mail to
14 the chief executive officer or administrator of all local governmental entities having
15 the 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, notice shall be sent to the
18 county board chairperson.

19 (f) Adoption by the planning commission of a project plan for each tax
20 incremental district and submission of the plan to the town board. The plan shall
21 include a statement listing the kind, number and location of all proposed public
22 works or improvements within the district or, to the extent provided in sub. (1) (h)
23 1. j., outside the district, an economic feasibility study, a detailed list of estimated
24 project costs, and a description of the methods of financing all estimated project costs
25 and the time when the related costs or monetary obligations are to be incurred. The

1 plan shall also include a map showing existing uses and conditions of real property
2 in the district; a map showing proposed improvements and uses in the district;
3 proposed changes of zoning ordinances, master plan, if any, map, building codes and
4 town ordinances; a list of estimated nonproject costs; and a statement of the proposed
5 method for the relocation of any persons to be displaced. The plan shall indicate how
6 creation of the tax incremental district promotes the orderly development of the
7 town. The town shall include in the plan an opinion of the town attorney or of an
8 attorney retained by the town advising whether the plan is complete and complies
9 with this section.

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

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

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

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

23 3. Assigns a name to the district for identification purposes. The first district
24 created shall be known as “Tax Incremental District Number One, Town of in

1 County”. Each subsequently created district shall be assigned the next consecutive
2 number.

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

7 5. Contains all of the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 district that has the power to levy taxes on the property within the tax incremental
2 district.

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

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

12 3. The representative chosen by the town under par. (a) 1. shall be the town
13 board chairperson, or his or her designee. If the town board chairperson appoints a
14 designee, he or she shall give preference to the person in charge of administering the
15 town's economic development programs, the town treasurer, or another person with
16 knowledge of local government finances.

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

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

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

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

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

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

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

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

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

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

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

1 a town to determine or redetermine the tax incremental base of a tax incremental
2 district under this subsection.

3 (b) Upon application in writing by the town clerk, in a form prescribed by the
4 department of revenue, the department shall determine according to its best
5 judgment from all sources available to it the full aggregate value of the taxable
6 property and, except as provided in par. (c), of the town-owned property in the tax
7 incremental district. Subject to sub. (10) (d), the department shall certify this
8 aggregate valuation to the town clerk, and the aggregate valuation constitutes the
9 tax incremental base of the tax incremental district. The town clerk shall complete
10 these forms upon the creation of a tax incremental district or upon the amendment
11 of a district's project plan and shall submit the application on or before December 31
12 of the year the tax incremental district is created, as defined in sub. (3) (h) 2. or, in
13 the case of an amendment, on or before December 31 of the year in which the changes
14 to the project plan take effect.

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

20 (d) 1. If the town adopts an amendment to the original project plan under sub.
21 (3) (j) for any district which includes additional project costs at least part of which
22 will be incurred after the period specified in sub. (6) (b) 1., the tax incremental base
23 for the district shall be redetermined by adding to the tax incremental base the value
24 of the taxable property, and, except as provided in par. (c), of the town-owned
25 property, that is added to the existing district as of the January 1 of the same

1 calendar year for a resolution adopted before October 1 or as of January 1 of the next
2 subsequent calendar year for a resolution adopted after September 30. The tax
3 incremental base as redetermined under this subdivision is effective for the purposes
4 of this section only if it exceeds the original tax incremental base determined under
5 par. (b).

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

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

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

24 (g) The department of revenue may not certify the tax incremental base as
25 provided in par. (b) until it determines that each of the procedures and documents

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

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

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

17 **(6) ALLOCATION OF POSITIVE TAX INCREMENTS.** (a) If the joint review board
18 approves the creation of the tax incremental district under sub. (4), positive tax
19 increments with respect to a tax incremental district are allocated to the town which
20 created the district for each year commencing after the date when a project plan is
21 adopted under sub. (3) (g). The department of revenue may not authorize allocation
22 of tax increments until it determines from timely evidence submitted by the town
23 that each of the procedures and documents required under sub. (3) (d) to (f) has been
24 completed and all related notices given in a timely manner. The department of
25 revenue may authorize allocation of tax increments for any tax incremental district

1 only if the town clerk and assessor annually submit to the department all required
2 information on or before the 2nd Monday in June. The facts supporting any
3 document adopted or action taken to comply with sub. (3) (d) to (f) are not subject to
4 review by the department of revenue under this paragraph except as provided under
5 par. (e). After the allocation of tax increments is authorized, the department of
6 revenue shall annually authorize allocation of the tax increment to the town that
7 created the district until the sooner of the following events:

8 1. The department of revenue receives a notice under sub. (10) and the notice
9 has taken effect under sub. (10) (b).

10 2. Sixteen years after the tax incremental district is created.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **(7) NOTIFICATION OF POSITION OPENINGS.** (a) Any person who operates for profit
12 and is paid project costs under sub. (1) (h) 1. a., d., i. and j. in connection with the
13 project plan for a tax incremental district shall notify the department of workforce
14 development and the local workforce development board established under 29 USC
15 2832, of any positions to be filled in the county in which the town which created the
16 tax incremental district is located during the period commencing with the date the
17 person first performs work on the project and ending one year after receipt of its final
18 payment of project costs. The person shall provide this notice at least 2 weeks prior
19 to advertising the position.

20 (b) Any person who operates for profit and buys or leases property in a tax
21 incremental district from a town for which the town incurs real property assembly
22 costs under sub. (1) (h) 1. c. shall notify the department of workforce development
23 and the local workforce development board established under 29 USC 2832, of any
24 position to be filled in the county in which the town creating the tax incremental

1 district is located within one year after the sale or commencement of the lease. The
2 person shall provide this notice at least 2 weeks prior to advertising the position.

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

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

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

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

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

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

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

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

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

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

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

9 **(10) NOTICE OF DISTRICT TERMINATION.** (a) A town which creates a tax
10 incremental district under this section shall give the department of revenue written
11 notice within 10 days of the termination of the tax incremental district under sub.
12 (9).

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

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

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

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

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

6 (a) Payment by the town from the special fund of the tax incremental district.

7 (b) Payment out of its general funds.

8 (c) Payment out of the proceeds of the sale of bonds or notes issued by it under
9 ch. 67.

10 (d) Payment out of the proceeds of the sale of public improvement bonds issued
11 by it under s. 66.0619.

12 (e) Payment as provided under s. 66.0713 (2) and (4) or 67.16.

13 (f) Payment out of the proceeds of revenue bonds or notes issued by it under s.
14 66.0621.

15 (g) Payment out of the proceeds of revenue bonds issued by the town as provided
16 by s. 66.1103, for a purpose specified in that section.

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

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

1 of the tax incremental base of the district next created which is attributable to the
2 overlapped area.

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

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

16 **(16) USE OF TAX INCREMENTAL FINANCING FOR INLAND LAKE PROTECTION AND**
17 **REHABILITATION PROHIBITED.** Notwithstanding sub. (11), no tax incremental financing
18 project plan may be approved and no payment of project costs may be made for an
19 inland lake protection and rehabilitation district or a county acting under s. 59.70
20 (8).

21 **(17) PAYMENT OF ELIGIBLE COSTS FOR ANNEXED TERRITORY, REDETERMINATION OF TAX**
22 **INCREMENTAL BASE.** If a city or village annexes territory from a town and if all or part
23 of the territory that is annexed is part of a tax incremental district created by the
24 town, the city or village shall pay to the town that portion of the eligible costs that
25 are attributable to the annexed territory. The city or village, and the town, shall

1 negotiate an agreement on the amount that must be paid under this subsection. The
2 department shall redetermine the tax incremental base of any parcel of real property
3 for which the tax incremental base was determined under sub. (5) if part of that
4 parcel is annexed under this subsection.

5 **(18) SUBSTANTIAL COMPLIANCE.** Substantial compliance with subs. (2), (3) (a),
6 (b), (c), (d), (e), (f), and (j), (4), and (5) (b) by a town that creates, or attempts to create,
7 a tax incremental district is sufficient to give effect to any proceedings conducted
8 under this section if, in the opinion of the department of revenue, any error,
9 irregularity, or informality that exists in the town's attempts to comply with subs.
10 (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b) does not affect substantial justice.
11 If the department of revenue determines that a town has substantially complied with
12 subs. (2), (3) (a), (b), (c), (d), (e), (f), and (j), (4), and (5) (b), the department of revenue
13 shall determine the tax incremental base of the district, allocate tax increments, and
14 treat the district in all other respects as if the requirements under subs. (2), (3) (a),
15 (b), (c), (d), (e), (f), and (j), (4), and (5) (b) had been strictly complied with based on the
16 date that the resolution described under sub. (3) (h) 2. is adopted.

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

18 [Laws of 1975, chapter 105] Section 1 (1) The legislature finds that the existing
19 system of allocating aggregate property tax revenues among tax levying
20 municipalities has resulted in significant inequities and disincentives. The cost of
21 public works or improvements within a city, town, or village has been borne entirely
22 by the city, town, or village, while the expansion of tax base which is stimulated,
23 directly or indirectly, by such improvements, benefits not only the city, town, or
24 village but also all municipalities which share such tax base. This situation is
25 inequitable. Moreover, when the cost to a city, town, or village of a public

1 improvement project exceeds the future benefit to the city, town, or village resulting
2 therefrom, the city, town, or village may decide not to undertake such project. This
3 situation has resulted in the postponement or cancellation of socially desirable
4 projects.

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

11 **SECTION 4. Initial applicability.**

12 (1) This act first applies to a tax incremental district that is created on October
13 1, 2004.

14 (END)