



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2003 Senate Bill 305

**Senate Substitute
Amendment 1 and Senate
Amendment 1 to Senate
Substitute Amendment 1**

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This memorandum describes Senate Substitute Amendment 1 and Senate Amendment 1 to Senate Substitute Amendment 1 to 2003 Senate Bill 305 (“the bill”), relating to tax incremental financing.

TAX INCREMENTAL DISTRICT (TID) PROPERTY VALUE LIMITS INCREASED

Under current law, a city or village may create a TID if either:

- The equalized value of the proposed TID (plus certain city or village property) and the equalized value of property in all existing TIDs in that city or village (plus certain city or village property) does not exceed 7% of the total equalized value of the city or village; or
- The equalized value of the proposed TID (plus certain city or village property) plus the value increment of all existing TIDs in the city or village does not exceed 5% of the total equalized value of the city or village.

The bill would repeal current law and instead provide that a city or village may create a TID if the equalized value of the proposed TID (plus certain city or village property) plus the value increment of all existing TIDs in the city or village does not exceed 12% of the total equalized value of the city or village.

PROVISIONS OF THE BILL RELATING TO JOINT REVIEW BOARDS

Under current law, each proposed TID is reviewed by a joint review board consisting of a representative of each of the following taxing jurisdictions within whose boundaries the TID would be created: the school board, the county, the technical college district, and the city or village. (The joint review board also includes one public member selected by the four representatives of the taxing

jurisdictions.) No TID may be created by a city or village unless it is approved by a majority of the joint review board.

The bill would make the following changes relating to joint review boards:

1. The bill would allow a city or village to create a standing joint review board to review all proposed TIDs instead of creating a separate joint review board for each proposed TID.
2. The bill would require the public school representative to a joint review board to be the school board president, or the president's designee. In appointing a designee, the school board president would be required to give preference to appointing the finance director for the school system or another person with knowledge of local government finances.
3. The bill would require that the county representative to the joint review board, the county executive in counties with a county executive or, and in counties without any county executive, the chairperson of the county board, or that person's designee. In appointing a designee, the county executive or county board chairperson would be required to give preference to appointing the county treasurer or another person with knowledge of local government finances.
4. The bill would require that the city representative would be the mayor (or city administrator, if appropriate) or the village board president, or that person's designee. In appointing a designee, the mayor or village board president would be required to give preference to appointing the person in charge of administering economic development programs for the city or village, the municipal treasurer, or another person with knowledge of local government finances.
5. The bill would require that the technical college representative to the joint review board be the director, or the director's designee. In appointing a designee, the director would be required to give preference to the district's chief financial officer or another person with knowledge of local government finances.
6. The bill provides that the joint review board may not approve a TID unless the board, in its approval of the resolution creating the TID, makes a "positive assertion" that, in its judgment, the development described in the TID project plan would not occur without the creation of a TID.
7. The bill requires a joint review board to give notice of its meetings to any special-purpose district with authority to levy property taxes within the TID.
8. Under current law, a joint review board is required to approve a resolution creating a TID not less than 10 days nor more than 30 days after receiving the resolution from the city or village. Under the bill, the joint review board would be required to act within 30 days after receiving the resolution.
9. The bill provides for shared school board representation on the joint review board if a union high school district and an elementary district each have authority to impose property taxes within the TID. The high school district and the elementary school district each have a

member of the joint review board under this provision, with each member having 1/2 of one vote.

MIXED-USE DEVELOPMENT TIDS AUTHORIZED

Under current law, a city or village may create a TID upon a finding that at least 50% of the territory of the TID is a blighted area, an area in need of rehabilitation or conservation work, or an area that is suitable for industrial sites and has been zoned for industrial use.

In addition to the types of TIDs authorized under current law, the bill would authorize a city or village to create a TID upon a finding that at least 50% of the territory of the TID is suitable for “mixed-use development.” “Mixed-use development” is defined in the bill to mean development that contains a combination of industrial, commercial, or residential uses, except that lands proposed for newly platted residential use, as shown on the project plan, may not exceed 35%, by area, of the real property within the district.

MAXIMUM LIFE OF TIDS MODIFIED

Under current law, a TID is terminated when sufficient tax increments have been received to pay off the TID project costs, or when the TID has reached the end of its statutorily designated maximum life, whichever occurs first. (One exception to this rule is for “donor” TIDs, which is discussed below). Under current law, the maximum life of a TID is generally 23 years.

Under this bill, the maximum life of a TID created for industrial development or for mixed-use development would be 20 years. The maximum life of a TID created to rehabilitate a blighted area or an area in need of rehabilitation would be 27 years. However, with respect to an industrial development or mixed-use development TID, a city or village could, during the 18th year of the TID’s existence, request the joint review board to approve an extension of the maximum life of the TID for five years. The joint review board may extend the life of the district for the period requested by the city or village. However, if the city or village provides the board with an independent audit that demonstrates that the district is unable to pay its project costs within the 20-year period, the joint review board must extend the life of the district for five years.

AMENDMENTS TO TIDS

Under current law, a city or village may amend the project plan of an existing TID, which generally requires the same process and findings as for creating a new TID. In addition, under current law, a city or village may, not more than once during the seven years after a TID is created, adopt an amendment to the project plan to add contiguous territory to a TID that is served by public works or improvements that were created as a part of the TID project plan. Expenditures for project costs that occur because of a territorial amendment to a project plan may be made for not more than three years after the date on which the amendment is approved.

The bill would authorize a city or village to adopt up to four territorial amendments to a TID at any time during the life span of the TID. In addition, the bill would provide that the limits on the value of property within a city or village that may be included within a TID and the inclusion of certain property owned by a city or village in the base of a TID also apply with respect to amendments to an

existing TID. In addition, the bill would repeal statutory language that authorizes expenditures for project costs incurred because of a territorial amendment or project plan to be made for not more than three years after the date on which the amendment is approved. The bill would also provide explicit statutory authority for a territorial amendment that subtracts property from an existing TID, provided that the subtraction of territory does not remove contiguity from the TID.

TID PROJECT EXPENDITURE PERIOD INCREASED

Under current law, for TIDs created after September 30, 1995, no expenditure for project costs may be made later than seven years after the TID is created. For TIDs created before October 1, 1995, no expenditure may be made later than 10 years after the TID is created.

The bill would allow expenditures for project costs to be made up to 15 years after the TID is created, for industrial or mixed-use development TIDs and for up to 22 years after the TID is created for “blighted area” or “area in need of rehabilitation” TIDs.

RESTRICTIONS ON CREATING TIDS ON LAND THAT IS ANNEXED FROM A TOWN

The bill restricts the circumstances under which land that is annexed from a town may be included in a TID. The bill provides that a TID may not include annexed territory, if that territory was not within the boundaries of the city or village on January 1, 2004, unless:

- Three years have elapsed since the territory was annexed;
- The city or village enters a cooperative plan boundary agreement under s. 66.0307, Stats., or another kind of agreement relating to the annexation with the town; or
- The city or village pledges to pay the town five years of property taxes on the value of the annexed land included in the TID. These payments would be eligible project costs that could be financed with tax increments.

DONATING TAX INCREMENTS FROM ONE TID TO ANOTHER

Under current law, under certain circumstances, a city or village may use tax increments from one TID to pay project costs of another TID in which the growth in property value has not been sufficient to pay the project costs. Except for TIDs located in certain statutorily designated municipalities, the donating of tax increments from one TID to another is generally restricted to TIDs created before 1995. One of the restrictions under current law is that the donor TID must have a positive tax increment in excess of the tax increments that is necessary to pay its project costs in that year.

Under the bill, the donor TID must be able to demonstrate, based on the positive tax increments that are currently generated, that it has sufficient revenues to pay for all project costs that have been incurred under the project plan and sufficient surplus revenues to pay for some of the eligible costs of the recipient TID.

In addition, the bill creates a new procedure for donating tax increments from one TID to another. Under this procedure, positive tax increments may be allocated from one TID to another if:

- The donor TID and the recipient TID have the same overlapping tax jurisdictions;
- The allocation of tax increments is approved by the joint review board;
- The donor TID has first satisfied all its current year debt service and project cost obligations;
- The project costs in the recipient TID are used to create, provide or rehabilitate low-cost housing or to remediate environmental contamination, or
- The recipient TID is a “blighted area” or an “area in need of rehabilitation” TID.

The bill provides that a city or village may not request an extension of the maximum life of a donor TID.

PROVISIONS THAT APPLY WHEN CASH GRANTS ARE PROVIDED TO DEVELOPERS AND LANDOWNERS

The bill prohibits cities and villages from using tax increments to provide cash grants to owners, developers, or lessees of land within the TID, unless the recipient of the grant has signed a “development agreement” with the city or village. The term “development agreement” is not defined but is intended to be an agreement under which, as a condition of receiving cash grants, the recipient agrees to meet certain standards specified by the city or village. In addition, if a city or village anticipates that the proposed project plan’s project costs may include cash grants made by the city or village to owners, lessees, or developers of land located within the TID, the public hearing notice required for the TID project plan must include a statement to that effect.

RESTRICTIONS ON USE OF TAX INCREMENTS TO PAY FOR RESIDENTIAL DEVELOPMENT MODIFIED

Under current law, with respect to TIDs created after September 30, 1995, tax increments may not be used to pay for project costs associated with a newly platted residential development.

The bill would allow tax increments to be used to pay for project costs associated with newly platted residential development in a mixed-use development TID under the following circumstances:

1. The density of the residential housing is at least three units per acre;
2. The residential housing is located in a “conservation subdivision.” A “conservation subdivision” is defined as a housing development in a rural setting that is characterized by compact lots and common open space, and where the natural features of the land are maintained to the greatest extent possible; or
3. The residential housing is located in a “traditional neighborhood development.” A “traditional neighborhood development” is defined as a compact, mixed-use neighborhood where residential, commercial, and civic buildings are within close proximity to each other.

ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

1. Under current law, the Department of Revenue (DOR) is prohibited from approving a TID if the statutory procedural steps have not been followed by the city or village. The bill provides that if the city or village substantially complies with the statutory procedures and the DOR determines that any error, irregularity, or informality in the city's or village's attempt to comply with the statutory procedures does not affect substantial justice, the department is then required to approve the TID.
2. The bill prohibits the DOR from certifying the tax incremental base of a proposed TID (therefore, not allowing the TID to continue) if the city or village has an amount of property in the proposed TID and existing TIDs that exceeds the statutory limits established under the bill.
3. Under current law, except for industrial TIDs, no more than 25% of the territory within a TID may consist of property standing vacant for an entire seven-year period immediately preceding the adoption of the resolution creating the TID. The bill provides that this restriction does not apply to vacant land that is contaminated by environmental pollution.
4. Under current law, a city or village must notify the DOR within 10 days after a TID is terminated. Under the bill, a city or village must notify the DOR within 60 days after the TID is terminated. In addition, the city or village and the DOR must establish a date by which the city or village will submit a report on the terminated TID to the DOR. This report would be required to contain a financial accounting of all expenditures made by the city or village; the total amount of project costs incurred by the city or village; the total amount of positive tax increments received by the city or village; and the total amount of project costs not paid for with tax increments that became obligations of the city or village after the TID was terminated. The DOR would be prohibited from certifying the tax incremental base for a future TID in a city or village which has not filed the completed TID termination report.
5. The bill provides that if a city or village annexes property from a town that includes property within an environmental remediation TID, the city or village and the town must negotiate an agreement on the amount that must be paid to the town to compensate for the annexation. The city or village must pay to the town that portion of the eligible TID project costs incurred by the town that are attributable to the annexed territory.
6. Under current law, the city or village planning commission must hold a public hearing on a proposed TID at least 30 days before adopting the TID resolution. The bill provides that the hearing must be held at least 14 days before adopting the resolution.
7. The bill requires a city or village, in its application to the DOR for certification of the tax incremental base of a TID, to include a statement of the percentage of territory within the TID which the city or village estimates will be devoted to retail business at the end of the TID expenditure period, if that estimate is at least 35%.

INITIAL APPLICABILITY

The following provisions of the bill apply to TIDs created on or after October 1, 2004 or to amendments to existing TIDs that take effect on or after October 1, 2004. All other provisions of the bill that are described in this memorandum but that are not listed below apply both to TIDs in existence on the date that the bill becomes law and to TIDs that are created after the bill becomes law.

1. Payments made by a city or village to a town to compensate for property taxes levied on annexed land may be paid from tax increments.
2. Cash grants made by a city or village to an owner, lessee, or developer of land that is located within a TID may not be paid from tax increments unless the grant recipient has signed a development agreement with the city or village.
3. The public hearing notice for a proposed TID must include a statement notifying the public if the proposed TID project costs include cash grants to be made to owners, lessees, or developers of land within the TID.
4. The restrictions imposed by the bill on a city or village that creates a TID that includes land annexed from a town.
5. The requirement that a TID resolution declare that the proposed TID is a blighted area district, a rehabilitation or conservation district, and industrial district or a mixed-use district.
6. The provisions of the bill relating to the composition of the joint review board.
7. The provisions of the bill that a joint review board may not approve a proposed TID unless it makes a positive assertion that, in its judgment, the development described in the TID project plan would not occur without the creation of a TID.
8. The requirement that a joint review board notify the governing body of any special-purpose district that has the authority to levy property taxes within the TID.
9. The requirement that the application filed by a city or village with the DOR to certify the tax incremental base of a TID must include the percentage of territory within the TID which the city or village estimates will be devoted to retail business at the end of the maximum expenditure period if that estimate is at least 35%.
10. The provisions of the bill providing a 20-year maximum life for industrial or mixed-use development TIDs (with a possible five-year extension).
11. The provisions of the bill providing a 27-year maximum life for blighted area or “area in need of rehabilitation” TIDs.
12. The provisions of the bill affecting when tax increments from one TID can be used to pay the project costs of another TID, that apply to certain TIDs created before 1995 or 1996.

13. The provisions of the bill changing from 10 to 60 the number of days after a TID is terminated within which the city or village must notify the DOR of the termination, and the reporting requirements imposed on a city or village with respect to a terminated TID.

SENATE AMENDMENT 1 TO SENATE SUBSTITUTE AMENDMENT 1

Senate Amendment 1 to Senate Substitute Amendment 1 is a technical amendment that clarifies the initial applicability and effective dates of the bill.

LEGISLATIVE HISTORY

On November 13, 2003, the Senate adopted Senate Substitute Amendment 1 to 2003 Senate Bill 305 as amended by Senate Amendment 1, and passed the bill, as amended, by a vote of Ayes, 20; Noes, 11. The Assembly concurred in the bill on January 20, 2004 by a vote of Ayes, 84; Noes, 12.

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