



1997 ASSEMBLY BILL 731

January 27, 1998 - Introduced by Representatives M. LEHMAN, GOETSCH, WOOD, F. LASEE, MUSSER, SPRINGER and BRANDEMUEHL. Referred to Committee on Ways and Means.

1 **AN ACT** *to renumber and amend* 66.46 (4) (gm) 4. b., 66.46 (4) (gm) 4. bm. and
2 66.46 (4) (gm) 4. c.; *to amend* 66.46 (4) (c), 66.46 (4) (gm) 4. (intro.), 66.46 (4)
3 (gm) 4. a., 66.46 (4) (h) 1., 66.46 (4) (h) 2., 66.46 (4m) (a), 66.46 (6) (a), 66.46 (6)
4 (am) 1. and 66.46 (7) (am); and *to create* 66.46 (2) (f) 4., 66.46 (3m), 66.46 (4)
5 (gm) 4. ac., 66.46 (4) (gm) 4. ag., 66.46 (4) (gm) 4. am., 66.46 (4) (h) 3., 66.46 (4m)
6 (d), 66.46 (5) (cg), 66.46 (6) (am) 5. and 66.46 (7) (ar) of the statutes; **relating**
7 **to:** revising the purposes for which tax incremental districts are created and
8 changing certain procedures that affect the way in which such districts are
9 operated.

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% 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, 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 creation by the city or village of a joint review board to review the proposal. The joint review board, which is made up of representatives of the overlying taxing jurisdictions of the proposed TID, must approve the project plan or the TID may not be created. If an existing TID project plan is amended by a planning commission, these steps are also required.

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

This bill changes the requirements related to real property that must exist before a city or village may create a TID. Under the bill, instead of a requirement that at least 50% of the area to be included in the TID be blighted, in need of rehabilitation or suitable for industrial sites, 2 new types of TIDs are created. Under the bill, an “economic enhancement area” TID may be created upon a finding by the common council or village board that in at least 2 of the 3 years preceding the year in which the proposed district is to be created the assessed value of the taxable property located in the proposed district declined compared to the assessed value of all of the taxable property in the city or village, without regard to the loss of value, if any, to property acquired by the city or village in which the proposed TID is located. Also under the bill, a “Greenfield” TID may be created upon a finding that 50% of the area of the real property within the proposed TID is unimproved or was acquired from a town by a city or village with the intent of creating a TID that contains that territory.

Current law also provides that in general, unless the project plan is amended, no expenditure of tax increments may be made later than 7 years, or 10 years in certain cases, after the TID is created. In no event, however, may the total number of years during which expenditures are made plus the total number of years during which tax increments are allocated exceed 27 years. Under the bill the maximum existence of an economic enhancement TID is 20 years after it is created, except that if land within the TID is affected by environmental pollution the maximum existence is 23 years. Under the bill, the maximum existence of a Greenfield TID is 18 years after it is created. The bill also provides that, if expenditures equal to at least 60% of the estimated project costs of an economic enhancement area TID are made not later than 10 years after the creation of the TID, or if expenditures equal to at least 60% of the estimated project costs of a Greenfield TID are made not later than 9 years after the creation of the TID, the remaining amount of estimated project costs may be made at any time that is not later than 3 years before the date on which the district is required to terminate.

Under the bill, no TID that includes land annexed from a town within 3 years of the proposed TID's creation date may be created if, at the time of the annexation, the city or village did not intend to include the annexed territory in a TID. A proposed TID that contains land annexed from a town with the intent of including it in a TID may be included in such a TID if the city or village presents evidence to, and satisfies, the joint review board that it has made a good faith effort to enter into a boundary agreement with the town before the TID's creation or if the city or village pays the town from which the land was annexed, over a 5-year period, an amount that is 5 times the product of the town's current year's net property tax rate and the assessed value of the land that was annexed.

Under current law, a joint review board may disband following approval or rejection of a proposed TID. Under the bill, a joint review board is required to meet annually to review progress on each TID in the city or village, and the city or village is required to make the records relating to each TID's expenditures and tax increment allocations during the previous year available to the board. The bill also requires that notices of all joint review board meetings that are held after the first meeting shall be sent to all board members, to the chief executive officer or administrator of all local governmental entities that may levy taxes on property located in the district and to certain town board chairs. If the board determines that a city or village has made expenditures for costs other than eligible project costs, the city or village must, within 2 years, reimburse the TID's special account from sources other than tax increments.

The bill also authorizes the planning commission of a city or village to modify a TID's boundary by removing territory from the TID if the planning commission determines, in writing, that all of the TID's costs have been or may be paid by tax increments that are generated from the smaller district. The bill also prohibits the use of tax increments for residential development or for retail development, except incidental retail use in part of a facility that is otherwise used for manufacturing purposes, in a Greenfield TID.

All of the changes to current law that are contained in this bill take effect on the first day of the 13th month beginning after publication, except that all changes that relate to the joint review board take effect on the day after publication.

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

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

- 1 **SECTION 1.** 66.46 (2) (f) 4. of the statutes is created to read:
- 2 66.46 (2) (f) 4. Notwithstanding subd. 1., project costs for a tax incremental
- 3 district, the authorizing resolution of which contains the findings described in sub.
- 4 (4) (gm) 4. ac., may not include any expenditures made or estimated to be made or

1 monetary obligations incurred or estimated to be incurred by the city for a residential
2 development or for a retail development, other than incidental retail use in part of
3 a facility that is otherwise used for manufacturing purposes.

4 **SECTION 2.** 66.46 (3m) of the statutes is created to read:

5 66.46 (3m) LIMITS ON TAX INCREMENTAL DISTRICT BOUNDARIES. (a) No city or
6 planning commission may include within the boundary of a tax incremental district
7 territory that has been annexed by the city and that has not been part of the city for
8 at least 3 years before the date on which the city or planning commission includes
9 the territory within the district's boundary if, at the time of the annexation, the city
10 did not intend to include the annexed territory in a tax incremental district.

11 (b) A city or planning commission may include within the boundary of a tax
12 incremental district territory that was annexed by the city, with the intent of the city
13 to include the annexed territory in a tax incremental district, if one of the following
14 conditions applies:

15 1. The city presents evidence to the joint review board under sub. (4m) (d)
16 showing that the city made a good faith effort to enter into a boundary agreement
17 with the town from which the land was annexed before the creation of the district and
18 if the joint review board determines that the city did make such a good faith effort.

19 2. The city pays to the town from which the land was annexed, in 5 equal annual
20 instalments or as otherwise agreed to by the city and the town, an amount that is
21 calculated as follows:

22 a. Determine the current year's net property tax rate of the town from which
23 the land was annexed.

1 b. Multiply the amount under subd. 2. a. by the assessed value of the land that
2 was annexed, as determined from the most recent assessment preceding the year in
3 which the land was annexed.

4 c. Multiply the amount under subd. 2. b. by 5.

5 **SECTION 3.** 66.46 (4) (c) of the statutes is amended to read:

6 66.46 (4) (c) Identification of the specific property to be included under par. (gm)
7 4., 1995 stats., as blighted or in need of rehabilitation or conservation work. Owners
8 of the property identified shall be notified of the proposed finding and the date of the
9 hearing to be held under par. (e) at least 15 days prior to the date of the hearing. In
10 cities with a redevelopment authority under s. 66.431, the notification required
11 under this paragraph may be provided with the notice required under s. 66.431 (6)
12 (b) 3., if the notice is transmitted at least 15 days prior to the date of the hearing to
13 be held under par. (e).

14 **SECTION 4.** 66.46 (4) (gm) 4. (intro.) of the statutes is amended to read:

15 66.46 (4) (gm) 4. (intro.) Contains findings that specify one of the following:

16 **SECTION 5.** 66.46 (4) (gm) 4. a. of the statutes is amended to read:

17 66.46 (4) (gm) 4. a. ~~Not~~ For a district that is created before the effective date
18 of this subd. 4. a. [revisor inserts date], that not less than 50%, by area, of the real
19 property within such district is at least one of the following: a blighted area; in need
20 of rehabilitation or conservation work, as defined in s. 66.435 (2m) (b); or suitable for
21 industrial sites within the meaning of s. 66.52 and has been zoned for industrial use;
22 and,

23 **SECTION 6.** 66.46 (4) (gm) 4. ac. of the statutes is created to read:

1 66.46 (4) (gm) 4. ac. That not less than 50%, by area, of the real property within
2 such district is unimproved or was acquired from a town by a city with the intent of
3 creating a tax incremental district which contains that territory.

4 **SECTION 7.** 66.46 (4) (gm) 4. ag. of the statutes is created to read:

5 66.46 (4) (gm) 4. ag. That in at least 2 of the 3 years preceding the year in which
6 the proposed district is to be created the assessed value of the taxable property
7 located in the proposed district declined compared to the assessed value of all of the
8 taxable property in the city. The comparison of assessed value under this subd. 4.
9 ag. shall be made without considering the loss of value, if any, to property acquired
10 by the city in which the proposed district is located.

11 **SECTION 8.** 66.46 (4) (gm) 4. am. of the statutes is created to read:

12 66.46 (4) (gm) 4. am. That in at least 2 of the 3 years preceding the year in which
13 the proposed district is to be created the assessed value of the taxable property
14 located in the proposed district has increased in value at a rate that is lower than the
15 rate of increase of the assessed value of all of the taxable property in the city. The
16 comparison of the rate of increase of assessed value under this subd. 4. am. shall be
17 made without considering the loss of value, if any, to property acquired by the city
18 in which the proposed district is located.

19 **SECTION 9.** 66.46 (4) (gm) 4. b. of the statutes is renumbered 66.46 (4) (gm) 6.
20 and amended to read:

21 66.46 (4) (gm) 6. The Confirms that the improvement of such an area described
22 under subd. 4. ac. is likely to enhance significantly the value of substantially all of
23 the other real property in such the district. It shall not be necessary to identify the
24 specific parcels meeting such criteria; and.

1 **SECTION 10.** 66.46 (4) (gm) 4. bm. of the statutes is renumbered 66.46 (4) (gm)
2 7. and amended to read:

3 66.46 (4) (gm) 7. ~~The~~ Confirms that the project costs relate directly to
4 eliminating blight, directly serve to rehabilitate or conserve the area or directly serve
5 to promote industrial development, consistent with the purpose for which the tax
6 incremental district is created under subd. 4. a.; ~~and~~

7 **SECTION 11.** 66.46 (4) (gm) 4. c. of the statutes is renumbered 66.46 (4) (gm) 8.
8 and amended to read:

9 66.46 (4) (gm) 8. ~~Either~~ Confirms that either the equalized value of taxable
10 property of the district plus all existing districts does not exceed 7% of the total
11 equalized value of taxable property within the city or the equalized value of taxable
12 property of the district plus the value increment of all existing districts within the
13 city does not exceed 5% of the total equalized value of taxable property within the city.

14 **SECTION 12.** 66.46 (4) (h) 1. of the statutes is amended to read:

15 66.46 (4) (h) 1. Subject to subd. subds. 2. and 3., the planning commission may
16 at any time, by resolution, adopt an amendment to a project plan, which amendment
17 shall be subject to approval by the local legislative body and approval of the
18 amendment shall require the same findings as provided in par. (g). Any amendment
19 to a project plan is also subject to review by a joint review board, acting under sub.
20 (4m). Adoption of an amendment to a project plan shall be preceded by a public
21 hearing held by the plan commission at which interested parties shall be afforded a
22 reasonable opportunity to express their views on the amendment. Notice of the
23 hearing shall be published as a class 2 notice, under ch. 985. The notice shall include
24 a statement of the purpose and cost of the amendment and shall advise that a copy
25 of the amendment will be provided on request. Prior to such publication, a copy of

1 the notice shall be sent by 1st class mail to the chief executive officer or administrator
2 of all local governmental entities having the power to levy taxes on property within
3 the district and to the school board of any school district which includes property
4 located within the proposed district. For any county with no chief executive officer
5 or administrator, this notice shall be sent to the county board chairperson.

6 **SECTION 13.** 66.46 (4) (h) 2. of the statutes is amended to read:

7 66.46 (4) (h) 2. Not more than once during the 7 years after the tax incremental
8 district is created, and subject to sub. (3m), the planning commission may adopt an
9 amendment to a project plan under subd. 1. to modify the district's boundaries by
10 adding territory to the district that is contiguous to the district and that is served by
11 public works or improvements that were created as part of the district's project plan.
12 Expenditures for project costs that are incurred because of an amendment to a
13 project plan to which this subdivision applies may be made for not more than 3 years
14 after the date on which the local legislative body adopts a resolution amending the
15 project plan.

16 **SECTION 14.** 66.46 (4) (h) 3. of the statutes is created to read:

17 66.46 (4) (h) 3. The planning commission may adopt an amendment to a project
18 plan under subd. 1. to modify the district's boundaries by removing territory from the
19 district if the planning commission issues a written determination that all of the
20 district's project costs which have been, or may be, incurred will be paid for by tax
21 increments that are generated from the smaller district.

22 **SECTION 15.** 66.46 (4m) (a) of the statutes is amended to read:

23 66.46 (4m) (a) Any city that seeks to create a tax incremental district or amend
24 a project plan shall convene a joint review board to review the proposal. The board
25 shall consist of one representative chosen by the school district that has power to levy

1 taxes on the property within the tax incremental district, one representative chosen
2 by the technical college district that has power to levy taxes on the property within
3 the tax incremental district, one representative chosen by the county that has power
4 to levy taxes on the property within the tax incremental district, one representative
5 chosen by the city and one public member. If more than one school district, more than
6 one technical college district or more than one county has the power to levy taxes on
7 the property within the tax incremental district, the unit in which is located property
8 of the tax incremental district that has the greatest value shall choose that
9 representative to the board. The public member and the board's chairperson shall
10 be selected by a majority of the other board members before the public hearing under
11 sub. (4) (a) or (h) 1. is held. All board members shall be appointed and the first board
12 meeting held within 14 days after the notice is published under sub. (4) (a) or (h) 1.
13 The board shall meet at least annually to review the developments occurring in each
14 tax incremental district in the city. Additional meetings of the board shall be held
15 upon the call of any member. Notices of all joint review board meetings that are held
16 after the first meeting shall be sent by the board's chair to all of the other board
17 members, the chief executive officer or administrator of all local governmental
18 entities that have the power to levy taxes on property located within the district and
19 the town board chair of each town from which property was annexed by a city if the
20 property is located within the district and if the town is receiving a payment
21 described under sub. (3m) (b) 2. If the board determines that a city has made
22 expenditures from the special fund described under sub. (6) (c) for purposes other
23 than the purposes that are authorized under sub. (6) (c), the city shall reimburse the
24 special fund, from sources other than tax increments, in the amount of the improper
25 expenditure not later than 2 years after the board makes such a determination. The

1 city that seeks to create the tax incremental district or to amend its project plan shall
2 provide administrative support for the board. ~~By majority vote, the board may~~
3 ~~disband following approval or rejection of the proposal~~ and shall provide the board,
4 before its annual meeting, with records of each district's expenditures during the
5 most recently concluded fiscal year and the tax increment allocations received by
6 each district in the most recently concluded fiscal year. If the department of revenue
7 sends informational materials or instructions to a joint review board that explain the
8 board's duties and responsibilities, the department shall include instructions on the
9 board's duties when the board conducts its annual review of the developments
10 occurring in each tax incremental district in the city.

11 **SECTION 16.** 66.46 (4m) (d) of the statutes is created to read:

12 66.46 (4m) (d) Not later than 21 days after receiving from the city the evidence
13 described in sub. (3m) (b) 1., the joint review board shall determine whether the city
14 made a good faith effort to enter into a boundary agreement with the town from
15 which the land was annexed before the creation of the district. The joint review board
16 shall submit its decision to the city and to the town no later than 7 days after the
17 board makes its determination.

18 **SECTION 17.** 66.46 (5) (cg) of the statutes is created to read:

19 66.46 (5) (cg) If the city adopts an amendment to which sub. (4) (h) 3. applies,
20 the tax incremental base for the district shall be redetermined by subtracting from
21 the tax incremental base the assessed value of the taxable property that is deleted
22 from the existing district under sub. (4) (h) 3., as of the January 1 next preceding the
23 effective date of the amendment if the amendment becomes effective between
24 January 2 and September 30, as of the next subsequent January 1 if the amendment
25 becomes effective between October 1 and December 31, and, if the effective date of

1 the amendment is January 1 of any year, as of that date. The tax incremental base,
2 as redetermined under this paragraph, is effective for the purposes of this section
3 only if it is less than the original tax incremental base determined under par. (b).

4 **SECTION 18.** 66.46 (6) (a) of the statutes is amended to read:

5 66.46 (6) (a) If the joint review board approves the creation of the tax
6 incremental district under sub. (4m), positive tax increments with respect to a tax
7 incremental district are allocated to the city which created the district for each year
8 commencing after the date when a project plan is adopted under sub. (4) (g). The
9 department of revenue shall not authorize allocation of tax increments until it
10 determines from timely evidence submitted by the city that each of the procedures
11 and documents required under sub. (4) (d) to (f) have been completed and all related
12 notices given in a timely manner. The department of revenue may authorize
13 allocation of tax increments for any tax incremental district only if the city clerk and
14 assessor annually submit to the department all required information on or before the
15 2nd Monday in June. The facts supporting any document adopted or action taken
16 to comply with sub. (4) (d) to (f) shall not be subject to review by the department of
17 revenue under this paragraph. Thereafter, the department of revenue shall
18 annually authorize allocation of the tax increment to the city that created such a
19 district until the department of revenue receives a notice under sub. (8) and the
20 notice has taken effect under sub. (8) (b), 27 years after the tax incremental district
21 is created if the district is created before October 1, 1995, ~~or~~; 23 years after the tax
22 incremental district is created if the district is created after September 30, 1995, and
23 if the authorizing resolution of such a district contains the findings described in sub.
24 (4) (gm) 4. a.; 20 years after the tax incremental district is created if the district is
25 created on or after the effective date of this paragraph [revisor inserts date], and

1 if the authorizing resolution of such a district contains the findings described in sub.
2 (4) (gm) 4. ag. or am., except that, if soil within such a district is affected by
3 environmental pollution to the extent that development has not been able to proceed
4 according to the project plan because of the environmental pollution, 23 years after
5 the district is created; 18 years after the tax incremental district is created if the
6 district is created on or after the effective date of this paragraph [revisor inserts
7 date], and if the authorizing resolution of such a district contains the findings
8 described in sub. (4) (gm) 4. ac., except that, if soil within such a district is affected
9 by environmental pollution to the extent that development has not been able to
10 proceed according to the project plan because of the environmental pollution, 23
11 years after the district is created; whichever is sooner.

12 **SECTION 19.** 66.46 (6) (am) 1. of the statutes, as affected by 1997 Wisconsin Act
13 27, is amended to read:

14 66.46 (6) (am) 1. ~~For~~ Except as provided in subd. 5., for a tax incremental
15 district that is created after September 30, 1995, no expenditure may be made later
16 than 7 years after the tax incremental district is created, and for a tax incremental
17 district that is created before October 1, 1995, no expenditure may be made later than
18 10 years after the tax incremental district is created, except that, for a tax
19 incremental district that is created before October 1, 1995, and which receives tax
20 increments under par. (d), no expenditure may be made later than 12 years after the
21 tax incremental district is created.

22 **SECTION 20.** 66.46 (6) (am) 5. of the statutes is created to read:

23 66.46 (6) (am) 5. For a tax incremental district that is created after the effective
24 date of this subdivision [revisor inserts date], and except as provided in subd. 1.,
25 if expenditures equal to at least 60% of the district's estimated project costs are made

1 not later than 9 years after the creation of a tax incremental district, the authorizing
2 resolution of which is described in sub. (4) (gm) 4. ac., or not later than 10 years after
3 the creation of a tax incremental district, the authorizing resolution of which is
4 described in sub. (4) (gm) 4. ag. or am., expenditures equal to the remaining amount
5 of estimated project costs may be made not later than 3 years before the date on which
6 the district is required to terminate under sub. (7).

7 **SECTION 21.** 66.46 (7) (am) of the statutes is amended to read:

8 66.46 (7) (am) ~~Sixteen~~ For a district, the authorizing resolution of which is
9 described under sub. (4) (gm) 4. a., 16 years after the last expenditure identified in
10 the project plan is made if the district to which the plan relates is created after
11 September 30, 1995, or 20 years after the last expenditure identified in the project
12 plan is made if the district to which the plan relates is created before October 1, 1995,
13 except that in no case may the total number of years during which expenditures are
14 made under par. (am) 1. plus the total number of years during which tax increments
15 are allocated under this paragraph exceed 27 years.

16 **SECTION 22.** 66.46 (7) (ar) of the statutes is created to read:

17 66.46 (7) (ar) 1. For a district, the authorizing resolution of which is described
18 under sub. (4) (gm) 4. ac., 11 years after the last expenditure identified in the project
19 plan is made, or 16 years after the last expenditure identified in the project plan is
20 made if soil within such a district is affected by environmental pollution to the extent
21 that development has not been able to proceed according to the project plan because
22 of the environmental pollution, except that in no case may the total number of years
23 during which expenditures are made under sub. (6) (am) 1. plus the total number
24 of years during which tax increments are allocated under this subdivision exceed 23
25 years.

