



Staff Brief

Review of Tax Incremental Financing



July 9, 2014

SB-2014-02

Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, WI 53703-3382
Phone: (608) 266-1304
Fax: (608) 266-3830

www.legis.wisconsin.gov/lc

INTRODUCTION

This Staff Brief describes current Wisconsin law that is relevant to the discussion of policy options related to tax incremental financing (TIF).

TIF is a tool that cities, villages, towns, and certain counties (political subdivisions) often use to spur economic development. The TIF process allows a political subdivision to pay for public improvements within a designated portion of the political subdivision, called a tax incremental district (TID), using the future taxes collected on the TID's increased property value to repay the cost of the improvements. The rationale behind TIF is that the political subdivision's public improvements will encourage development, accompanied by an increase in property value that would not have otherwise occurred.

Wisconsin cities and villages have been able to use TIF since 1975. In 1997, cities, villages, towns, and counties were granted the authority to conduct environmental remediation in certain TIDS. In 2004, TIF law was expanded so that towns could also utilize TIF. As of October 1, 2006, the county board of a county in which no cities or villages are located (currently, Florence and Menominee Counties) may also utilize city and village TIF procedures. Because town TIF authority is somewhat different, this Staff Brief discusses city and village TIF authority separately from town TIF authority.

- *Part I* provides an overview of the TIF concept and city and village TID creation.
- *Part II* describes TID amendments, decrements, audits, termination, and extensions of normal TID termination dates.
- *Part III* describes special cases, including town TIDs, multijurisdictional TIDs, and environmental remediation TIDs.

This Staff Brief was prepared by Scott Grosz and Melissa Schmidt, Senior Staff Attorneys.

PART I – OVERVIEW AND TID CREATION

The general TIF law applicable to all cities and villages (and certain towns) may be found in s. 66.1105, Stats. This Part describes how a TID may be created, how long it may exist, and the requirements that must be fulfilled for a city or village to reap the tax benefits of the TID. It also includes a brief overview of some of the basic concepts behind TIF law.

BASIC TIF CONCEPTS

Base Values

Following TID creation, the Department of Revenue (DOR) determines the equalized value of the taxable property within the district. This is referred to as the TID's base value. The equalized value of certain city- and village-owned tax exempt property must also be included in the base value. Inclusion of this property prevents cities and villages from purchasing property prior to creating a TID in order to lower the TID's base value and create more tax increments than would have been created if the property had been taxable at the time the TID was created. [s. 66.1105 (2) (j) and (5), Stats.]

Value Increments and Tax Increments

If the property value increases beyond the base value, this increase is called a value increment. The DOR determines the value increment each year by subtracting the base value from the current sum of all of the taxable property value in the TID. Tax collected on the value increment is called the tax increment. The tax increment equals the value increment multiplied by the property tax levy of all jurisdictions levying taxes in the city or village. The city or village, as well as the county, school district, and technical college district, or any other tax district, do not receive the amount of revenues from their tax levy on the value increment. Instead, this money is collected and allocated to a special tax increment fund. This fund is used by the city or village to pay for the TID's project costs, including public works and other improvements in the TID, as a way to stimulate increases in property value.¹ [s. 66.1105 (2) (i) and (m) and (5), Stats.]

TID project costs are expenditures that may be made or estimated to be made, or monetary obligations that may be incurred or estimated to be incurred by the city or village and which are listed in the project plan. Section 66.1105 (2) (f), Stats., provides the following examples of expenditures that may be included as project costs:

- Capital costs, including costs of construction of public works and infrastructure, new buildings, demolition, remodeling, and repair of existing buildings, acquisition of equipment, soil and groundwater remediation, and site preparation.

¹ For further information on how tax increments work and are calculated, see Wisconsin DOR, *Wisconsin Tax Incremental Finance Manual*, ch. 1.2, found at: <http://www.dor.state.wi.us/pubs/slf/tif/cvmanual.html>.

- Financing costs.
- Real property assembly costs.
- Professional services.
- Imputed administrative costs incurred by the city or village in connection with project plan implementation.
- Relocation costs.
- Organizational costs such as the completion of studies and public information campaigns relating to the TID.
- Contributions for blight elimination under s. 66.1333, Stats.
- Discretionary payments that are necessary or convenient to the creation of the TID, including payments to a town in relation to property taxes levied on TID property.
- Costs related to construction or alteration of sewerage treatment plants, water treatment plants, environmental protection devices, storm or sanitary sewer lines, water lines, streets, and street amenities within the TID.
- Removal or containment of lead contamination.
- Cash grants to owners, lessees, or developers of land within the TID, provided the grant recipient has signed a development agreement with the city or village.

TID project costs must be expended within the TID's boundaries or the territory located within one-half mile of the district's boundaries and within the city or village that creates the district. Except for those extra-territorial expenditures, to the extent costs benefit the city or village outside the TID, the proportionate share of the costs do not qualify as project costs. For example, general operating expenses, unrelated to planning or development of a TID, do not qualify as project costs. Similarly, project costs may not, generally, include the costs of construction or expansion of municipal or other public buildings. [s. 66.1105 (2) (f), Stats.]

Payment for Project Costs

Generally, a city or village may pay for project costs with: (1) tax increments; (2) money from its general fund, that will be reimbursed when tax increments are generated; or (3) proceeds of notes or bonds specifically issued to finance TIF project costs. Typically, no expenditure may be made later than five years prior to the unextended termination date of the TID. [s. 66.1105 (6) (am) 1., Stats.]

CREATION OF A TID

There are numerous procedural requirements that must be satisfied before a TID may be created. These procedural requirements can be divided into three steps: (1) preparation; (2) notices and hearings; and (3) resolutions. [*Wisconsin Tax Incremental Finance Manual*, ch. 2.1.]

Step 1: Preparation

The first step in creating a TID is for the city or village’s planning commission (hereinafter, “planning commission”) to create a project plan. The following items must be included in the final plan:

- A statement of the kind, number, and location of proposed public works.
- An economic feasibility study.
- A detailed list of project costs, including financing costs.
- A description of the methods of financing and the time when the related costs or monetary obligations are to be incurred.
- A map showing the existing uses and conditions of real property in the district.
- A map showing the proposed improvements and uses in the district.
- The proposed changes in zoning ordinances, master plan, building codes, map, and city ordinances.
- A list of estimated nonproject costs.
- The proposed method for relocating any persons being displaced.
- An indication of how the TID’s creation promotes the orderly development of the city or village.
- A signed attorney’s opinion that the plan is complete and complies with Wisconsin’s TIF law.

[s. 66.1105 (4) (f), Stats.]

Step 2: Notices and Hearings

The planning commission must hold a public hearing to give the public a reasonable opportunity to express their views on: (1) the proposed creation of a TID and the proposed boundaries of the district; and (2) the proposed project plan. [s. 66.1105 (4) (a) and (e), Stats.] The planning commission may also hold one public hearing on both issues or separate public hearings to address each issue.

Step 3: Resolutions on the Project Plan

After the public hearing is held, the TID project plan must be reviewed and recommended by the following three decision-making bodies: (1) the planning commission; (2) the city or village legislative body; and (3) the Joint Review Board (JRB). Before the TID may be created, these bodies must adopt resolutions supporting its creation.

Planning Commission

The first body to review and recommend a TID is the planning commission that convened the public hearing or hearings. If the planning commission adopts a resolution recommending a

final version of the project plan, the resolution must also designate the TID's boundaries and include a finding that creation of the TID promotes orderly development in the city or village. [s. 66.1105 (4) (f), Stats.]

City or Village Legislative Body

If the planning commission adopts a resolution recommending a final TID project plan, the final project plan is sent to the city or village's legislative body for review. The legislative body is the second body to review the creation of a TID and may approve the plan by passing a creation resolution. However, the public hearing for the public to discuss the proposed project plan (described in Step 2, above) must take place at least 14 days before the legislative body can take any formal action.

Among the various items that must be included in the creation resolution, the resolution must include:

- A finding that the TID has not less than 50% of the real property that is one of the following: a **blighted area**, in need of **rehabilitation or conservation** work, suitable for **industrial sites** and zoned for industrial use, or suitable for **mixed-use development**.
- A finding that the TID complies with the **12% rule**. The 12% rule requires that the equalized value of the taxable property in the TID, plus the value increments of all existing TIDs does not exceed 12% of the total equalized value in the city or village.

[s. 66.1105 (4) (gm) 4. a. and c., Stats.]

Joint Review Board

As previously stated, taxes collected on the value increment of the TID are used to pay back project costs in the TID. The various taxing jurisdictions with authority to tax real property in the proposed TID do not receive these revenues. On account of the forgone revenues, these taxing jurisdictions have the opportunity to approve or deny the TID. The JRB is made up of five representatives, one each from the school district,² technical college district, county, and city or village where the TID is located, along with one public member selected by a majority of the other board members before the planning commission holds the public hearing or hearings. [s. 66.1105 (4m) (a), Stats.]

In order for the TID to be created, the JRB must approve its creation by a majority vote within 30 days of receiving the planning documents. If the local legislative body adopted a creation resolution, then before approving the TID, the JRB is required to review the public record, the planning documents, and the resolution passed by the local legislative body. [s. 66.1105 (4m) (b) 1., Stats.] The JRB may also decide to hold more public hearings in addition to the initial public hearing or hearings held by the planning commission. [s. 66.1105 (4m) (b) 1., Stats.] Further, the

² If the TID is served by a union high school district, then there will be two school members with half of a vote each: (a) a representative of the primary school district serving the largest area; and (b) a representative of the union high school district. [s. 66.1105 (4m), Stats.]

statutes provide a process by which the JRB may request DOR to review objective facts in any of the documents sent by the local legislative body.

The local legislative body must send the following information to the JRB for its review:

- The specific items that constitute the project costs, the total dollar amount of project costs projected to be paid with tax increments, and the projected amount of tax increments to be generated over the life of the TID.
- The projected equalized value of the value increment when the project costs are paid in full and the TID is terminated.
- The reasons why the project costs may not or should not be paid by the owners of the property that will benefit from the public improvements within the TID.
- The share of the projected tax increments estimated to be paid by the owners of the taxable property in each of the taxing jurisdictions overlying the TID.
- The benefits that the owners of the taxable property in the overlying taxing jurisdictions will receive to compensate them for their share of the projected tax increments paid.

[s. 66.1105 (4) (i), Stats.]

Upon reviewing the information sent by the local legislative body, the JRB must base its approval or denial of the local legislative body's creation resolution on the following criteria:

- Whether the development expected in the TID would occur without the use of TIF (a finding that “**but for**” the TID development would not occur).
- Whether the economic benefits of the TID, as measured by increased employment, business, and personal income and property value, are insufficient to pay for the cost of improvements in the TID.
- Whether the benefits outweigh the anticipated tax increments to be paid by property owners in the overlying taxing districts.

[s. 66.1105 (4m) (c) 1., Stats.]

The “But For” Test

As noted above, one of the most important findings that is required in order to create a TID is satisfaction of the “but for” test, named after the obligation of the JRB to conclude that the development undertaken in the TID would not occur in the absence of (“but for”) the public investment in the development, based on evidence submitted to the JRB by the local legislative body. [s. 66.1105 (4m) (c), Stats.] From a policy perspective, the goal of the “but for” test may be characterized as an effort to ensure that the TIF process is used to fund only those developments that truly require public assistance and that would not arise through traditional private-sector development. Satisfaction of the test is intended to ensure that TIF expenditures are made in order to spur development that would otherwise not occur, rather than to simply increase the profit that flows to a development that would arise regardless of public investment.

DOR'S ROLE IN APPROVING TIF APPLICATIONS

One of the responsibilities given to DOR is the responsibility to determine and certify the TID's base value and tax increments. DOR is also required to approve TIF applications, monitor compliance with certain mixed-use development requirements, and create and update a manual on the TIF program. [*Wisconsin Tax Incremental Finance Manual*, ch. 4.1, p.1.]

Certification of the Base Value

After a TID is created, the local municipal clerk submits certain application documents to DOR on or before October 31 of the year that the TID is created.³ [s. 66.1105 (5) (b), Stats.] DOR uses these documents to determine (or to redetermine) and certify the TID's base value and may impose a fee of \$1,000 to do so. [s. 66.1105 (5) (a), Stats.]⁴ As previously mentioned, increases in the TID's property value are measured against the base value of the property located in the TID prior to any development.

In addition to reviewing the procedural requirements, DOR also evaluates whether the TID exceeds the 12% rule. DOR may not certify the base value until it reviews and approves the city or village's finding that the equalized property value in the TID plus the value increment of all existing TIDs does not exceed 12% of the total equalized value of taxable property within the city. [s. 66.1105 (5) (d), Stats.]

Cities and villages may amend their project plan so that the TID is in compliance if the TID exceeds the 12% rule. If DOR determines that the TID exceeds the 12% rule, the city or village may either rescind its approval of the project plan or remove parcels of land so that the TID complies with the 12% limit. If the city or village decides to remove parcels of land, then it must resubmit the creation application to DOR within 30 days of receiving the noncompliance notice. [s. 66.1105 (12), Stats.]

While TIDs are technically created before the application documents are filed, the city or village may not receive the tax increments until DOR certifies various items. For example, if the city or village starts work before DOR certifies the base value of the TID, and DOR finds a problem which prohibits certification of the base, the city or village may not be able to receive tax increments resulting from an increase in the district's base value. [*Wisconsin Tax Incremental Finance Manual*, ch. 4.]

DOR Certification of Tax Increments

In order to receive any tax increments from an increase in the base value, each year the municipal clerk must submit a **Tax Increment Certification Report** to DOR by May 15. The statutes also require that the tax assessor submit a final report before the second Monday in June. DOR uses these reports to verify and certify the value of that year's tax increment to be allocated to the

³ A complete list of TID application materials is available on DOR's website at: <http://www.revenue.wi.gov/forms/govtif/pe-109.pdf>.

⁴ DOR may impose a fee of \$2,000 if the redetermination is based upon a single amendment to a project plan that both adds and subtracts TID territory. [s. 66.1105 (5) (a), Stats.]

city or village for repaying the costs of development. [*Wisconsin Tax Incremental Finance Manual*, ch. 4.1, p. 2.]

In the certification report submitted to DOR, the municipal clerk must include: (1) a request that DOR certify tax increments; (2) a list of any project plan amendments; and (3) an annual report. For the year that the TID terminates, the clerk must also submit to DOR a certified public accountant audit, discussed later in Part II of this brief.

Substantial Compliance

Not all municipal errors prevent DOR from determining the base value of a TID. In certain circumstances, DOR has the discretion to determine if the city or village has substantially complied with TIF requirements. DOR may decide there is substantial compliance if certain actions undertaken by the city or village in creating or attempting to create a TID do not affect “substantial justice.” [s. 66.1105 (15), Stats.] These actions are generally procedural in nature, including procedures undertaken by the planning commission, the JRB, and the clerk’s creation application documents. DOR determines substantial compliance on a case-by-case basis. [*Wisconsin Tax Incremental Finance Manual*, ch. 4.3.]

Alternative Method to Create a TID in Recently Annexed Town Territory

2013 Wisconsin Act 193 created an alternative method for a city or village to create a TID in recently annexed town territory. The alternative method allows a city or village to create a TID in former town territory outside of the 12% rule until the year 2016. Under this alternative method, the city or village may create a TID under this alternative method with the following limitations:

- The city or village holds a hearing on a proposed TID within 90 days of annexing the town territory.
- The TID terminates either seven years after the TID’s creation, or when the city or village has paid off all of the project costs, whichever is earlier.
- The TID may only make expenditures until October 1, 2016.
- The TID may not become a donor TID.

[s. 66.1105 (19), Stats.]

PART II – TID MANAGEMENT AND TERMINATION

TID AMENDMENTS

A TID may be amended for four reasons: (1) to modify the project plan; (2) to add or subtract property; (3) to extend the maximum life span; and (4) to donate tax increments to another TID. [*Wisconsin Tax Incremental Finance Manual*, ch. 2.2., p. 1.]

The amendment process is very similar to the process for creating a TID. For example, the planning commission must hold a public hearing. Also, the planning commission, the local legislative body, and the JRB all must adopt resolutions approving the amendment. However, there are statutory limits on the number of amendments. The limits on amendments depend on the type of amendment. For example, there is no limit as to the number of amendments to the project plan. However, the maximum number of territory amendments that may be adopted during the TID's lifespan is four. [s. 66.1105 (4) (h) 2., Stats.] Also, only certain types of TIDs may amend their maximum life span (discussed later in this Part).

REDETERMINATION OF TID BASE VALUE IN DECREMENT SITUATIONS

Generally, as part of the process of creating a TID, discussed in Part I, DOR will calculate a base value for the TID. Typically, during the TID's lifespan, property values of the property in the TID will rise above the base value, and the portion of taxes collected on the increase in property values will be used to pay back the project costs of the TID.

Current law, as affected by 2013 Wisconsin Act 183, addresses the situation where property values of the property in a TID do not rise, as expected, but instead fall. Under s. 66.1105 (5) (h), Stats., a city or village may, subject to JRB approval, request that DOR redetermine the base value of a TID that is in a "decrement situation" that continues for at least two consecutive years. Section 66.1105 (2) (aj), Stats., defines "decrement situation" as a decline in current value of TID property of at least 10% compared to the current base value of the TID. Section 66.1105 (5) (h), Stats., specifies that a city or village may request redetermination of the base value of a TID in a decrement situation once during the lifespan of the TID, and DOR may, pursuant to s. 66.1105 (5) (a), Stats., impose a fee of \$1,000 for the redetermination. Additionally, prior to redetermination by DOR, the city or village must complete a financial analysis of the TID, and must amend the TID project plan to satisfy at least one of the following requirements:

- With regard to the total value of public infrastructure improvement in the district that occurs after JRB approval, that at least 51% of the value of the improvements must be financed by a private developer or other private entity in return for the city or villages agreement to repay those costs solely through the payment of cash grants, and that cash grants must be paid via a development agreement with the city or village.
- That all project costs are expected to be paid within 90% of the TID's remaining life.

- That expenditures may be made only within the first half of the TID’s remaining life, unless approved by unanimous vote of the JRB, and subject to the generally applicable limitations or the timing of expenditures under TIF law.

[s. 66.1105 (5) (i), Stats.]

FINANCIAL AUDITS AND REPORTS

A TID must be audited by a certified public accountant at least three times. The purpose of the audits is to determine if all financial transactions are made in a legal and proper manner, as well as to determine if the TID is complying with its project plan and with TIF law. The city or village must have audits conducted at the following times: (1) no later than 12 months after 30% of the project expenditures are made; (2) 12 months after the end of the allowable expenditure period; and (3) 12 months after the termination of the TID. In addition, if a city or village has an annual general audit, it may include the TID’s audit as part of the annual general audit. [ss. 66.1105 (6m) (a) and (b), Stats.]

Annual reports describing the status of each existing TID, including expenditures and revenues, are also required. The city or village must prepare and make updated annual reports available to the public and send a copy of the report to each overlying taxing district annually by May 1. [s. 66.1105 (6m) (c), Stats.]

TID TERMINATION

Termination Date

The general rule is that a TID must terminate at the earliest of the following events: (1) all of the TID’s project costs are repaid using the tax increments; (2) the local legislative body dissolves the TID by resolution; or (3) the TID reaches its statutory maximum life span. [s. 66.1105 (7), Stats.] The statutory maximum life span depends upon when the TID was created and the type of TID. As previously stated, TIDs may be amended to extend the maximum life span. The following chart lists the statutory maximum life spans for each type of TID created under s. 66.1105, Stats., and the maximum extension of the TID’s life span that may be allowed if it is unable to pay off its project costs before the end of maximum life span.

Maximum Life Span of Tax Incremental Districts by Project Type

TID Project	Maximum Life Span	Maximum Extension of Life Span
Districts Created Before October 1, 1995 <ul style="list-style-type: none"> • Any District 	27 years	None
Districts Created between October 1, 1995 and September 30, 2004 <ul style="list-style-type: none"> • Blighted Districts, and Rehabilitation or Conservation Districts • Industrial Districts 	27 years 23 years	4 years None

TID Project	Maximum Life Span	Maximum Extension of Life Span
Districts Created on or after October 1, 2004		
<ul style="list-style-type: none"> • Blighted Districts, and Rehabilitation or Conservation Districts 	27 years	3 years
<ul style="list-style-type: none"> • Industrial Districts, Mixed-Use Districts 	20 years	3 years

[Section 66.1105 (7), Stats.]

Exception: Distressed and Severely Distressed TIDs

In some cases, a TID may be under such economic distress that it needs more time to pay off project costs than allowed by the initial termination date or extension period. In response to the economic recession that began at the end of 2007, TIF law was amended to allow a city or village to designate a TID as a **distressed TID** or **severely distressed TID**. According to DOR, as of June 2, 2014, there are 63 distressed TIDs and 11 severely distressed TIDs that are still active.

A city or village may designate a TID created before October 1, 2008, as either distressed or severely distressed when the local legislative body, in addition to other procedural requirements, adopts a resolution finding that the project costs exceed the amount of revenues from all sources that the city expects the district to generate during the life of the TID. [s. 66.1105 (4e) (a), Stats.]

For a city or village to designate a district as a severely distressed TID, a second finding is required. A severely distressed TID also requires a finding that the amount of the value increment generated in any year has declined at least 25% from the district's highest value increment over the course of the district's lifespan. [s. 66.1105 (4e) (am), Stats.]

Under current law, a local legislative body only has until October 1, 2015, to declare a TID distressed or severely distressed. Also, no TID may be declared distressed or severely distressed if the local legislative body approves a project amendment after October 1, 2009, except for the amendment that declares the TID distressed or severely distressed. [s. 66.1105 (4e) (a) (intro.) and 5., Stats.]

If a district is designated as a distressed TID, it is able to collect positive tax increments for up to 10 years after it would otherwise have been required to terminate. If a district is designated as a severely distressed TID, then it is able to collect positive tax increments for up to 40 years after the district was originally created. [s. 66.1105 (4e) (d) 2., Stats.]

Exception: Donor TIDs

As previously stated, if a TID pays off the entire amount of project costs before the maximum life span is over, it must terminate. An exception to this rule is that a city or village may amend the project plan and designate this TID as a donor TID. This allows the positive tax increments of the donor TID to be used to pay off the project costs of another TID located in the city or village. The act of designating a TID as a donor TID is referred to as an "allocation amendment." Wisconsin DOR, *TIF Allocation Amendment Fact Sheet*, found at: <http://www.revenue.wi.gov/faqs/slf/tif/alofacsht.pdf>.

The statutes list numerous requirements that must be satisfied before a city or village may designate a TID as a donor. What requirements apply depend on when the prospective donor TID was originally created. For example, one set of requirements applies to TIDs created before October 1, 1995. Another set of requirements apply to TIDs created after September 30, 1995 (or September 30, 1996 for first class cities). There are also separate requirements specific to distressed and severely distressed TIDs and environmental remediation TIDs (ERTIDs, which are discussed in Part III.)⁵

⁵ For a detailed list of the different requirements, see *TIF Allocation Amendment Fact Sheet*, found at: <http://www.revenue.wi.gov/faqs/slf/tif/alofacsht.pdf>.

PART III – SPECIAL CASES: TOWN TIDS, MULTIJURISDICTIONAL TIDS, AND ENVIRONMENTAL REMEDIATION TIDS

TIF law found in s. 66.1105, Stats., is the general TIF law applicable to cities and villages. Over the years, however, TIF law has expanded to allow more than one city or village to create a multijurisdictional TID together. TIF may also be used for environmental remediation. This Part briefly discusses these special types of TIDs.

TOWN TIDS

TIF authority applicable to towns differs from the TIF authority of a city or village. Only certain towns may create a TID under s. 66.1105, Stats., applicable to cities and villages. These towns include: (1) a town that has a cooperative plan with a city or village planning to annex all or part of the town; and (2) a town with a population of 3,500 and an equalized value of taxable property that is at least \$500 million, commonly referred to as a “large town.” In addition, any town has the authority to create a TID involving specific types of industries, commonly referred to as industry-specific town TIDs. According to DOR, as of June 2, 2014 there are three active town TIDs, none of which are industry-specific town TIDs.

Town TIDs Created Under TIF Authority Granted to City or Village

A town may create a TID under s. 66.1105, Stats., the TIF authority granted to a city or village, if the town has a cooperative agreement with a city or village planning to annex all or part of the town. A town with a cooperative agreement may only create a TID if the city or village into which the town territory will be annexed adopts a resolution approving of the TID’s creation and the TID is located solely within the territory that is to be annexed or attached by the city or village. [ss. 60.23 (32) (a) and 66.1105 (16) (a), Stats.]

2013 Wisconsin Act 193 extended the ability for a “large town” to create a TID under s. 66.1105, Stats. Beginning on April 6, 2014, a “large town” with a population of 3,500 or more and an equalized value of taxable property that is at least \$500 million may now create a TID under the same TIF authority as a city or village if all of the following apply:

- The boundaries of a large town TID must be within a sewer service area and sewer service must either be currently available or will be available before the use or operation of any improvements to property in the TID begins.
- If any part of a large town TID is annexed by a city or village, any assets or liabilities associated with that annexed territory become the responsibility of the annexing city or village.

- If any part of the large town TID is annexed by a city or village, DOR is required to redetermine the tax incremental base of the TID.

[s. 60.23 (32) (eg) to (er), Stats.]

2013 Wisconsin Act 193 also created an additional requirement for any town creating a TID under s. 66.1105, Stats. Before a town board exercising this TIF authority may approve a TID project plan, it must ensure that the project plan includes at least one of the following three provisions:

- At least 51% of the value of public infrastructure improvements in the TID must be financed by a private developer, or other private entity, in return for the town's agreement to repay the developer or other entity for those costs solely through the payment of cash grants as required under TIF law. To receive the cash grants, the developer or other private entity must enter into a development agreement with the town specified under TIF law.
- The town expects all project costs to be paid within 90% of the proposed TID's remaining life, based on the TID's termination date.
- Expenditures may be made only within the first half of the proposed TID's remaining life, based upon the TID's termination date, except that expenditures may be made after this period if the expenditures are approved by a unanimous JRB vote. No such expenditure may be made later than the time during which an expenditure may be made authorized under TIF law.

[s. 60.23 (32) (f), Stats.]

Industry-Specific Town TIDs

All towns, regardless of their size or whether they are being annexed, have the authority to create a TID for projects involving specific types of industries. However, according to DOR, as of June 2, 2014, no town has created an industry-specific town TID. The types of projects for which a town may exercise this TIF authority are the following:

- Agriculture, defined to mean the following activities as classified by the North American Industry Classification System (NAICS), which is published by the U.S. Office of Management and Budget:
 - Crop production.
 - Animal production.
 - Support activities for agriculture.
 - Support activities for animal production.
- Forestry projects, defined to mean the following activities as classified by NAICS:
 - Forestry and logging.
 - Support activities for forestry.

- Manufacturing projects, defined to mean the following activities as classified by NAICS:
 - Animal slaughtering and processing.
 - Wood product manufacturing.
 - Paper manufacturing.
 - Ethyl alcohol manufacturing.
- Tourism projects, defined to mean the following activities classified by NAICS:
 - Recreational and vacation camps.
 - Recreational vehicle parks and campgrounds.
 - Racetracks.
 - Dairy product stores.
 - Public golf courses.
- Residential development, but only to the extent that it has a necessary and incidental relationship to a project listed above.
- Retail development that is limited to the retail sale of products that are produced due to a project that is developed under an agricultural project, forestry project, or manufacturing project.
- For the Town of Brookfield, Waukesha County, a project related either to retail purposes, or to a purpose for which a city or village may create a TID.

[s. 60.85 (2) (b), Stats.]

An industry-specific TID project may only be located in any part of the town that is not within the extraterritorial zoning jurisdiction of a city or village, unless the city or village adopts a resolution approving of the creation of the industry-specific TID within the extraterritorial zoning area. [s. 60.85 (2) (c), Stats.]

Amendments and Expenditure Period

Many of the procedures applicable to TIDs created under s. 66.1105, Stats., are also applicable to industry-specific town TIDs. However, there are some key differences found in the industry-specific town TIF authority to amend the project plan, make expenditures, and terminate. There are also procedures related to the financial review of such a TID.

The ability to amend the project plan is more limited for an industry-specific town TID than a regular TID. For example, the project plan may only be amended once during the first five years after the TID is created. Another difference is that the project plan may only be amended to modify the district's boundaries by adding territory to the district that is contiguous to the district and that is served by public works or improvements that were created as part of the project plan. Also, expenditures for project costs that are incurred because of the amendment may only be made for two years after the town board adopts the resolution amending the project plan. [s. 60.85 (3) (j) 2., Stats.]

Termination

An industry-specific town TID must terminate at the earliest of the following events: (1) when all of the project costs, as well as any project costs from amendments to the project plan, are repaid using the tax increments; (2) the local legislative body closes the TID; (3) 11 years after the last expenditure identified in the original unamended project plan is made; or (4) the DOR Secretary determines that tax increments have been used to pay for ineligible costs and orders that the TID be terminated. This means that the maximum life span of an industry-specific town TID is 16 years. [s. 60.85 (9), Stats.]

Financial Reviews

An industry-specific town TID must be audited at least three times and have annual financial reports prepared, similar to a regular TID. However, the statutes also provide a process by which certain people may, by July 1, file a written request with DOR requesting a review of the industry-specific town TID to determine whether money expended, or debt incurred, by the TID in the prior year complied with the requirements related to the type of industry the TID is. The following people may make such a request:

- An owner of taxable property in the town that created the TID.
- An owner of taxable property that is located in a taxing jurisdiction which overlies the town in which the district is located.
- An owner of taxable property in a city or village that borders the town in which the district is located.
- A city or village that borders the town in which the district is located.

[s. 60.85 (6) (e) 1. and 2., Stats.]

DOR may deny a request to review the industry-specific town TID. If DOR chooses to conduct the review, it must hold a hearing, with written notification to the town clerk the person who requested the review, the clerk of each overlying taxing jurisdiction, and the clerk of every city or village that borders the town. If at the hearing, it is determined that the town made expenditures or incurred debt that are not allowed, then either of the following must be ordered: (1) the town must pay back all ineligible costs to the overlying taxing jurisdictions on a proportional basis relating to each jurisdiction's share of the tax increment, without using the tax increments; or (2) the TID must be terminated. Also, any person who received notice of the hearing may appeal the decision to the Dane County Circuit Court. [s. 60.85 (6) (e) 3. to 5., Stats.]

MULTIJURISDICTIONAL TIDS

In some cases, two or more cities or villages may want to work together to help spur economic development on a geographic area that crosses each other's municipal boundaries. Under 2011 Wisconsin Act 77, cities and villages are now authorized to work together and jointly create a TID, known as a multijurisdictional TID (MJTID). An MJTID must contain territory from all of the participating cities or villages. An MJTID must also be contiguous. Also, at least one

parcel in each participating city or village must touch at least one parcel in at least one of the other cities or villages. [s. 66.1105 (18) (a), Stats.] MJTIDs have different creation procedures from regular TIDs created under s. 66.1105, Stats. There are also limitations specific to how MJTIDs function.

Creation of MJTIDs

An MJTID is created when two or more participating cities or villages (but not towns) enter into a cooperative agreement that addresses various aspects of each city's or village's role and responsibility related to the MJTID. A copy of the cooperative agreement must be signed by all of the participating cities or villages and forwarded to DOR by the city or village designated in the agreement as the "lead city" or "lead village." This cooperative agreement must include at least all of the following items:

- A detailed description of how all of the participating cities or villages will be able to exercise their authorized TIF powers and meet the requirements necessary to create a TID.
- A detailed description of how determinations will be made that relate to incurring debt, expending funds for project costs, and distributing positive tax increments allocated by DOR.
- The extent to which one of the cities or villages will be authorized by all of the other participating cities or villages to act on behalf of all of them or all matters relating to the MJTID.
- A binding dispute resolution procedure to be used by the cities or villages to resolve, in a timely fashion, any disputes between the participating cities or villages related to the agreement or to the MJTID. The dispute resolution procedure must include a dissolution provision that includes certain provisions regarding unanimous agreement for the MJTID to terminate early and how the MJTID's assets, liabilities, and any other outstanding obligations will be distributed among the participating cities or villages.
- A detailed description of the proposed membership of JRB.
- A detailed description of the responsibilities of each city or village's planning commission, the membership and authority of the planning commission for the MJTID, and the operating procedures to be followed by the MJTID's planning commission.
- A detailed description of the responsibilities of each city's clerk, treasurer, assessor, and any other officer or official to carry out the requirements of the MJTID law, and a detailed description of which clerk, treasurer, assessor, officer, or official will be responsible for each task specified in the MJTID law.
- Identification of which city or village will be the lead city or village for purposes of completing any documents or tasks required under TIF law or by DOR; which city or village will be responsible for submitting the MJTID's creation documents; and which city or village will be responsible for submitting the MJTID's project plan amendment documents.

- A statement that all of the participating cities or villages agree that the MJTID's application will be submitted in its entirety as one complete application by the lead city or village, as determined by DOR.
- Consistent with TID termination requirements, a statement that the entire district will terminate at one time as a single entity and that the lead city or village shall submit to DOR all necessary notices and reports relating to the termination of the MJTID.
- A detailed description of the procedures the participating cities or villages will follow to determine all of the following:
 - Whether the MJTID's life may be extended as authorized under TIF law.
 - How the project plan or boundaries of the MJTID may be amended under TIF law.
- A description of how any annexation costs incurred by a participating city or village will be shared among all of the participating cities or villages if the annexed territory is part of the MJTID.

[s. 66.1105 (18) (a), (b), and (e) 1., Stats.]

Limitations

Generally, TIF law under s. 66.1105, Stats., which is applicable to a TID created in a single city or village is also applicable to MJTIDs. However, there are some additional provisions that are specific to an MJTID, including the following:

- No town may be part of an MJTID.
- No MJTID may be created unless each public member of JRB appointed from each participating city or village votes with the majority for approval of the resolution creating the MJTID.
- An MJTID may not become a donor district.
- MJTIDs may not receive tax increments from a donor district.
- MJTIDs may not incur project costs for any area that is outside of the district's boundaries.
- The 12% limit, relating to the amount of a city or village's property that may be in in a TID, applies on an aggregate basis to the participating cities or villages of an MJTID except that, for one or more participants, the part of the MJTID that is in an individual city or village may cause that city or village to exceed the 12% limit if the governing bodies of all taxation districts that overlay the city or village approve the creation of the MJTID.
- DOR may allocate positive tax increments to each participating city or village in an MJTID only to the extent that a city or village's component of the MJTID has generated a positive value increment.

- DOR may only impose one fee for the certification of the MJTID’s base value, or for any amendment to the base value, regardless of the number of participating cities or villages.⁶ Unless the cooperative agreement provides otherwise, the lead city or village is responsible for any such fee imposed by DOR. Also, DOR may only impose one annual administrative fee for each MJTID

[s. 66.1105 (4m) (b) 2., (6) (ag), (18) (c), Stats.]

ENVIRONMENTAL REMEDIATION TIDS

In 1997, TIF law was expanded to give cities, villages, towns, and counties (hereinafter, “political subdivisions”) the ability to create environmental remediation TIDs (ERTIDs) to fund remediation of environmental pollution with future positive tax increments. According to DOR, as of June 2, 2014, there are 15 active ERTIDs. ERTIDs operate under similar, but distinct requirements from regular TIDs created under s. 66.1105, Stats., including separate procedures for creating an ERTID and certifying its base value. There are also different eligible costs that may be funded by environmental remediation tax increments.

Creation of ERTIDs

In order to create an ERTID, the political subdivision must adopt a resolution that describes the boundaries and specifies the date of its creation. The political subdivision must also develop a written proposal for remediating environmental pollution in the ERTID, or the groundwater affected by environmental pollution regardless of whether the property above the groundwater is owned by the political subdivision. Similar to TIDs created under s. 66.1105, Stats., the political subdivision must also convene a JRB to review the proposal, with a similar timeline for reviewing the written proposal. However, when the JRB reviews the written proposal, it must also review a statement from the political subdivision that includes the following:

- A statement that the political subdivision has incurred some eligible costs.
- A detailed proposed remedial action plan, approved by the Department of Natural Resources (DNR) that contains the following information, cost estimates for anticipated eligible costs and a schedule for the design, implementation and construction that is needed to complete the remediation, with respect to the parcel or contiguous parcels of property.
- Details regarding the purpose and amount of the expenditures already made.
- A dated certificate issued by DNR that certifies that DNR has approved the site investigation report that relates to the land in the proposed ERTID in accordance with DNR rules.

[s. 66.1106 (1m), (3) (b) 1., and (4) (a), Stats.]

⁶ The statutes authorize DOR to impose a fee of \$1,000 for certification of the base value. If the certification is for an amendment to the project plan that both adds and subtracts territory, DOR may impose a fee of \$2,000. [s. 66.1105 (5) (a), Stats.]

The criteria that the JRB must use to approve the ERTID is also different from TIDs created under s. 66.1105, Stats. The JRB must base its decision upon the following criteria:

- Whether the development expected in the remediated property would occur without the use of an ERTID.
- Whether economic benefits of the remediated property, as measured by increased employment, business, and personal income and property value, are insufficient to compensate for the cost of the improvement.
- Whether the benefits of the proposal outweigh the anticipated environmental remediation tax increments to be paid by the owners of the property in the overlying taxing districts.

[ss. 66.1106 (2) (a) and (3) (c), Stats.]

If the JRB approves the creation of the TID, the political subdivision must submit a written application to DOR for certification of the ERTID's base value. In order to certify the ERTID's base value, the political subdivision must submit to DOR all of the following:

- The same statement that the political subdivision submitted to the JRB as described above (i.e., the proposed remedial action plan and costs, DNR certification of the site investigation report, etc.)
- A statement that all taxing jurisdictions within the authority to levy general property taxes in the proposed ERTID have been notified that the political subdivision intends to recover the costs of remediating environmental pollution on the property and have been provided a statement of the estimated costs to be recovered.
- A statement, signed by its chief executive officer, that the political subdivision has attempted to recover the cost of remediating environmental pollution on the property from the person who caused the environmental pollution.
- All forms, completed by the political subdivision, required by DOR that relate to the determination of the ERTID's base.

[s. 66.1106 (4), Stats.]

Eligible Costs for ERTIDs

A political subdivision has up to 15 years after DOR certifies the base value to incur eligible costs for environmental remediation work in the ERTID. [s. 66.1106 (2) (b), Stats.] However, only the costs that DNR determines are necessary to close the site, as described in DNR's site investigation report, may be paid with the positive tax increments. [s. 66.1106 (4) (d), 1., Stats.] Eligible costs that may be funded from positive environmental remediation tax increments include capital costs, administrative costs, and professional service costs associated with the investigation, removal, containment, or monitoring of, or the restoration of, soil, air, surface water, sediments, or groundwater affected by environmental pollution. Eligible costs must be reduced by any amounts received from anyone who is responsible for the discharge of hazardous substances of the property; any amount received, or expected to be received from a local, state, or federal program

for environmental remediation; and any amount of net gain that the political subdivision receives from the sale of the property. Specific examples of eligible costs include the following:

- Monitoring costs.
- Cancellation of delinquent taxes if the political subdivision demonstrates that it has not already recovered such costs by any other means.
- Property acquisition costs.
- Demolition costs, including asbestos removal.
- Removing and disposing of underground storage tanks or abandoned containers.

[s. 66.1106 (1) (c), Stats.]

Termination

Similar to regular TIDS, an ERTID must terminate at the earliest of the following events: (1) when all of the project costs are repaid using the tax increments; (2) the local legislative body closes the ERTID; or (3) the ERTID reaches the maximum life span of an ERTID is 23 years after DOR certifies the base value. An ERTID may, however, become a donor ERTID if all of the project costs are repaid before the maximum life span, but it may only do so until it reaches its maximum life span and it may only donate its positive tax increments to another ERTID. Also, DNR is required to certify to DOR when remediation of the environmental pollution is completed. [s. 66.1106 (2) (c), (4) (d) 2., and (11) (b), Stats.]