



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF TAX INCREMENTAL FINANCING

Room 413 North
State Capitol

August 14, 2014
10:00 a.m. – 3:24 p.m.

[The following is a summary of the August 14, 2014 meeting of the Study Committee on Review of Tax Incremental Financing. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.wisconsin.gov/lc>.]

Call to Order and Roll Call

Chair Gudex called the meeting to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Richard Gudex, Chair; Rep. Amy Loudenbeck, Vice Chair; Reps. Mike Kuglitsch, and Tod Ohnstad; and Public Members Jennifer Andrews, Michael Harrigan, Eileen Kelley, John Kovari, Richard Lincoln, David Rasmussen, Brian Ruechel, Jason Serck, Mike Slavish, Peter Thillman, and Hal Wortman.

COMMITTEE MEMBERS EXCUSED: Sen. Robert Jauch; Rep. Josh Zepnick; and Public Member Thomas Wilson.

COUNCIL STAFF PRESENT: Scott Grosz and Melissa Schmidt, Senior Staff Attorneys.

APPEARANCES: Keith Bosman, Mayor, City of Kenosha; Darryn Burich, Planning Director, City of Oshkosh; Joe Gromacki, TIF Coordinator, City of Madison; T.J. Justice, City Administrator and Development Director, City of West Bend; John Kovari, Ph.D., Assistant Professor, Department of Political Science/Public Administration, UW-La Crosse; and James Spiotto, Managing Director, Chapman Strategic Advisors, L.L.C., Chicago, IL.

Approval of the Minutes of the July 17, 2014 Meeting

Public Member Richard Lincoln moved, seconded by Public Member Michael Harrigan, to approve the minutes of the July 17, 2014 meeting. The motion passed on a unanimous voice vote.

Description of Materials Distributed

Melissa Schmidt, Senior Staff Attorney, Legislative Council staff, provided an overview of Memo. No. 1, *The Public Purpose Doctrine's Limitation on Donating Positive Tax Increments to a Tax Incremental Financing District with Different Overlying Taxing Districts* (August 7, 2014). In her discussion, Ms. Schmidt explained that the public purpose doctrine of the Wisconsin Constitution limits the ability of a tax incremental district (TID) to donate its increment to another TID that is comprised of other underlying taxing jurisdictions. She also suggested that it could be possible to modify state law relating to donor TIDs to allow a donor TID to share increments attributable to shared underlying taxing jurisdictions in order to comply with the public purpose doctrine.

Ms. Schmidt also noted that a letter from Nate Ristow, Legislative Advisor, Department of Revenue (DOR), was distributed to committee members in response to several questions raised at the July 17, 2014, meeting.

Presentations by Invited City Officials

Links to the PowerPoint presentations of the speakers may be found on the committee's website [<http://docs.legis.wisconsin.gov/misc/lc/study/2014/1190/>].

Joe Gromacki, Tax Incremental Financing (TIF) Coordinator, City of Madison

Mr. Gromacki began his presentation with an overview of fundamental concepts relating to real estate feasibility analysis, including market research, developer use of equity, cash flow projection, and developer use of leverage. He also discussed cash flow and liquidation models for bank underwriting, including capitalization rate analysis and loan to value discount rates. Additionally, he discussed Madison's use of cost estimates as they relate to TIF feasibility and the elements of the city's TIF funding gap analysis.

Mr. Gromacki concluded his comments with several recommendations regarding TIF best practices, with the caveat that the TIF practices useful to a city the size of Madison may not be applicable to smaller communities. He noted that Madison, due to the size of its equalized assessed values, is not as constrained by the 12% rule as other communities.

Throughout his presentation, Mr. Gromacki responded to questions from committee members. When asked for recommendations for the committee's work, he suggested consideration of a recodification of the TIF law to improve its readability. He described Madison's guidelines to avoid expending all expected TID revenue as a means to avoid distressed TIDs, and explained his preference for personal guarantees from developers who propose TIF projects.

T.J. Justice, City Administrator and Development Director, City of West Bend

Mr. Justice presented information to the committee regarding the use of TIF in the City of West Bend, as well as the city's experience with distressed TIDs. He stated that West Bend has had a total of 13 TIDs, of which 11 are active. Of the active TIDs, he stated that four are redevelopment TIDs and seven are industrial TIDs. He shared that some of the TIDs have been incredibly successful TIDs, as well as some that probably should never have been created. Of the 11 active TIDs, Mr. Justice said that five are distressed TIDs.

Mr. Justice discussed some of the problems that the city's TIDs have faced. He stated that the redevelopment TIDs have faced the following challenges: (1) high upfront costs resulting from either the need to assemble lands, environmental remediation, or significant infrastructure, or combinations thereof; (2) no guaranteed development on three of the TIDs; (3) delayed development; (4) private development guarantees were inadequate for a public/private joint venture; and (5) the 2010 revaluation by DOR. Regarding the seven industrial TIDs, Mr. Justice stated that all of them have substantial development but that two of these TIDs are distressed due in part to delayed development activity and unexpectedly high infrastructure costs.

Mr. Justice also discussed that the project costs for every TID in West Bend, even those in distress, includes internal operating costs. He testified that this practice complicates the financial health of the districts. In response to questions about whether an audit would help address this practice, Mr. Justice stated that they were advised that this is allowed under the statutory definition of "project costs" and that an audit would not prevent this practice. Mr. Justice did suggest changing the date of the annual reporting requirement, which currently requires a city to prepare a report on each TID and to make it available to the public, as well as sending a copy of the report to each overlying taxation district by May 1 annually. He said that this deadline makes it difficult to complete an audit by June or July.

In response to committee questions about using a report card to grade and evaluate the performance of a TID, Mr. Justice stated that he did not think that this was a good idea because it would be too hard to find a good metric system to do so.

Darryn Burich, Planning Director, City of Oshkosh

Mr. Burich presented information to the committee regarding the use of TIF in the City of Oshkosh. He shared that the city has created 27 TIDs, of which 18 are currently open and two are newly created and not yet certified. He said that the city has 13 industrial TIDs, and 13 redevelopment TIDs in the central part of the city, and one mixed-use TID that was created but never certified.

Mr. Burich stated that the amount of equalized value of taxable property in the city's TIDs is currently 8.23%, which does not exceed the 12% limit. He explained that the 12% limit, however, negatively impacts smaller communities, who may exceed this by creating just one or two TIDs. He recommended that the committee consider allowing some municipalities who are close or exceeding the 12% limit to exceed this limit if the Joint Review Board (JRB) approves doing so, as well as stronger powers to review a TID's annual reports.

Mr. Burich discussed the problems with the "but for" test, and how it is misunderstood. He said that everyone has a different understanding. He stated that people opposing a TID will use the "but for" test to argue against a TID's creation. He explained that not all projects result in an easily measurable or understandable "return on investment" (ROI) because some real estate markets are more fragile and harder to develop than others. He explained how Oshkosh analyzes its ROI, based upon the City of Madison's analysis. He recommended that the committee consider clarifying the "but for" test.

In addition, Mr. Burich suggested that the committee consider creating other types of TIDs, including sales tax TIDs or economic development TIDs.

Keith Bosman, Mayor, and Frank Pacetti, City Administrator, City of Kenosha

Mr. Bosman and Mr. Pacetti presented information to the committee regarding the use of TIF in the City of Kenosha. He explained that the latest TID created by the city was for Amazon.com, which redeveloped the old Chrysler plant. Mr. Pacetti explained that the 12% limit on the creation of a TID is a problem for larger municipalities, not just smaller municipalities. Even though Kenosha is the fourth-largest community in the state, it is running up against the 12% limit because of the combination of the economic crisis of 2008 and the fact that Kenosha is doing very well with the success of creating a TID for Amazon.com.

Mr. Pacetti discussed how Kenosha utilizes TIF. He stated that the city is interested in bringing with new business or businesses located in another state to Kenosha, not stealing business from other parts of the state. He also stated that he is not supportive of residential TIDs because it puts a strain on cities, schools, and the county. He said that a residential project does not need to be subsidized in the same way as an industrial project.

Mr. Pacetti suggested that the committee consider amending the 12% rule so that successful communities running up against the 12% limit can continue to attract new business into the state. For example, the committee could consider allowing a municipality to remove TIDs similar to Amazon out of calculation. He also suggested providing incentives for TIDs revitalizing downtown areas. In response to questions from the committee, Mr. Pacetti suggested that the committee consider either increasing the 12% limit to 15%; allowing the JRB to decide whether to exceed the limit; or eliminate the 12% limit altogether.

Presentations by Invited Speakers

James Spiotto, Managing Director, Chapman Strategic Advisors, L.L.C.

Mr. Spiotto presented information about municipal financial crises, defaults, and bankruptcies from a national perspective. He stated that generally 75% of all municipal bond defaults have occurred in bonds issued by a municipality to finance revenue producing enterprises, such as highways, bridges, utilities, swimming pools, harbors, etc. He explained that state and local governments rarely default, in part because states have created technical assistance for municipalities in distress. He also said that investment in infrastructure and governmental services to attract businesses for job growth has helped prevent municipal defaults and bankruptcies.

Mr. Spiotto stated that a municipality's economic distress does not improve over time. He explained that this is why it is important to scrutinize a TIF project at the front end of its creation. Mr. Spiotto explained that TIF is a valuable tool for addressing economic stimulus of blighted areas and redevelopment that is needed in a municipality. It helps by allowing the municipality to spend money on infrastructure to attract businesses. He stated that every state but California utilizes TIF for economic development.

Mr. Spiotto explained some of the methods for dealing with distressed TIDs, including periodic monitoring and review, permitted base value adjustments, maintain development agreement guarantees and collateral, increased judicial oversight, increased use of donor TIDs, and review of the TIF process and efficiency. In response to questions from the committee, Mr. Spiotto suggested that the "but for" test could be redefined and suggested redefining it require the local municipality to make a determination that the TID is created for a public purpose. In response to other questions about donor

TIDs, Mr. Spiotto stated that, in his opinion, donor TIDs may help mask underlying problems of the recipient TID that may need correction.

John Kovari, Ph.D., Assistant Professor, Department of Political Science/Public Administration, UW-La Crosse

Dr. Kovari presented information about the science of evaluating TIF law. He stated that TIF research conducted in the early 2000's indicated that TIF was bad for communities because it drained property values in non-TIF areas. He explained that it skewed real estate markets and took tax revenue from overlying taxing jurisdictions. He stated that research conducted in the middle-2000's found that TIF does have some benefits, including appreciation of home values, the offset of the effects of crime and Brownfields, and the increase in property value of commercial areas.

Based upon the most current research, Dr. Kovari stated that current research has found TIF to be extremely beneficial in some cases, but harmful in others. He stated that research has found property values grow slower than normal in municipalities with a TID because a TID can sap economic strength from other areas. He also explained how TIDs may be more beneficial in "central cities" (defined by the U.S. Census Bureau to be the largest city in a metropolitan statistical area) than suburban TIDs, which can erode the central city's property value.

Dr. Kovari explained he has found that if a municipality uses TIF too much, it can be counterproductive. He stated that on average, every \$1 increase in TID value results in \$6 growth in total equalized assessed value of property statewide, however, smaller communities can stifle natural economic growth with a TIF subsidy. He also stated that research shows that a TID's performance is linked to management practices, including pre-implementation risk assessment and post-implementation performance measurement.

Dr. Kovari stated that current research suggests the need to: (1) strengthen the "but for" test; (2) strengthen the definition of "blight"; (3) reduce TIF value limits based upon fiscal capacity; (4) utilize alternative financing methods; and (5) strengthen the JRB process. In response to questions from the committee, Dr. Kovari stated that to help protect smaller municipalities, more training for municipal staff on fiscal literacy and TIF law would be helpful. He also suggested certification of municipal staff before the municipality could be eligible to create a TID.

Discussion of Committee Assignment

Chair Gudex instructed Mr. Grosz and Ms. Schmidt to outline the recommendations offered by invited speakers during the July and August meetings in preparation for discussion at the September meeting. Chair Gudex invited committee members to submit their own recommendations to Legislative Council staff as well, and noted that Public Members Brian Ruechel and Michael Harrigan, distributed recommendations for the committee's consideration.

Other Business

Chair Gudex indicated that the committee will hold its next meeting on September 10th and asked Legislative Council staff to poll members regarding their availability for meetings in October and November.

Adjournment

The meeting was adjourned at 3:24 p.m.

MS:ty