



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF TAX INCREMENTAL FINANCING

Room 412 East
State Capitol

November 13, 2014
10:00 a.m. – 2:47 p.m.

[The following is a summary of the November 13, 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, Tod Ohnstad, and Josh Zepnick; and Public Members Jennifer Andrews, Michael Harrigan, Eileen Kelley, David Rasmussen, Mike Slavish, Peter Thillman, and Hal Wortman.

COMMITTEE MEMBERS EXCUSED: Sen. Robert Jauch; and Public Members John Kovari, Richard Lincoln, Brian Ruechel, Jason Serck, and Thomas Wilson.

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

Approval of the Minutes of the October 9, 2014 Meeting

Representative Ohnstad moved, seconded by Representative Kuglitsch, to approve the minutes of the October 9, 2014 meeting. The motion passed on a voice vote.

<p>*ATTENTION: This was the final meeting of the Study Committee on Review of Tax Incremental Financing. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.</p>

Description of Materials Distributed and Discussion of Committee Assignment

Chair Gudex welcomed committee members and explained that the plan for the meeting was to review the drafts listed on the agenda, and if the committee voted to approve recommendation of any draft, the draft would be included for a final vote by mail ballot. He stated that some of the drafts may be combined so that the committee's final recommendations to the Joint Legislative Council consist of no more than a total of 10 drafts.

WLC: 0018/P2 and WLC: 0037/P1

WLC: 0018/P2

Melissa Schmidt, Senior Staff Attorney, Legislative Council, provided a brief explanation of the draft. She explained that the difference between this draft and the first version was the list of information that must be included in the annual report submitted to the Department of Revenue (DOR) and the Joint Review Board (JRB). She stated that this change was made at the direction of the chair, in response to a request made by Senator Jauch.

In response to questions about JRB annual meeting provisions under the draft, Ms. Schmidt explained that, if a municipality was required to create more than one JRB because it created tax incremental districts (TIDs) with different overlying taxing jurisdictions, nothing in the draft prevented the municipality from holding one combined meeting for all of the JRBs to meet together for purposes of reviewing annual reports.

The committee discussed whether this draft increased the level of bureaucracy regarding the use of tax incremental financing (TIF). Chair Gudex stated that this draft strengthens the JRB review process. In response to questions about requiring annual reports to be posted on DOR's website, Public Member Peter Thillman explained that the intent behind the draft was to require statewide reporting. Public Member Hal Wortman said that this requirement created more transparency and accountability for municipalities that create TIDs.

Public Member Michael Harrigan stated that this draft strengthened the accountability of a municipality that creates a TID. He suggested that the JRB should review the performance, and not effectiveness, of each TID. He also suggested that the deadline for filing an annual report should be changed from May 1 to July 31.

The committee discussed whether the annual report should include every developer associated with the TID. Public Member Eileen Kelley explained that in many cases, the list of developers could be rather lengthy because the list of developers involved could change frequently. She also explained that many developers do not request TIF assistance. Mr. Thillman suggested that the annual report should just include any developer involved in a developer's agreement and any developer that received TIF assistance.

The committee also discussed the penalties that should apply to a municipality that does not comply with the draft's annual report filing requirements. The committee discussed concerns over the cost of requiring an audit of a TID as a consequence for a municipality not meeting the annual reporting requirements. The committee discussed amending the draft to require a penalty of \$100 per day, beginning 60 days after notice by DOR, if the municipality still has not filed an annual report.

Representative Amy Loudenbeck stated that the draft should also apply to industry-specific town TIDs and environmental remediation TIDs to make sure that the accountability measures in the draft applied equally to all TIDs.

WLC: 0037/P1

Ms. Schmidt provided a brief explanation of WLC: 0037/P1, relating to DOR review and determination of industry-specific town TID project compliance. She explained that this draft repealed a provision that allowed a person other than a town resident to request DOR to review an industry-specific town-TID. She explained that no similar provision was present under s. 66.1105, Stats., the TIF law applicable to cities and villages.

The committee briefly discussed combining this draft with WLC: 0018/P2, as both drafts address TID accountability.

Representative Kuglitsch moved, seconded by Representative Ohnstad, to combine WLC: 0018/P2 and WLC: 0037/P1. The motion was approved on a unanimous vote.

Representative Loudenbeck moved, seconded by Representative Ohnstad, to amend the combined draft to: (1) replace the requirement that the JRB review the effectiveness of a TID with the requirement that the JRB review the performance of a TID; (2) make the annual reporting requirements applicable to industry-specific town TIDs and environmental remediation TIDs; and (3) replace the requirement that the annual report include any developer of the land located within a TID with the requirement the report include any developer who received TIF assistance or was involved in a TID's developer agreement. The motion was approved on a unanimous vote.

Representative Loudenbeck moved, seconded by Representative Ohnstad, to approve the combined drafts, as amended. The motion was approved by a vote of Ayes, 11 (Sen. Gudex; Reps. Loudenbeck, Kuglitsch, Ohnstad, and Zepnick; and Public Members Andrews, Harrigan, Kelley, Slavish, Thillman, and Wortman) and Noes, 1 (Public Member Rasmussen).

WLC: 0012/1, WLC: 0035/P1, WLC: 0036/P1, WLC: 0040/P1, and WLC: 0044/P1

WLC: 0012/1

Ms. Schmidt provided a brief explanation of WLC: 0012/1, relating to the review period for JRB approval of a TID creation or amendment resolution. She explained that this draft is substantively the same as the version reviewed at the last meeting because the committee did not request any changes.

WLC: 0035/P1

Mr. Grosz provided a brief explanation of WLC: 0035/P1, relating to industrial zoning requirements in a TID. He explained that the draft specified that the requirement related to the maintenance of industrial zoning of a TID only to TIDs declared to be industrial districts. Mr. Thillman

suggested that this draft made a technical change to TIF law. The committee then discussed whether this draft was a technical draft.

WLC: 0036/P1

Mr. Grosz provided a brief explanation of WLC: 0036/P1, relating to planning commission notice for amendment of a TID project plan. He explained that the draft amends the notice requirements that must be met before a municipal planning commission meets to discuss a TID amendment. Mr. Thillman suggested that this draft made a technical change to TIF law. Committee discussion followed as to whether this draft was a technical draft.

WLC: 0040/P1

Mr. Grosz briefly explained that WLC: 0040/P1, relating to repealing various provisions of the TIF statutes repealed TIF statutes that are now obsolete because the TIDs to which the statute applied has terminated. The committee discussed whether this draft was a technical draft.

WLC: 0044/P1

Mr. Grosz provided a brief explanation of WLC: 0044/P1, relating to allocation of positive tax increments and termination of TIDs. He stated that the draft eliminates a timing penalty that decreases a TID's lifespan if the TID is created after September 30 and before May 15. The committee discussed whether this draft was a technical draft.

The committee also discussed a suggestion made by Public Member Brian Ruechel regarding the equalization valuation method. Mr. Ruechel suggested that the committee consider amending the levy limit calculation made by DOR such that the calculation would be based on the total equalized value of property in a municipality, less any value of property located inside of a TID. The committee discussed whether this was a technical change.

Representative Ohnstad moved, seconded by Public Member Harrigan, to combine drafts WLC: 0012/1, WLC: 0035/P1, WLC: 0036/P1, WLC: 0040/P1 and WLC: 0044/P1 into one technical draft. The motion was approved on a unanimous vote.

Representative Loudonbeck moved, seconded by Public Member Harrigan, to amend the combined draft to require the levy limit calculation to exclude value of property located inside of a TID, and to approve the draft as amended. The motion was approved on a unanimous vote.

WLC: 0038/P1, WLC: 0039/P1, and WLC: 0042/P1

WLC: 0038/P1

Ms. Schmidt briefly explained that WLC: 0038/P1, WLC: 0039/P1, and WLC: 0042/P1 were related to donor TIDs. She explained that WLC: 0038/P1, relating to authorizing any TID to use allocated tax increments donated from another TID, allows any TID to be a recipient TID and use allocated tax increments donated to it from another TID.

WLC: 0039/P1

Ms. Schmidt briefly explained that WLC: 0039/P1, relating to modifying the requirements for sharing tax increments by TIDs and limiting the participation of certain special purpose districts in TID financing, allows an existing TID to donate and receive tax increments regardless of whether the donor and recipient TIDs are located in the same lake sanitary district, public inland lake protection and rehabilitation district, or town sanitary district (special purpose district). She stated that the draft also excludes these special purpose districts from participating in the creation of a future TID.

WLC: 0042/P1

Ms. Schmidt also briefly explained WLC: 0042/P1, relating to modifying the requirements for sharing tax increments by TIDs with different overlying taxing districts. She stated that this draft allows any TID to be a donor or recipient TID regardless of whether the donor and recipient have the same overlying taxing jurisdictions. The committee discussed concerns about the feasibility of this draft. In response to committee concerns, Chair Gudex found that there was consensus to not move forward with this draft.

Public Member Rasmussen moved, seconded by Representative Ohnstad, to combine WLC: 0038/P1 and WLC: 0039/P1. The motion was approved by a unanimous vote.

Representative Ohnstad moved, seconded by Public Member Harrigan, to approve the combined drafts. The motion was approved by a voice vote.

WLC: 0041/P1

Mr. Grosz briefly explained WLC: 0041/P1, relating to inclusion of vacant land within the boundaries of a TID. He stated that the draft removes the restriction that property standing vacant may not comprise more than 25% of the area in a TID that is created on or after the effective date of the draft. Public Member Harrigan suggested that the draft also should amend current law to not require any city-owned property to be included in the base value of a TID.

Public Member Harrigan moved, seconded by Representative Kuglitsch, to amend the draft to exclude city-owned property from the base value of a TID if the property is not being used. The motion was approved by a unanimous vote.

Representative Ohnstad moved, seconded by Public Member Thillman, to approve the draft, as amended. The motion was approved by a unanimous vote.

WLC: 0043/P1

Ms. Schmidt briefly explained WLC: 0043/P1, relating to TIF project plan amendments and extending the life of a TID if the district is adversely impacted by statutory changes or changes to the equalized valuation method. She explained that the draft allows a municipality to amend a TID's project plan or extend the life of the TID if during the TID's life, a provision of TIF law found under s. 66.1105, Stats., was amended or DOR changes the equalization valuation method, or both, and the statutory

amendment or change to the equalization valuation method adversely impacts the annual and total amount of tax increments to be generated over the life of the TID.

The committee discussed whether the draft should be expanded to allow project plan amendments or a lifespan extension for other types of statutory or policy changes. The committee discussed concerns about whether the draft was the right approach for helping a TID that is struggling. The committee also discussed how long the draft should allow a TID's lifespan to be extended and whether the draft should be amended to also address the adverse impact the technical college funding changes, made by 2013 Wisconsin Act 145, had on TIDs.

Public Member Harrigan moved, seconded by Public Member Thillman, to amend the draft to allow a municipality to amend a TID's project plan, or extend its lifespan, if it was adversely impacted by 2013 Wisconsin Act 145. The motion was approved by a vote of Ayes, 8 (Sen. Gudex; and Public Members Andrews, Harrigan, Kelley, Rasmussen, Slavish, Thillman, and Wortman); and Noes, 3 (Reps. Loudenbeck, Kuglitsch, and Ohnstad).

Public Member Harrigan moved, seconded by Representative Ohnstad, to amend the draft to allow a municipality to allow a five-year lifespan extension. The motion was approved by a vote of Ayes, 10 (Sen. Gudex; Reps. Ohnstad and Zepnick; and Public Members Andrews, Harrigan, Kelley, Rasmussen, Slavish, Thillman, and Wortman); and Noes, 2 (Reps. Loudenbeck and Kuglitsch).

Public Member Wortman moved, seconded by Public Member Harrigan, to approve the draft as amended. The motion was approved by a vote of Ayes, 10 (Sen. Gudex; Reps. Ohnstad and Zepnick; and Public Members Andrews, Harrigan, Kelley, Rasmussen, Slavish, Thillman, and Wortman); and Noes, 2 (Reps. Loudenbeck and Kuglitsch).

WLC: 0013/1

Ms. Schmidt briefly explained WLC: 0013/1, relating to increasing the amount that a political subdivision may add to its levy limit upon the dissolution of a TIF district. She explained that this draft is substantively the same as the version reviewed at the last meeting because the committee did not request any changes.

During committee discussion of the draft, committee members also discussed Public Member Ruechel's suggestion to amend the levy limit calculation made by DOR so that the calculation would be based on the total equalized value of property in a municipality, less any value of property located inside of a TID. Committee members discussed whether this suggestion could be considered a technical change to TIF law and, after further discussion, a vote, described above, on Public Member Ruechel's suggestion was taken to include the change in the draft that combines drafts WLC: 0012/1, WLC: 0035/P1, WLC: 0036/P1, WLC: 0040/P1, and WLC: 0042/P1.

Representative Zepnick moved, seconded by Representative Ohnstad, to approve the draft. The motion failed by a tie vote of Ayes, 6 (Public Members Andrews, Harrigan, Kelley, Rasmussen, Slavish, and Wortman);

and Noes, 6 (Sen. Gudex; Reps. Loudenbeck, Kuglitsch, Ohnstad, and Zepnick and Public Member Thillman).

WLC: 0015/1

Mr. Grosz briefly explained WLC: 0015/1, relating to redetermination of base value for blighted or rehabilitation TIDs. He said that it is substantively the same as the version reviewed at the last meeting because the committee did not request any changes.

The committee discussed the need for this draft. In response to concerns raised about the draft, Chair Gudex explained that the draft is substantively similar to 2013 Senate Bill 252, which he authored, but which was amended before it was enacted as 2013 Wisconsin Act 183. He explained that because this draft encourages developers to develop property, even if a taxing jurisdiction loses money before a TID terminates, the taxing jurisdiction will still benefit because TIDs will become more profitable and will likely be able to terminate earlier than it would without changes made by this draft. Public Member Thillman also suggested that the draft should apply to all types of TIDs, not just a TID that is blighted or in need of rehabilitation or conservation work.

Public Member Thillman moved, seconded by Public Member Harrigan, to amend the draft to allow all types of TIDs to be able to redetermine their base according to the provisions of the draft. The motion was approved by a unanimous vote.

Representative Zepnick moved, seconded by Representative Ohnstad, to approve the draft, as amended. The motion was approved by unanimous vote.

WLC: 0016/1 and WLC: 0019/P1

Mr. Grosz briefly explained WLC: 0016/1 and WLC: 0019/P1, both relating to limits on TID creation as measured by total TID value. He explained that both drafts increased the limit on the amount of equalized value of property that may be included in a municipality's TID from 12% to 15%. He explained that the major difference was that WLC: 0016/1, also allowed a municipality to create one additional TID, even if in so doing, the municipality would exceed the 15% limit.

Committee members discussed concerns over allowing a municipality an opportunity to exceed a 15% limit without the need of requesting an exception from the Legislature. In response to committee discussions, Chair Gudex found that there was no consensus to move forward with WLC: 0016/1.

Representative Ohnstad moved, seconded by Public Member Wortman, to approve WLC: 0019/P1. The motion was approved by a unanimous vote.

WLC: 0017/1

Mr. Grosz provided a brief explanation of WLC: 0017/1, relating to designation of TIDs as distressed or severely distressed districts. He explained that this draft amended the current sunset provision on a municipality's ability to designate a TID as either distressed or severely distressed from October 1, 2015 to October 1, 2020.

Public Member Rasmussen moved, seconded by Public Member Thillman, to approve the draft. The motion was approved by a unanimous vote.

Continued Discussion of Committee Assignment

Chair Gudex and Vice-Chair Loudenbeck thanked committee members for their service on the committee. Chair Gudex stated that Legislative Council staff would amend the drafts to reflect changes made by the committee and submit them to committee members for a final vote by mail ballot in December. Representative Kuglitsch also thanked both Chair Gudex and Vice-Chair Loudenbeck for their leadership on the committee.

Adjournment

The meeting was adjourned at 2:47 p.m.

MS:ty