



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE STUDY COMMITTEE ON REVIEW OF TAX INCREMENTAL FINANCING

FROM: Scott Grosz and Melissa Schmidt, Senior Staff Attorneys

RE: Committee Options for Possible Legislation

DATE: September 3, 2014

At the August 14, 2014 meeting of the Study Committee on Review of Tax Incremental Financing (TIF), Chair Gudex instructed committee members to submit their ideas for options relating to possible study committee work product to the Legislative Council staff. Additionally, he asked Legislative Council staff to summarize recommendations that were suggested by the individuals who provided testimony to the committee during its July and August meetings.

This Memo combines the suggested options described above into a preliminary list, as summarized by the Legislative Council staff. The purpose of this Memo is to provide a basis for committee discussion on possible work product. The suggested options for either further study or possible legislation have been classified by subject matter and include notation as to the source of each option. Multiple sources may be cited when suggestions were deemed to be substantially similar in nature.

### **THE "BUT FOR" TEST**

#### **Background**

One of the findings that is required in order to create a TIF district (TID) is satisfaction of the "but for" test, named after the obligation of the Joint Review Board (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.

## Options

The study committee could propose to:

- Clarify the “but for” test. [Gudex, Burich]
- Replace the “but for” test with a “public purpose” test. [Rasmussen, Spiotto]
- Add additional questions for the “but for” test including consideration or limits on developer return on investment and consideration of alternative sites in central city areas. [Kovari]
- Maintain flexibility of the current definition and not amend it. [Serck, Binkowski]

## DEFINITION OF “BLIGHT”

### Background

As one option for TID creation, a local legislative body may create a TID based on findings that at least 50% of the real property of the TID constitutes a blighted area. Section 66.1105 (2) (ae), Stats., defines “blighted area” to mean any of the following:

- An area, including a slum area, in which the structures, buildings or improvements, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals, or welfare.
- An area which is predominantly open and which consists primarily of an abandoned highway corridor, as defined in s. 66.1333 (2m) (a), or that consists of land upon which buildings or structures have been demolished and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

The statutory definition also specifies that a “blighted area” does not include predominantly open land area that has been developed only for agricultural purposes.

## Options

The study committee could propose to:

- Clarify the definition of blight. [Gudex]
- Redefine the definition of blight with objective measures. [Kovari]

- Maintain the current definition of blight. [Serck, Binkowski]

## **PROJECTS COSTS**

### **Background**

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 examples of expenditures that may be included as project costs, including capital costs, financing costs, real property assembly costs, professional services, and imputed administrative costs incurred by the city or village in connection with project plan implementation.

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.]

### **Options**

The study committee could propose to:

- Revise current law to more thoroughly prevent municipalities from using TID revenue to fund general operating expenses. [Gudex]
- Allow municipalities to include certain general operating expenses as project costs, such as police and fire protection or snowplowing. [Loudenbeck]

## **THE 12% RULE**

### **Background**

Under current TIF law, DOR may not certify a TID's 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 municipality.

### **Options**

The study committee could propose to:

- Authorize the JRB to determine whether a municipality may exceed the 12% rule. [Ohnstad, Andrews, Burich]

- Increase or repeal the 12% limit. [Ohnstad, Pacetti]
- Review DOR's methods for calculation of the 12% rule. [Harrigan]
- Reduce the value limit to 7% for most municipalities; allow 1<sup>st</sup> and 2<sup>nd</sup> class cities to remain at 12%. [Kovari]
- Allow exceptions to the 12% rule. [Andrews, Rasmussen, Burich]
- Allow the City of Kenosha to exclude its Amazon project from its calculations of the 12% rule. [Bosman, Pacetti, Ohnstad]

## **JOINT REVIEW BOARD**

### **Background**

The JRB is one of the entities that must adopt a resolution in support of a TID's creation. The JRB is made up of five representatives, one each from the school district, 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. On account of the potentially forgone tax revenues, the JRB provides overlying taxing jurisdictions with an opportunity to approve or deny the creation of each TID. 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.

Under current law, JRB approval must occur within 30 days of receipt of planning documents from the local legislative body.

### **Options**

The study committee could propose to:

- Add transparency and a structure for the public to review information for each TID and all audits and reports that JRB members receive. [Loudenbeck]
- Allow the JRB to decide whether to exceed the 12% test. [Ohnstad, Burich, Andrews]
- Allow JRB decision-making on substantial compliance. [Andrews]

- Eliminate the 30-day deadline for JRB approval. [Harrigan]
- Review the JRB composition, role, process, and participation in yearly reviews and assessment of claw-back provisions. [Gudex]

## **LEVY LIMITS**

### **Background**

Generally, Wisconsin law imposes local levy limits on municipalities that, subject to certain exceptions, prohibit municipalities from increasing their levies except with regard to increases related to increased property values due to new construction. One of the exceptions to the levy limit law permits a municipality to increase its levy by an amount equal to its maximum allowable levy for the immediately preceding year, multiplied by a percentage equal to 50% of the amount determined by dividing the value increment of a terminated TID, calculated for the previous year, by the political subdivision's equalized value for the previous year, all as determined by the Department of Revenue (DOR).

### **Options**

The study committee could propose to:

- Allow 85% of the value increment of a terminated TID to be used in the maximum allowable levy calculation. [Harrigan, Ruechel]
- Eliminate the requirement that a levy increase following TID termination must occur immediately after the TID's termination. [Ruechel]

## **AID TO TIDS IN CRISIS**

### **Background**

Under current law, several pieces of recent legislation address local options to provide aid to TIDs in crisis, including the ability to extend a TID's lifespan upon declaring a TID to be distressed or severely distressed, and the ability to recalculate a TID's base value if the base value declines during the TID's lifespan (a "decrement" situation). Under current law, a municipality has until October 1, 2015, to declare a TID as distressed or severely distressed.

### **Options**

The study committee could propose to:

- Allow automatic decrement adjustments to TID base value if current TID value falls below original base value. [Ruechel]

- Repeal the sunset of distressed TID law so that municipalities may continue to declare a TID as distressed or severely distressed after October 1, 2015. [Ruechel]

## **CHANGE IN STATE STATUTES ADVERSELY IMPACTING TIDS**

### **Background**

During testimony previously received by the committee, the committee discussed the adverse impact, often unintended or unanticipated, of state policy changes on TID performance.

### **Options**

The study committee could propose to:

- Allow project plan amendments, or make them automatic, following state policy changes. [Kovari, Ruechel]
- Allow TID lifespan extensions following state policy changes. [Kovari]
- Review the adverse impact of recent changes to DOR property valuation methods on TID performance. [Andrews]

## **DONOR TIDS**

### **Background**

Generally, 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 amendment 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. However, current law allows a TID to donate its positive tax increments to a recipient TID only if the donor and the recipient TIDs share the same overlying taxing jurisdictions. Additionally, not all types of TIDs are currently eligible to receive donated increments.

### **Options**

The study committee could propose to:

- Exclude small, non-overlapping jurisdictions from the donor process. [Gudex, Harrigan, Mielke]
- Authorize all TIDs to receive donated increments. [Harrigan]
- Review the prohibition on non-overlapping jurisdictions in the donor process as applied to any type of overlapping district. [Harrigan]

## **MIXED-USE TIDS**

### **Background**

Under current law, a municipality may create a TID for mixed-use development that contains a combination of industrial, commercial, or residential uses, with the limitation that lands proposed for newly-platted residential use may not exceed 35%, by area, of the real property within the TID.

### **Options**

The study committee could propose to:

- Authorize zoning changes in mixed-use TIDs after the TID has been created, particularly for property zoned and suitable for industrial development within a mixed-use TID. [Harrigan]
- Increase the limit on newly platted residential property within a mixed-use TID, which is currently limited to 35%. [Schmidt]
- Limit municipalities to one mixed-use TID at a time. [Kovari]
- Place a temporary stay on the creation of mixed-use TIDs as a way to prioritize redevelopment. [Kovari]

## **TOWN TIDS**

### **Background**

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. Towns that wish to create TIDs must satisfy certain findings and reporting requirements that are not required for TID creation in cities or villages.

The study committee could propose to:

- Reduce the list of persons that may request TID review by DOR and allow appeal of DOR’s decision in any circuit court. [Loudenbeck]
- Make the requirement that a town must report its TID expenditures to DOR also applicable to TIDs in all municipalities. [Loudenbeck]
- Extend city and village TIF authority to towns. [Rasmussen, Schmidt]
- Limit or repeal town TIF authority. [Andrews, Mooney]

## **TYPES OF TIDS**

### **Background**

Under current law, TIDs may be created based on several options for findings, relating to the “type” of TID intended to be created. Under current law, options for the “type” of TID include blight, rehabilitation or conservation, industrial, and mixed-use TIDs.

### **Options**

The study committee could propose to:

- Create a research park TID type. [Kuglitsch]
- Allow residential TIDs. [Serck]
- Conduct a review of the necessity of different TID types. [Loudenbeck]
- Study other TIF models to allow for increments based on sales tax or economic development, including the “SuperTIF” model. [Kovari, Mielke, Mooney, Burich]

## **THE TID CREATION PROCESS**

Numerous options relating to various aspects of the TID creation process have been suggested. The study committee could propose to:

- Replace the “legal description” application requirements with a boundary map requirement. [Rasmussen]
- Eliminate timing penalty for TID creation as it relates to a TID’s maximum revenue period. [Harrigan]
- Require TIF training or certification for at least one person involved in TID creation. [Kovari]
- Require the consideration of “worst case” analysis at TID creation, including analysis of the impact of debt service on property taxes if a TID fails to perform as expected. [Kovari]
- Limit total TID project plan expenditures to a specified percentage of total anticipated TID present value. [Kovari]
- Maintain current law regarding lifespan of redevelopment TIDs. [Ruechel]
- Prohibit county government guarantees of municipal bond issues for TIF use. [Kovari]
- Prohibit farming on real property located in a TID once development on the property has begun. [Mielke]

## **TID AMENDMENT PROCESS**

### **Background**

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.

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.

### **Options**

The study committee could propose to:

- Streamline the amendment process. [Andrews]
- Review the amendment process to clarify when amendments should be necessary, including review of the level of detail required in an original project plan. [Rasmussen]
- Clarify the application of the use (50%) test and vacant land test in the context of territory amendments. [Harrigan]

## **PROJECT PLANS**

### **Background**

A TID project plan identifies a municipality's plan for expenditures within a TID. Current law specifies certain findings and content to be contained in each TID project plan.

### **Options**

The study committee could propose to:

- Eliminate or modify the vacant land test. [Harrigan]
- Eliminate the estimate of retail development requirement in mixed-use TIDs. [Harrigan]

## **ANNUAL REPORTS**

### **Background**

Under current law, each municipality with a TID must prepare an updated annual report describing the status of each existing TID, including expenditures and revenues, and must send a copy of this report to each overlying taxation district by May 1<sup>st</sup>.

### **Option**

The study committee could propose to revise the May 1<sup>st</sup> reporting date. [Gudex, Harrigan, Justice]

## **CLARITY OF TIF STATUTES**

### **Background**

During its previous meetings, several topics of discussion have arisen relating to improving the clarity and usefulness of current TIF statutes.

### **Options**

The study committee could propose to:

- Undertake a general recodification of s. 66.1105, Stats. [Gudex, Loudenbeck, Gromacki]
- Allow municipalities to refer to TIDs by a descriptive name rather than by its creation number. [Justice]

## **DATA COLLECTION AND STUDY**

### **Background**

During the testimony previously received by the committee, several discussions arose relating to the current state of data collection and analysis regarding TID utilization.

### **Options**

Suggested options relating to data collection and study of TID utilization:

- Statewide collection of annual TIF data. [Gudex, Kovari]
- Enhanced auditing of mixed-use TIDs to verify use ratios between residential, commercial, and industrial uses. [Kovari]
- Study of distressed and severely distressed TIDs. [Kovari]
- Study of "SuperTIF" feasibility (see, also, the discussion above on "Types of TIDs," starting on p. 8). [Kovari]

## **TIF BEST PRACTICES**

### **Background**

During the testimony previously received by the committee, several discussions arose relating to best practices for TID creation.

### **Options**

The study committee could propose to:

- Conduct a general review of TIF best practices. [Gudex]
- Establish TIF underwriting policies and principles. [Gromacki]
- Create TIDs with increment generators whenever possible. [Gromacki]
- Avoid single purpose and single parcel TIDs. [Gromacki]
- Avoid municipally owned industrial or commercial park TIDs. [Gromacki]
- Set aside a cushion of tax increments in all TIDs. [Gromacki]
- Add more prudent underwriting, pay-as-you-go, or other taxpayer protection measures to new projects. [Loudenbeck, Gromacki]
- Require personal guarantees from developers. [Gromacki]

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