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Wisconsin's Proposed Senate Bill Can Have Far-Reaching Implications for Wisconsin Municipalities Creating Tax Incremental Financing Districts

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Posted By: Alan Marcuvitz

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What is a Tax Incremental Financing District?

Tax Incremental Financing Districts (TIDs) are one tool that cities and villages have utilized to spur economic development. TIDs provide an alternative to municipal financing for funding public works projects, transfer the financial risk for development to developers, and provide developers financial incentives to construct projects that would not be economically feasible without the TID.

Wisconsin Statute § 66.1105 governs TIDs and allows communities to create a defined tax district whose taxes, among other uses, can fund cash grants to developers of land within the district by either distributing funds to the developer at the outset of a project or distributing funds annually by the "pay-as-you-go" approach.

The "pay-as-you-go" approach, which is increasingly utilized by Wisconsin cities and villages, operates on the assumption that development will add taxable value to a district. An initial base value of the property in the district is established at the commencement of the TID. The taxes generated from property after the development is undertaken minus the base value taxes yields the net incremental revenue ("NIR"). The NIR is the amount available to repay the city or village and developer for certain initial project costs for or directly related to development within the TID. To avoid financial short falls, development agreements often have a developer guaranty of increased value that obligates the developer to pay the shortfall between the actual NIR and projected NIR.

What Are The Proposed Changes?

While there are many advantages to TIDs, there is concern that TIDs increase the tax burden on citizens within the community. Governor Tony Evers' proposed budget, introduced as 2019 Senate Bill 59 on March 1, 2019, attempts to address this concern by proposing three changes to future TIDs. Those changes are:

1. Capping the developer allocation to 20% of the NIR (currently, there is no statutory limit to the amount of NIR that can be allocated to a developer),
2. Requiring TID project plans to include "stress tests" to test the "TID's finances and feasibility under different economic situations, including a slower pace of development and lower rate of property value growth than expected in the TID," and
3. Allowing cities and villages to transfer TID money to its general fund if the "city or village erroneously report a higher value increment for its TID by an aggregate amount of at least $50 million."

What Are The Implications to Municipalities?

- Existing TIDs would not be affected, but future TIDs would be subject to the new Senate Bill.
- If passed, the 20% cap on developer allocation may make some smaller project-specific TIDs unfeasible for the developer and require a shift from the trend of cities and villages creating smaller project-specific TIDs to establishment of larger TIDs in which the 20% amount payable to a developer would still be sufficient incentive to attract some developer's participation in a TID.
- The new "stress test" requirement will add administrative processing time in requiring evaluation of the TID under less favorable economic conditions during the planning phase.

Municipalities should be aware of these potential changes for TIDs currently under consideration.
