

1975 Senate Bill 420

Date published: November 20, 1975

**CHAPTER 105, Laws of 1975**  
(Vetoed in Part)

**Vetoed in Part** AN ACT to amend 66.436; and to create 20.255 (5), ~~60.293~~ and 66.46 of the statutes, relating to authorizing cities and villages ~~and towns~~ to use tax incremental financing in connection with certain public improvement projects and making and increasing appropriations.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1. Legislative declaration.** (1) The legislature finds that the existing system of allocating aggregate property tax revenues among tax levying municipalities has resulted in significant inequities and disincentives. The cost of public works or improvements within a city, ~~town~~ or village has been borne entirely by the city, ~~town~~ or village, while the expansion of tax base which is stimulated, directly or indirectly, by such improvements, benefits not only the city, ~~town~~ or village but also all municipalities which share such tax base. This situation is inequitable. Moreover, when the cost to a city, ~~town~~ or village of a public improvement project exceeds the future benefit to the city, ~~town~~ or village resulting therefrom, the city, ~~town~~ or village may decide not to undertake such project. This situation has resulted in the postponement or cancellation of socially desirable projects.

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(2) The legislature further finds that accomplishment of the vital and beneficial public purposes of sections 66.405 to 66.425, 66.43, 66.431, 66.435 and 66.52 of the statutes, is being frustrated because of a lack of incentives and financial resources. The purpose of this act is to create a viable procedure by which a city, ~~town~~ or village, through its own initiative and efforts, may finance projects which will tend to accomplish these laudable objectives.

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(3) It is further found and declared that in establishing a tax increment system, the legislature is acting in all respects for the benefit of the people of this state to serve a public purpose in improving and otherwise promoting their health, safety, welfare and prosperity.

**SECTION 1m.** 20.255 of the statutes is created to read:

20.255 (5) **TAX INCREMENTAL BASE PAYMENTS.** (a) *Project payments.* A sum sufficient for payments to school districts under s. 66.46 (11).

~~SECTION 1r. 60.293 of the statutes is created to read:~~

~~60.293 **Town tax increment powers.** Towns shall have all powers of cities under s. 66.46.~~

Vetoed  
in Part

**SECTION 2.** 66.436 of the statutes is amended to read:

**66.436 Villages to have certain city powers.** Villages shall have all of the powers of cities under ss. 66.43, 66.431 ~~and~~, 66.435 and 66.46.

**SECTION 3.** 66.46 of the statutes is created to read:

**66.46 Tax increment law.** (1) **SHORT TITLE.** This section shall be known and may be cited as the "Tax Increment Law".

(2) **DEFINITIONS.** In this section, unless a different intent clearly appears from the context:

(a) "Blighted area" means any area (including 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 such 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, or any area which by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of

conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use, or any area which is predominantly open 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.

(b) "City" means any city in this state.

(c) "Local legislative body" means the common council.

(d) "Personal property" has the meaning prescribed in s. 70.04.

(e) "Planning commission" means a plan commission created under s. 62.23, a board of public land commissioners if the city has no plan commission, or a city plan committee of the local legislative body, if the city has neither such a commission nor such a board.

(f) "Project costs" mean any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the city which are listed in a project plan as costs of public works or improvements within a tax incremental district, plus any costs incidental thereto, diminished by any income, special assessments, or other revenues, other than tax increments, received or reasonably expected to be received by the city in connection with the implementation of such plan. Such project costs include, but are not limited to:

1. Capital costs, including but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures; the acquisition of equipment; and the clearing and grading of land.

2. Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity.

3. Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the city of real or personal property within a tax incremental district for consideration which is less than its cost to the city.

4. Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering, and legal advice and services.

5. Imputed administrative costs, including, but not limited to, reasonable charges for the time spent by city employees in connection with the implementation of a project plan.

6. Relocation costs, including, but not limited to, those relocation payments made following condemnation under ss. 32.19 and 32.195.

7. Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of tax incremental districts and the implementation of project plans.

8. The amount of any contributions made under s. 66.431 (13) in connection with the implementation of the project plan.

9. Payments made, in the discretion of the local legislative body, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans.

(g) "Project plan" means the properly approved plan for the development or redevelopment of a tax incremental district, including all properly approved amendments thereto.

(h) "Real property" has the meaning prescribed in s. 70.03.

(i) "Tax increment" means that amount obtained by multiplying the total county, city, school and other local general property taxes levied on all taxable property within a tax incremental district in any year by a fraction having a numerator equal to that year's equalized value of all taxable property in such district minus the tax incremental base and a denominator equal to that year's equalized value of all taxable property in such district. In any year, a tax increment is "positive" if the tax incremental base is less than the aggregate value of taxable property as equalized by the department of revenue; it is "negative" if such base exceeds such value.

(j) "Tax incremental base" means the aggregate value, as equalized by the department of revenue, of all taxable property located within a tax incremental district on the date as of which such district is created, determined as provided in sub. (5) (b).

(k) "Tax incremental district" means a contiguous geographic area within a city defined and created by resolution of the local legislative body.

(L) "Taxable property" means all real and personal taxable property located in a tax incremental district.

(3) POWERS OF CITIES. In addition to any other powers conferred by law, a city may exercise any powers necessary and convenient to carry out the purposes of this section, including the power to:

(a) Create tax incremental districts and to define the boundaries of such districts;

(b) Cause project plans to be prepared, to approve such plans, and to implement the provisions and effectuate the purposes of such plans;

(c) Issue tax incremental bonds and notes;

(d) Deposit moneys into the special fund of any tax incremental district; or

(e) Enter into any contracts or agreements, including agreements with bondholders, determined by the local legislative body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans. Such contracts or agreements may include conditions, restrictions, or covenants which either run with the land or which otherwise regulate the use of land.

(4) CREATION OF TAX INCREMENTAL DISTRICTS AND APPROVAL OF PROJECT PLANS. In order to implement the provisions of this section, the following steps and plans are required:

(a) Holding of a public hearing by the planning commission at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a tax incremental district and the proposed boundaries thereof. Notice of such hearing shall be published as a class 2 notice, under ch. 985. Prior to such publication, a copy of the notice shall be sent by first class mail to the chief executive officer of all local governmental entities having the power to levy taxes on property located within the proposed district and to the school board of any school district which includes property located within the proposed district.

(b) Designation by the planning commission of the boundaries of a tax incremental district recommended by it to be created and submission of such recommendation to the local legislative body.

(c) Adoption by the local legislative body of a resolution which:

1. Describes the boundaries, which may, but need not, be the same as those recommended by the planning commission, of a tax incremental district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included therein. In this connection, the local legislative body shall take care that the boundaries include only those whole units of property as are assessed for general property tax purposes.

2. Creates such district as of a date therein provided. If the resolution is adopted during the period between May 2 and September 30, then such date shall be the next preceding May 1. If such resolution is adopted during the period between October 1 and April 30, then such date shall be the next subsequent May 1. If the resolution is adopted on May 1, the district shall have been created as of the date of the resolution.

3. Assigns a name to such district for identification purposes. The first such district created shall be known as "Tax Incremental District Number One, City of \_\_\_\_\_". Each subsequently created district shall be assigned the next consecutive number.

4. Contains findings that:

a. Not less than 25%, by area, of the real property within such district meets at least one of the following criteria: 1) is a "blighted area"; 2) is in need of "rehabilitation or conservation work" within the meaning of s. 66.435 (3); or 3) is suitable for "industrial sites" within the meaning of s. 66.52; and

b. The improvement of such area is likely to enhance significantly the value of substantially all of the other real property in such district. It shall not be necessary to identify the specific parcels meeting such criteria; and

c. The aggregate value of equalized taxable property of the district plus all existing districts does not exceed 5% of the total value of equalized taxable property within the city.

(d) Preparation and adoption by the planning commission of a project plan for each tax incremental district and submission of such plan to the local legislative body. Such plan shall include a statement listing the kind, number, and location of all proposed public works or improvements within such district; an economic feasibility study; a detailed list of estimated project costs; and a description of the methods of financing all estimated project costs and the time when such costs or monetary obligations related thereto are to be incurred. Such plan shall also include a map showing existing uses and conditions of real property in such district; a map showing proposed improvements and uses therein; proposed changes of zoning ordinances; master plan, map, building codes and city ordinances; a list of estimated nonproject costs; and a statement of a proposed method for the relocation of any persons to be displaced.

(e) Approval by the local legislative body of a project plan. Such approval shall be by resolution which contains findings that such plan is feasible and in conformity with the master plan, if any, of the city.

(f) The planning commission may at any time adopt an amendment to a project plan, which amendment shall be subject to approval by the local legislative body in the same manner as an initial project plan.

(5) DETERMINATION OF TAX INCREMENT AND TAX INCREMENTAL BASE. (a) Upon the creation of a tax incremental district or upon adoption of any amendment subject to par. (c), its tax incremental base shall be determined forthwith.

(b) Upon application in writing by the city clerk, in such form as the department of revenue may prescribe, the department shall determine according to its best judgment from all sources available to it the full aggregate value of the taxable

property in such district, which aggregate valuation, upon certification thereof by it to the city clerk, constitutes the tax incremental base of such district.

(c) If the city adopts an amendment to the original project plan for any district which includes additional project costs for which tax increments may be received by such city, the tax incremental base for such district shall be redetermined pursuant to par. (b) as of the May 1 following the effective date of such amendment, except that if the effective date of the amendment is May 1 of any year, the redetermination shall be made on that date. The tax incremental base as redetermined under this paragraph is effective for the purposes of this section only if it exceeds the original tax incremental base determined under par. (b).

(d) It is a rebuttable presumption that any property within a tax incremental district acquired or leased as lessee by the city, or any agency or instrumentality thereof, within the one year immediately preceding the date of the creation of such district was so acquired or leased in contemplation of the creation of such district. Such presumption may be rebutted by the city with proof that such property was so leased or acquired primarily for a purpose other than to reduce the tax incremental base. If such presumption is not rebutted, in determining the tax incremental base of such district, but for no other purpose, the taxable status of such property shall be determined as though such lease or acquisition had not occurred.

(e) The city assessor shall identify upon the assessment roll returned and examined under s. 70.45 those parcels of property which are within each existing tax incremental district, specifying thereon the name of each district. A similar notation shall also appear on the tax roll made by the city clerk under s. 70.65.

(f) The department of revenue shall annually give notice to the designated finance officer of all governmental entities having the power to levy taxes on property within each district as to both the assessed and equalized value of such property and the assessed and equalized value of the tax increment base. Such notice shall also explain that the taxes collected in excess of the base will be paid to the city as provided under sub. (6) (b).

(6) ALLOCATION OF POSITIVE TAX INCREMENTS. (a) Positive tax increments with respect to a tax incremental district are allocated to the city which created such district for each year from the date when such district is created until the earlier of:

1. That time, after the completion of all public improvements specified in the plan or amendments thereto, when the city has received aggregate tax increments with respect to such district in an amount equal to the aggregate of all expenditures previously made or monetary obligations previously incurred for project costs for such district; or

2. Fifteen years after the last expenditure identified in the plan is made. No expenditure may be provided for in the plan more than 5 years after the district is created unless an amendment is adopted by the local legislative body under sub. (5) (c).

(b) Notwithstanding any other provision of law, every officer charged by law to collect and pay over or retain local general property taxes shall, first, on the next settlement date provided by law, pay over to the city treasurer out of all such taxes which he has collected that portion which represents a tax increment allocable to such city.

(c) All tax increments received with respect to a tax incremental district shall, forthwith upon receipt by the city treasurer, be deposited into a special fund for such district. The city treasurer may deposit additional moneys into such fund pursuant to an appropriation by the local legislative body. Moneys shall be paid out of such fund only to pay project costs with respect to such district, to reimburse the city for such

payments, or to satisfy claims of holders of tax incremental bonds or notes issued with respect to such district. Subject to any agreement with bondholders, moneys in such fund may be temporarily invested in the same manner as other city funds. After all project costs and all tax incremental bonds and notes with respect to such district have been paid or the payment thereof provided for, subject to any agreement with bondholders, if there remain in such fund any moneys, they shall be paid over to the treasurer of each county, school district or other tax levying municipality or to the general fund of the city in such amounts as belong to each respectively, having due regard for what portion of such moneys, if any, represents tax increments not allocated to the city and what portion thereof, if any, represents voluntary deposits of the city into such fund.

(7) TERMINATION OF TAX INCREMENTAL DISTRICTS. The existence of a tax incremental district shall terminate when:

(a) Positive tax increments are no longer allocable with respect to a district under sub. (6) (a); or

(b) The local legislative body, by resolution, dissolves the district.

(9) FINANCING OF PROJECT COSTS. (a) Payment of project costs may be made by any one or more of the following methods or any combination thereof:

1. Payment by the city from the special fund of the tax incremental district;
2. Payment out of its general funds;
3. Payment out of the proceeds of the sale of bonds or notes issued by it under ch. 67;
4. Payment out of the proceeds of the sale of public improvement bonds issued by it under s. 66.059;
5. Payment as provided under s. 66.54 (2) (c), (d), or (e);
6. Payment out of the proceeds of mortgage bonds or notes or mortgage certificates issued by it under s. 66.066;
7. Payment out of the proceeds of revenue bonds issued by it under s. 66.51; or
8. Payment out of the proceeds of the sale of tax incremental bonds or notes issued by it under this subsection.

(b) 1. For the purpose of paying project costs or of refunding notes issued under ch. 67 or this subsection for the purpose of paying project costs, the local legislative body may issue tax incremental bonds or notes payable out of positive tax increments. Each such bond or note and all interest coupons appurtenant thereto are declared to be a negotiable instrument. Such bonds and notes shall not be included in the computation of the constitutional debt limitation of such city. Bonds and notes issued under this subsection, together with the interest and income therefrom, shall be taxed in the same manner as are municipal bonds issued under s. 67.04.

2. Tax incremental bonds or notes shall be authorized by resolution of the local legislative body without the necessity of a referendum or any elector approval, but such referendum or election may be held, through the procedures provided in s. 66.521 (10)

(d). Such resolution shall state the name of the tax incremental district, the amount of bonds or notes authorized, and the interest rate or rates to be borne by such bond or notes. Such resolution may prescribe the terms, form and content of such bonds or notes and such other matters as the local legislative body deems useful

3. Tax incremental bonds or notes may not be issued in an amount exceeding the aggregate project costs. Such bonds or notes shall mature over a period not exceeding 20 years from the date thereof. Such bonds or notes may contain a provision authorizing the redemption thereof, in whole or in part, at stipulated prices, at the

option of the city, on any interest payment date and shall provide the method of selecting the bonds or notes to be redeemed. The principal and interest on such bonds and notes may be payable at any time and at any place. Such bonds or notes may be payable to bearer or may be registered as to the principal or principal and interest. Such bonds or notes may be in any denominations. Such bonds or notes may be sold at public or private sale. Insofar as they are consistent with this subsection, the provisions of ch. 67 relating to procedures for issuance, form, contents, execution, negotiation, and registration of municipal bonds and notes are incorporated herein by reference.

4. Tax incremental bonds or notes are payable only out of the special fund created under sub. (6) (c). Each such bond or note shall contain such recitals as are necessary to show that it is only so payable and that it does not constitute an indebtedness of such city or a charge against its general taxing power. The local legislative body shall irrevocably pledge all or a part of such special fund to the payment of such bonds or notes. Such special fund or the designated part thereof may thereafter be used only for the payment of such bonds or notes and interest thereon until the same have been fully paid; and a holder of such bonds or notes or of any coupons appertaining thereto shall have a lien against such special fund for payment of such bonds or notes and interest thereon and may either at law or in equity protect and enforce such lien.

5. To increase the security and marketability of tax incremental bonds or notes, the city may:

a. Create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom; or

b. Make such covenants and do any and all such acts, not inconsistent with the Wisconsin constitution, as may be necessary or convenient or desirable in order to additionally secure such bonds or notes or tend to make the bonds or notes more marketable according to the best judgment of the local legislative body.

(10) OVERLAPPING TAX INCREMENTAL DISTRICTS. (a) Subject to any agreement with bondholders, a tax incremental district may be created, the boundaries of which overlap one or more existing districts, except that districts created as of the same date may not have overlapping boundaries.

(b) If the boundaries of 2 or more tax incremental districts overlap, in determining how positive tax increments generated by that area which is within 2 or more districts are allocated among such districts, but for no other purpose, the aggregate value of the taxable property in such area as equalized by the department of revenue in any year as to each earlier created district is deemed to be that portion of the tax incremental base of the district next created which is attributable to such overlapped area.

(11) EQUALIZED VALUATION FOR APPORTIONMENT OF PROPERTY TAXES. (a) With respect to the county, school districts, and any other local governmental body having the power to levy taxes on property located within a tax incremental district, the calculation of the equalized valuation of taxable property in a tax incremental district under ch. 70 may not exceed the tax incremental base of the district until the district is terminated.

(b) All tax increments which have accrued to school districts under this section shall be determined and such amounts shall be paid on March 1 of each year out of the appropriation under s. 20.255 (5) (a) to all school districts which have territory in a tax incremental district.

Vetoed  
in Part

~~(12) This section does not apply to any commercial or industrial expansion in any city if the new commercial or industrial capacity causes a corresponding tax base loss in any other city in this state.~~

(13) The department of local affairs and development, in cooperation with other state agencies and local governments, shall make a comprehensive report to the governor and legislature at the beginning of each biennium, beginning with the 1977 biennium, as to the effects and impact of tax incremental financing projects socially, economically and financially.

**SECTION 3m. Appropriation increase.** The appropriation under section 20.566 (2) (a) of the statutes, as affected by the laws of 1975, is increased by \$50,000 in fiscal year 1975-76 to provide funding for implementing the tax increment law.

**SECTION 4. Construction of act.** The legislature declares that this act is necessary for the welfare of this state and its inhabitants, and it is the intent of the legislature that it is to be liberally construed to effect its purpose.

**SECTION 5. Tax increments; court test.** Upon enactment of this section, the attorney general shall promptly commence an action seeking a declaratory judgment to determine whether the constitution permits a city or village to finance certain public improvements with the taxes derived from the increase in equalized taxable valuation within a tax incremental district in lieu of the taxes being received by the local governmental entities having authority to levy a tax within the district as provided in section 66.46 of the statutes as created by this act. The attorney general shall petition for leave to commence the action as an original action before the Wisconsin supreme court. If the petition is denied, he shall commence the action in the circuit court for Dane County.

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