

COMMUNITY AND ECONOMIC DEVELOPMENT CLINIC
YALE LAW SCHOOL

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MEMORANDUM

TO: Connecticut Main Street Center
FROM: Community & Economic Development Clinic, Yale Law School
DATE: March 4, 2015
RE: Tax Increment Financing

The Connecticut Main Street Center has asked the Community and Economic Development Clinic (“CED”) to:

1. Research the substantive and procedural provisions of tax increment financing (“TIF”) in Connecticut, including current law, proposed legislation, and projects that have successfully utilized TIF funds; and
2. Compare TIF legislation in Connecticut to TIF legislation in other states and the District of Columbia, with a view to developing TIF legislation to help revitalize Connecticut downtowns.

I. Introduction to Tax Increment Financing

Tax Increment Financing (“TIF”) is a tool used by states and municipalities to stimulate development and redevelopment.¹ TIF is used to “provide funds to construct public infrastructure, promote development opportunities and expand a municipality’s future tax base.”² These funds are made available based on the expectation that increases in future tax revenue will be sufficient to pay off any debt incurred.³ Currently, TIF legislation exists in 49 states and the District of Columbia. TIF programs vary widely from state to state, but the basic process by which TIF funds are raised is fairly consistent.

a. General Outline of a TIF Program

First, a city or state will establish a “TIF District.” TIF Districts can comprise commercial districts, designated blighted areas, or other areas the state or municipality has designated for redevelopment.⁴ Often, the legislation will include some restrictions on the designation of TIF

¹ See Jonathan M. Davison, *Urban Redevelopment—Tax Increment Financing*, Rathkopf’s The Law of Zoning and Planning § 15:59 (4th ed. 2013) (technique for implementing a local redevelopment, industrial or economic development program).

² *Tax Increment Financing as a Tool for Affordable Housing in Connecticut* 8 (July 2013).

³ Rob Kerth & Phineas Baxandall, *Tax Increment Financing: The Need for Increased Transparency and Accountability in Local Economic Development Subsidies* 6 (Fall 2011).

⁴ *Id.*; see also *Tax Increment Financing as a Tool for Affordable Housing in Connecticut* 9 (July 2013).

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Districts.⁵ The legislation may specify a geographical area for the district, limit the number of years a district can exist, or require that there be a reasonable expectation of development, among other possible limitations. In some instances, the legislation may only enable the use of TIF funds if there is some existing barrier to development (e.g., contamination).⁶

Once a TIF District is established, the current tax assessment is frozen for the duration of the TIF District designation.⁷ Tax revenue is then split into two streams. The municipality continues to receive the frozen level of taxes into its general fund, and the additional taxes collected on account of the redevelopment are devoted to a special fund.⁸ The municipality then issues bonds or loans based on the anticipated future revenues, and those bonds or loans are used to finance the development in the TIF District.⁹

II. TIF in Connecticut

TIF has rarely been used in Connecticut.¹⁰ Evidence suggests that this is for two reasons: (1) all but one of Connecticut's TIF statutes authorize only the use of increases in property taxes, and not sales or income taxes, to pay off the bonds; and, (2) Connecticut legislation does not allow for the collection of tax revenues from properties nearby TIF-designated projects.¹¹ Because of these statutory limitations on TIF, Connecticut municipalities often prefer to use other mechanisms of financing, such as general obligation bonds or tax abatements.¹²

a. Current Law

⁵ See *Tax Increment Financing as a Tool for Affordable Housing in Connecticut* 9 (July 2013).

⁶ *Id.*

⁷ *Id.* at 8.

⁸ Rob Kerth & Phineas Baxandall, *Tax Increment Financing: The Need for Increased Transparency and Accountability in Local Economic Development Subsidies* 6 (Fall 2011).

⁹ *Id.*

¹⁰ Greg Bordonaro, *State mulls expanding TIF model financing*, Hartford Business, April 4, 2012, available at <http://www.hartfordbusiness.com/article/20120402/PRINTEDITION/304029998/state-mulls-expanding-tif-model-financing>.

¹¹ See Conn. Gen. Stat. § 32-23zz (2014), Conn. Gen. Stat. § 8-192 (2014); Conn. Gen. Stat. §§8-140 – §8-145 (2014); Conn. Gen. Stat. §§8-125 – §8-139 (2014). Increases in government revenue other than property taxes (such as income tax, and sales tax) or increases in private sector revenue (e.g., ticket sales, parking fees, etc.) could be the funding source for bonds under Section 32-285.

¹² Greg Bordonaro, *State mulls expanding TIF model financing*, Hartford Business, April 4, 2012, available at <http://www.hartfordbusiness.com/article/20120402/PRINTEDITION/304029998/state-mulls-expanding-tif-model-financing> (stating city was able to offer only \$1.6 million in TIF bonds as opposed to \$5.2 million in general obligation bonds). General obligation bonds are backed by the full faith and credit of the government issuer and typically do not include any assets as collateral. Unlike revenue bonds, which are repaid from the revenues of the funded project, general obligation bonds can be repaid from a variety of sources, including taxes.

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Legislation authorizing the use of TIF can be found in five different parts of the Connecticut General Statutes. The statutes authorize the use of TIF for the following: (1) information technology and remediation projects; (2) municipal development projects; (3) significant economic projects; (4) urban renewal; and (5) redevelopment. Since the merger of Connecticut Innovations, Inc. and the Connecticut Development Authority in 2012, much of the TIF funding has flowed through Connecticut Innovations. Connecticut Innovations is a quasi-public entity, which finances and supports Connecticut's growing companies and also serves as the state's lender for these projects.¹³

1) Information Technology and Remediation Projects, Section 32-23zz

Section 32-23zz of the Connecticut General Statutes authorizes the use of TIF to fund Information Technology and Remediation projects. An information technology project is defined as one that both "provides information technology intensive office or laboratory space" as well as one that Connecticut Innovations decides will "materially contribute to the economic base of the state."¹⁴

A remediation project must be one that improves property subject to a spill, a facility, an establishment, or a project that is eligible to be treated as polluted real property or contaminated real property.¹⁵ This type of project must follow a strict remediation plan. That plan must meet the applicable standards and requirements of the Department of Energy and Environmental Protection ("DEEP").¹⁶

These standards are set at the discretion of the Commissioner of Energy and Environmental Protection.¹⁷ Additionally, Connecticut Innovations must determine that the project will support significant employment or new economic activity, contribute to the economic base of the state or the municipality, or provide a residential or mixed-use development that requires assistance from Connecticut Innovations to attract private funding.¹⁸

¹³ *Who We Are*, Connecticut Innovations (July 24, 2014), <http://www.ctinnovations.com/about> (according to its website, "Connecticut Innovations is the leading source of financing and support for Connecticut's innovative, growing companies.").

¹⁴ Conn. Gen. Stat. § 32-23d(dd) (2014).

¹⁵ *Id.*; see also Conn. Gen. Stat. § 22a-134(3) (2014) ("Establishment" means any real property at which any business there were generated "hazardous waste generated at a different location was recycled reclaimed, resued, stored, handled, treated, transported or disposed of" or where dry cleaning, furniture stripping or vehicle body repair was conducted after May 1, 1967); 42 U.S.C. § 9601 (9)(B) (2012) ("Facility" means any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located").

¹⁶ *Id.* § 32-23d(gg) (2014).

¹⁷ *Id.* § 22a-133aa(a) (2014).

¹⁸ *Id.* § 32-23d(dd) (2014); § 32-23d(gg) (2014).

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Figure I below lists all publicly-available projects that have been funded through Section 32-33zz.

Figure I

Project Name	Location	Description
Legion Square Associates	Berlin	Connecticut Brownfields Redevelopment Authority (“CBRA”) provided \$675,000 in TIF funds for this project, which converted a solid waste facility into a retail center. ¹⁹
Killingly Commons	Killingly	The conversion of a manufacturing facility received \$1.5 million in TIF funds from CBRA. ²⁰
Daticon	Norwich	CBRA bonded \$1 million to improve an under-utilized site in 2001. ²¹
North Haven Commons	North Haven	This project was given \$2.3 million in TIF funding from CBRA. ²² The total cost to convert a former scrap yard into a regional retail center was \$55 million. ²³
Hudson Baylor Corporation	South Windsor	An abandoned building was converted into a state-of-the-art recycling center. ²⁴ The total amount of TIF funds made available for this project is not available.

2) Chapter 132: Municipal Development Projects, Sections 8-186 to 8-192

The General Statutes also authorize the use of TIF for municipal development projects.²⁵ A “development project” is “a project conducted by a municipality for the assembly, improvement, and disposition of land or buildings or both to be used principally for industrial or business

¹⁹ Maria Chrysochoou et al., *Reversing Urban Sprawl: A Reclaimability Index Approach for Reviving Downtown Brownfields* Ctr. for Transp. and Livable Sys., 11 (March 2011), http://www.ctls.uconn.edu/pdf/CTLS_08-03_Final_Report.pdf.

²⁰ *Id.*

²¹ Adam Benson, *Hotel deal could yield \$1M in taxes for Norwich*, Norwich Bulletin, Dec. 16, 2013, available at <http://www.norwichbulletin.com/article/20131216/NEWS/131219665/10283/NEWS?template=printart>.

²² Steve Dwyer, *North Haven Commons: Going Above, Beyond the Call*, Brownfield Renewal (July 24, 2014), http://www.brownfieldrenewal.com/news-north_haven_commons_going_above_beyond_the_call-255-r02d4bf.html.

²³ *Id.*

²⁴ Connecticut Innovations, *Connecticut Brownfields Redevelopment Authority: Giving Commercial and Industrial Sites a Fresh Start*, available at <http://www.ctinnovations.com/pdf/CBRA.pdf>.

²⁵ Conn. Gen. Stat. § 8-192 (2014).

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purposes and includes vacated commercial plants.”²⁶ The funds used to furnish bonds come from the increase in taxation from personal and real property within the development project.²⁷ This means that the statute assumes that the project will generate an increase in property or personal property taxes in order to service the bond.²⁸ These bonds can be administered either by the municipality or Connecticut Innovations.²⁹ Bonds issued pursuant to this statute need to first be noticed for a public hearing. After the public hearing, they must be passed by a resolution of the legislative body of the municipality.³⁰ DECD is then required to give final approval.³¹ If the project includes housing and facilities related to housing, the bonds may be issued for up to forty years.³² In all other cases, bonds may be issued for a thirty-year term.³³ The Clinic could find no projects on record financed through Section 8-192.

3) Significant Economic Projects, Section 32-285

Section 32-285 of the General Statutes establishes a TIF program for self-sustaining “significant economic projects.”³⁴ The tax increments are generated from the increase in hotel taxes, sales, cabaret, admissions and dues taxes on a Connecticut Innovations approved project.³⁵ Admissions include the amount paid for the “right or privilege to have access to a place or location where amusement, entertainment or recreation is provided.”³⁶ Dues include assessment charges to members as well as charges for social, athletic, or sporting privileges or facilities.³⁷ The purpose of the statute is to attract such projects to Connecticut.³⁸ The statute defines an eligible project as:

A large-scale development project (A) that may add a substantial amount of new economic activity and employment in the municipality in which it is to be located and surrounding areas, and may generate significant additional tax revenues in the state; (B) for which use of the tax incremental financing mechanism may be necessary to attract the project to locate in the state; (C) which is economically viable and self-sustaining, taking into account the application of the proceeds of the bonds to be issued under the tax

²⁶ *Id.* § 8-187(4) (2014).

²⁷ *Id.* § 8-192(a) (2014).

²⁸ *Id.*

²⁹ *Id.* § 8-192 (2014)

³⁰ *Id.* § 8-192(a) (2014).

³¹ *Id.* § 8-192 (2014)

³² *Id.*

³³ *Id.*

³⁴ *Id.* § 32-285 (2014).

³⁵ *Id.* § 32-285(a)(1) (2014). *See also*, Conn. Gen. Stat. § 12-542 (stating cabaret tax repealed effective June 23, 1999).

³⁶ *Id.* § 12-540(3)(2014).

³⁷ *Id.* § 12-540(4)(2014).

³⁸ *Id.* § 32-285(a)(1) (2014).

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incremental financing program; (D) for which the direct and indirect economic benefits to the state and the municipality in which it will be located outweigh the costs of the project; and (E) which is consistent with the strategic development priorities of the state.³⁹

Any person, firm, or corporation interested in obtaining funds from the TIF program must apply to Connecticut Innovations, which makes a preliminary determination “as to whether a proposed project may be eligible for participation in the program.”⁴⁰ Connecticut Innovations can retain financial advisors to determine what applicable taxes will be generated, and whether the project is self-sustaining or economically viable.⁴¹

Should Connecticut Innovations decide to present a project using hotel taxes to its board of directors for final approval, the project must be noticed to numerous public officials: (1) the president pro-tempore and minority leader of the State Senate; (2) the speaker and minority leader of the House of Representatives; (3) the joint standing committees of the General Assembly which deal with matters related to finance, revenue and bonding; and (4) the Department of Economic and Community Development.⁴² Any member of the General Assembly may request that Connecticut Innovations defer making a decision on the project for thirty days.⁴³

In order to obtain final approval on a project using incremental sales, admissions, cabaret and dues taxes, Connecticut Innovations must submit the application to the joint standing committees of the General Assembly which deal with matters related to finance, revenue and bonding, as well as the Department of Economic and Community Development.⁴⁴ The committees then have forty-five days to advise Connecticut Innovations of their approval or modifications.⁴⁵ If the committees do not agree, then a committee on conference is formed, and issues a report back to the original committees.⁴⁶ If the joint standing committee rejects this report, the project is deemed approved.⁴⁷ If the report is approved, the modifications and suggestions are reported back to Connecticut Innovations.⁴⁸ If the committees do not act within forty-five days, approval is assumed.⁴⁹

³⁹ *Id.* § 32-285(b) (2014).

⁴⁰ *Id.* § 32-285(d) (2014).

⁴¹ *Id.* § 32-285(e)(2) (2014).

⁴² *Id.* § 32-285(e)(4)(a) (2014).

⁴³ *Id.*

⁴⁴ *Id.* § 32-285(f)(6) (2014).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

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After this process is completed, and the project has been approved, Connecticut Innovations may issue bonds, but only if they are then approved by the State Bond Commission.⁵⁰ The entire approval process occurs at the state level. Figure II below lists successful projects completed through Section 32-285 tax increment financing.

Figure II

Project Name	Location	Description
Lake Compounce	Bristol	The Lake Compounce Theme Park improvements were financed in 1996 with \$18 million in TIF funding. The total project cost was \$40 million. ⁵¹
Oakdale Theatre	Wallingford	This project had a total cost of \$20.3 million, and received \$9.9 million in TIF funding in 1995. ⁵² The bond was issued for a twenty-year term. ⁵³
Dodd Stadium	Norwich	This project had a total cost of \$9.8 million and received \$1.545 million in TIF funding in 1994. ⁵⁴ The bond was issued for a twelve-year term. ⁵⁵
The Meadows	Hartford	The Meadows Music Theatre was financed in 1994 with \$9.885 million in TIF funding. ⁵⁶ The total project cost was \$22 million. ⁵⁷ The bond was issued for a thirty-year term. ⁵⁸ The state received more incremental tax revenue than the amount of debt service owed on the bonds between 1997 and 2008. ⁵⁹
Cabela's	East Hartford	This project had a total cost of \$50.5 million dollars, and received \$9.95 million in TIF funding in 2006. ⁶⁰

⁵⁰ *Id.* § 32-285(g)(2) (2014).

⁵¹ Linda Miller, *Meadows Music Theatre and the Lake Compounce Theme Park: Comparison of Annual Tax Revenue and Debt Service Payments on Tax Incremental Financing Bonds* (Jul. 2010), available at <http://www.cga.ct.gov/2010/ofarpt/2010OFA-0319.htm>.

⁵² *Id.*

⁵³ Judith Lohman, *Facilities Exempt From Admission Tax*, OLR Research Report, (Feb. 2006), available at <http://www.cga.ct.gov/2006/rpt/2006-R-0177.htm>.

⁵⁴ <http://www.cga.ct.gov/2010/ofarpt/2010OFA-0319.htm>

⁵⁵ Judith Lohman, *Facilities Exempt From Admission Tax*, OLR Research Report, (Feb. 2006), available at <http://www.cga.ct.gov/2006/rpt/2006-R-0177.htm>.

⁵⁶ Linda Miller, *Meadows Music Theatre and the Lake Compounce Theme Park: Comparison of Annual Tax Revenue and Debt Service Payments on Tax Incremental Financing Bonds* (Jul. 2010), available at <http://www.cga.ct.gov/2010/ofarpt/2010OFA-0319.htm>.

⁵⁷ *Id.*

⁵⁸ Judith Lohman, *Facilities Exempt From Admission Tax*, OLR Research Report, (Feb. 2006), available at <http://www.cga.ct.gov/2006/rpt/2006-R-0177.htm>.

⁵⁹ Linda Miller, *Meadows Music Theatre and the Lake Compounce Theme Park: Comparison of Annual Tax Revenue and Debt Service Payments on Tax Incremental Financing Bonds* (Jul. 2010), available at <http://www.cga.ct.gov/2010/ofarpt/2010OFA-0319.htm>.

⁶⁰ *Id.*

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4) Chapter 30: Redevelopment Projects, Sections 8-125 to 8-139

Sections 8-125 to 8-139 enable funding for “redevelopment projects,” defined as the development of areas that are “deteriorated, deteriorating, substandard or detrimental to the safety, health, morals or welfare of the community.”⁶¹ Deteriorated or deteriorating means that at least twenty percent of the buildings contain “building deficiencies” or “environmental deficiencies.”⁶² Section 8-134(a) authorizes the use of real and personal property taxes that increase within the redevelopment project area to finance bonds and fund the project. The project must follow a redevelopment plan.⁶³ Redevelopment plans typically include a description of the redevelopment area and its condition, as well as information on the necessary changes to land use, zoning and public utilities, displacement and temporary relocation assistance required, and the financial aspects of the proposed redevelopment.⁶⁴ These bonds may be issued by Connecticut Innovations but are paid for by the municipality.⁶⁵ The municipality must first approve such action.⁶⁶ In order for a bond to be adopted by the legislative body of the municipality, there must first be a public hearing.⁶⁷ The redevelopment plan may include more than one municipality.⁶⁸ The Clinic could find no projects on record financed through Sections 8-125 to 8-139.

5) Urban Renewal Projects, Sections 8-140 to 8-145

An urban renewal project includes “undertakings and activities for the elimination and/or prevention of the development or spread of slums or substandard, insanitary, blighted, deteriorated or deteriorating areas.”⁶⁹ Section 8-141 lists examples of what may be permitted, which include the following: (1) “acquisition of real property and demolition”; (2) “removal or rehabilitation of buildings”; (3) removal or rehabilitation aimed at eliminating hazardous conditions; (4) “installation, construction or reconstruction” of such items as streets, public parks, utilities, or playgrounds; and (5) approved disposition of any property necessary to the “objectives of the urban renewal project.”⁷⁰

⁶¹ Conn. Gen. Stat. § 8-125(2) (2014).

⁶² *Id.* § 8-125(7) (2014).

⁶³ *Id.* § 8-134(a) (2014).

⁶⁴ *Id.* § 8-125(3) (2014).

⁶⁵ *Id.* § 8-134 (2014).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* § 8-139 (2014).

⁶⁹ *Id.* § 8-141 (2014).

⁷⁰ *Id.*

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b. Proposed Legislation

1) Substitute House Bill 6527

In 2011, Substitute House Bill No. 6527⁷¹ proposed allowing “corridor zone municipalities to use incremental property tax revenue a project generates to repay the loans and other debt a business incurred to finance a project.”⁷² The bill proposed to expand Section 32-23zz to include any type of project to be completed in one of the thirteen corridor zone municipalities.⁷³ Under the bill, the enterprise corridor zone municipalities can finance new development by returning increases in tax revenue to pay private debt taken on by a developer during the course of the project.⁷⁴ This would change current law that dictates that incremental tax revenue may be used only to repay previously municipal or state issued bonds.⁷⁵

The proposed legislation also sought to expand Section 32-285, giving priority to projects in municipalities designated as enterprise corridor zones.⁷⁶ Furthermore, the act proposed expanding the eligible enterprise corridor zones.⁷⁷ This bill did not propose including taxes other than real and personal property taxes, nor did it propose to expand the area producing this incremental revenue beyond that of the project area.⁷⁸ This bill passed the Commerce Committee by a vote of eighteen to one, with support from various community organizations and leaders, and was then referred to the Committee on Finance, Revenue and Bonding where it never received a vote.⁷⁹

⁷¹ Substitute House Bill 6527 was subtitled “An Act Concerning Tax Incremental Financing in Enterprise Corridor Zones, Tax Incremental Financing in Municipal Development Zones, and Allowing Certain Commercial Properties in Bristol and Plainville to Qualify for Enterprise Zone Benefits.”

⁷² H.B. 6257, 2011 Leg., Jan. Sess. (Ct. 2011) (OLR Bill Analysis), Conn. Gen. Stat. § 32-80(b)(2) (2014) (an enterprise corridor zone is defined as “two or more contiguous eligible municipalities, at least one of which is located along an interstate highway, limited access state highway or intersecting interstate or limited access state highways and is designated as a regional center in the locational guide map included in the state plan of conservation and development adopted pursuant to chapter 297”).

⁷³ H.B. 6257, 2011 Leg., Jan. Sess. (Ct. 2011).

⁷⁴ *Id.* (OLR Bill Analysis).

⁷⁵ *Id.* § (3)(h)(2).

⁷⁶ *Id.* § 2.

⁷⁷ *Id.* § (4)(b) (adding specific census blocks and municipalities that have major research universities with programs in bioscience, biotechnology, pharmaceuticals or photonics, and an enterprise zone).

⁷⁸ *Id.* §(1)(b).

⁷⁹ Ct. Gen. Assemb. H.B. 6527, Bill Tracking, *available at* http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=6527&which_year=2011&SUBMIT1.x=7&SUBMIT1.y=7, Ct. Gen. Assemb. An Act Concerning Tax Incremental Financing in Enterprise, J. Favorable Rep., Mar. 22, 2011, *available at* <http://www.cga.ct.gov/2011/JFR/H/2011HB-06527-R00CE-JFR.htm> (supported by Representative Mae Flexer, Connecticut Conference of Municipalities, Connecticut Community Development Association, Connecticut Economic Development Association, and the Town of Killingly).

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2) Senate Bill 144

In 2012, Senate Bill 144⁸⁰ proposed expanding Section 32-23zz of the Connecticut General Statutes to include not only information technology and remediation projects, but also any project for development, as provided in Chapter 130, or any municipal development project, as provided in Chapter 132 (Sections 8-125 to 8-139 and Section 8-192 discussed above, respectively).⁸¹

S.B. 144 also sought to expand the type of taxes that could be used to fund projects. Under the proposed legislation, funds could be derived from an increase in taxes on real and personal property, as well as sales and income tax.⁸² This bill did not propose to expand the collection of tax revenue beyond the project itself.⁸³ The legislation was proposed for the purpose of helping to finance “building the infrastructure and developing projects to encourage business and institutional growth and job creation.”⁸⁴

The bill was sponsored by the Commerce Committee, and was supported by the City of New Haven and the Connecticut Conference of Municipalities (“CCM”).⁸⁵ Donna Hamzy of CCM testified that the bill was “a reasonable option for municipalities to help stimulate much needed economic development and growth at the local level.”⁸⁶ The Connecticut Development Authority opposed the bill stating that a project undertaken under this bill would require too much state assistance.⁸⁷ The Office of Policy and Management also opposed the bill, citing similar concerns about the decrease in state revenue.⁸⁸ The bill passed the Commerce Committee by a vote of twelve to five, but then never made it out of the Committee on Finance, Revenue and Bonding.⁸⁹

3) Senate Bill 1114

⁸⁰ The subtitle of Senate Bill 144 was “An Act Expanding the State’s Tax Incremental Financing Programs.”

⁸¹ S.B. 144, 2012 Leg., Feb. Sess. (Ct. 2012).

⁸² *Id.*

⁸³ *Id.* (allowing for “taxable sales, taxable personal income or any combination thereof, in a project each year”).

⁸⁴ *Id.* (purpose of the bill).

⁸⁵ Ct. Gen. Assemb., J. Commerce Comm. An Act Expanding the State’s Tax Incremental Financing Programs, J. Favorable Rep., Mar. 27, 2012 .

⁸⁶ *Id.*

⁸⁷ *Id.* (stating bill increase in state assistance for project would “decrease the added state retained revenue as a result of the bill”).

⁸⁸ *Id.* (“We cannot support a bill that siphons off portions of the state’s primary revenue sources for municipal purposes.”).

⁸⁹ Connecticut Gen. Assemb. S.B. 144, Bill Tracking, *available at*

http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=144&which_year=2012&SUBMIT1.x=16&SUBMIT1.y=12&SUBMIT1=Normal.

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In 2013, the Senate Bill 1114⁹⁰ proposed to expand the collection of incremental revenues to sales and income taxes.⁹¹ These incremental revenues could be used to fund a development project pursuant to Chapter 132, a redevelopment project pursuant to Chapter 130, or a project pursuant to Section 32-23zz of the General Statutes.⁹² The proposed legislation allotted seventy-five percent (75%) of the incremental revenues to be attributable to such projects, with twenty-five percent (25%) retained by the state.⁹³ Again, the legislation did not propose to expand the area producing this incremental revenue beyond that of the project area.⁹⁴ The purpose for this proposed legislation was to “allow a municipality to include incremental personal income taxes and sales and use taxes as part of the financing plan for a development or redevelopment project.”⁹⁵ This Bill was never voted out of the Committee on Finance, Revenue and Bonding.⁹⁶

Each of the proposed pieces of legislation described above is summarized in Figure III below.

Figure III

Bill	Year	Key Provisions	Current Status
Substitute House Bill 6527	2011	Expansion of Sections 32-23zz and 32-285 to allow “corridor zone municipalities to use incremental property tax revenue.”	No action since referral by House to Committee on Finance, Revenue and Bonding.
Senate Bill 144	2012	Proposed expanding Section 32-23zz to include any development project. Also sought to expand the type of taxes available.	No action since favorable change of reference from Senate to Committee on Finance, Revenue and Bonding.
Senate Bill 1114	2013	Proposed to expand the collection of incremental revenues to sales and income taxes.	No action since referral by House to Committee on Finance, Revenue and Bonding.

c. Why Current Law Is Not Suited for Connecticut Main Street’s Needs

⁹⁰ The subtitle of Senate Bill 144 was “An Act Concerning the Governing Board of the Harbor Point District and an Expansion of Tax Incremental Financing.”

⁹¹ S.B. 1114, 2013 Leg., Jan. Sess. (Ct. 2013).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* (“[S]uch project may be financed by incremental revenues from withholding taxes under the personal income tax and sales and use taxes attributable to such project”).

⁹⁵ *Id.* (Statement of Purpose).

⁹⁶ *Id.*

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1) Complex and Inconsistent Procedures

Currently, there are five different statutory sources that authorize TIF (described above in Section II of this memorandum), each with a different process for approving financing. Figure IV below summarizes the overlapping requirements of each statute.

Figure IV

Statute	Purpose	Requirements
Section 8-186 to 8-192	Municipal development	Noticed public hearing and subsequent approval by legislature. ⁹⁷
Sections 8-140 to 8-145	Urban renewal	Prospective developers must produce an urban renewal plan, which itself requires subsidiary plans. There must also be a noticed public hearing. ⁹⁸
Sections 8-125 to 8-139	Redevelopment	Much like urban renewal projects, redevelopment projects require a plan and a noticed public hearing followed by legislative approval. If the bond is issued by Connecticut Innovations, the municipality must also approve. ⁹⁹
Section 32-23zz	Remediation	Municipality must first authorize a remediation plan, which is not explicitly defined in the statutes. ¹⁰⁰
Section 32-285	Significant economic projects	Must first apply to Connecticut Innovations (“CI”), which makes a preliminary determination. If CI wishes to make final determination, Senate must be notified. Must also be noticed to several joint standing committees and agencies before approval. ¹⁰¹ See Section II of memorandum above.

The varied pieces of legislation and their accompanying approval mechanisms create a number of difficulties for prospective developers seeking TIF funds. First, consider definitional issues.

⁹⁷ Conn. Gen. Stat. § 8-192(a) (2014).

⁹⁸ See *Id.* § 8-142 (2014) (must be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements and rehabilitation as may be proposed to be carried out in the area of the urban renewal project, zoning and planning changes, if any, land uses, maximum densities, building requirements and the plan’s relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements).

⁹⁹ *Id.* § 8-125(3); § 8-127(b) (2014).

¹⁰⁰ *Id.* § 32-23d(gg) (2014).

¹⁰¹ See *Id.* § 32-23d(dd) (2014); 32-23d(gg) (2014).

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Certain downtown economic development projects may include urban renewal, remediation and redevelopment.

Second, the processes open projects up to discretionary denials at a number of stages, sometimes after completing costly tasks. Consider, for instance, a project seeking funding under Section 32-285. Projects can be denied funding at six different stages: (1) by Connecticut Innovations in its preliminary review; (2) by the Connecticut Innovations Board of Directors after preliminary approval has already been given; (3) by the joint standing committees of the General Assembly after Connecticut Innovations referral; (4) once again by a joint standing committee after receiving a report by an ad hoc committee; (5) once again by Connecticut Innovation after their receive referral from a joint standing committee; and finally (6) by the State Bond Commission. In addition to each of these opportunities for discretionary denial, members of the General Assembly can delay approval at essentially any point in the process.¹⁰² Once more, this process occurs entirely at the state level.

2) Excessive Limitations

The types of projects that are qualified under state statute to receive TIF funding are significant economic projects, urban renewal projects, municipal development projects, information technology projects, remediation projects, and redevelopment projects.¹⁰³ As identified above, these projects have definitions and requirements that place further restrictions on what projects will qualify.

1. Project Area Limitations

Connecticut's TIF programs only allow tax revenue to be generated from the increase in a specific project's taxes. The Connecticut model only generates the revenue necessary to back the bonds issued if the particular project generates an increase in taxes. This revenue is limited if the funds are generated only from real or personal property taxes.¹⁰⁴ Section 32-285 may have been the legislature's way of addressing this issue by allowing the increase in hotel, admissions, sales, cabaret, and dues taxes generated by a project to be utilized. However, Section 32-285 is still project limited. Other jurisdictions allow for the creation of a TIF District that includes but is not limited to the financed project. The existence of a TIF District can make the bonds more attractive to investors, since there is a wider source of potential revenue to be accumulated to help finance the bond.

¹⁰² See *Id.* § 32-285(e)(4)(a) (2014) (can request project be put on hold for thirty days),

¹⁰³ See *Id.* § 32-23zz (2014); § 8-192 (2014), C§ 32-285 (2014); §§ 8-140 to 8-145 (2014); Conn. Gen. Stat. §§ 8-125 to 8-139 (2014).

¹⁰⁴ *Tax Increment Financing as a Tool for Affordable Housing in Connecticut* 32 (July 2013).

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2. Limited by Real and Personal Property Taxes

With the exception of Section 32-285, Connecticut TIF programs only allow real and personal property to be allocated towards the TIF program. Most states follow this model, with few allowing the increment to be generated from sales and income taxes.¹⁰⁵

3. Process of Issuing TIF Bonds Often Not Municipality Run

Except under the Redevelopment and Urban Renewal TIF Statutes, found in Sections 8-125 to 8-145, municipalities do not have the authority to issue TIF bonds on their own. Only Connecticut Innovations can issue I.T. and Environmental Remediation Section 32-23zz TIF bonds. Connecticut Innovations also initiates the process of issuing TIF bonds under Significant Economic Projects Section 32-285. What is more, Section 32-285 gives multiple actors the authority to veto the TIF project, including the president pro-tempore and minority leader of the State Senate, the speaker and house leader of the State House of Representatives, the Joint Standing Committees of the General Assembly, and DECD. Finally, though municipalities can initiate TIF projects under Municipal Development Projects, Sections 8-186 to 8-192, such projects are subject to final approval from DECD.

III. TIF in Other Jurisdictions

Connecticut Main Street Center has identified four other jurisdictions that have exemplary records in using TIF funding to revitalize downtown areas: Washington, D.C., Wisconsin, Iowa, and Maine. The following section examines the structure of the TIF programs in these jurisdictions and highlights some of the projects these jurisdictions have completed using TIF funding.

a. Washington, D.C.

There are two main statutes authorizing the issuance of TIF bonds in the District of Columbia (“the District”) to finance development and/or redevelopment projects: (1) the 1998 Tax Increment Financing Authorization Act (“DC TIF Act”);¹⁰⁶ and (2) the Retail Incentive Act of 2004 (“Retail Incentive Act”).¹⁰⁷

1) Tax Increment Financing Authorization Act of 1998

¹⁰⁵ Rob Kerth & Phineas Baxandall, *Tax Increment Financing: The Need for Increased Transparency and Accountability in Local Economic Development Subsidies* 6 (Fall 2011).

¹⁰⁶ D.C. Code § 2-1217.01 *et seq.*

¹⁰⁷ *Id.* § 2-1217.71

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Under the DC TIF Act, the Council of the District of Columbia (“DC Council”) can authorize the issuance of TIF bonds to finance development costs of eligible projects with the aggregate principal amount of TIF bonds capped at \$500 million total and \$300 million in the Central Business District.”¹⁰⁸ The DC TIF Act also provides that “TIF bonds may qualify as tax-exempt enterprise zone facility bonds if the bonds satisfy the applicable requirements of the Internal Revenue Code . . . and applicable laws of the District.”¹⁰⁹

The DC TIF Act (1) defines a priority development area whereby development sponsors whose projects are located within that area may apply for TIF funding and (2) establishes the DC Ballpark TIF Area.¹¹⁰ While the geographic boundaries between the priority development area and the DC Ballpark TIF Area do not overlap, tax increment revenues (both property and sales) from the DC Ballpark TIF Area are set aside in the Community Benefit Fund and may be used to secure bonds [including TIF bonds] or other evidence of indebtedness.”¹¹¹ This means that TIF revenues that come from the DC Ballpark can be used for other purposes within the district.

The authority to administer TIF financing and certify eligible projects is vested in the Chief Financial Officer (“CFO”) of the District.¹¹² In addition to certifying eligible projects, the CFO is authorized to “abolish, merge TIF areas or alter the boundaries of a TIF area”¹¹³ and “impose reasonable fees in connection with the issuance of the TIF bonds to defray administrative costs [associated with] the issuance of such TIF bonds.”¹¹⁴

1. Criteria for selection and process

Under the DC TIF Act, any individual or entity seeking TIF funding for a project located in a priority development area must submit an application to the CFO containing: “(1) a delineation of the proposed TIF area; (2) a description of the proposed land uses of the project; (3) pro forma projections of the revenues and expenses of the project; (4) a financial feasibility description of the project; (5) the timing and phasing of the project; (6) a statement of the compatibility of the project with the Comprehensive Plan; (7) a description of how the project complies with zoning regulations of the District; and (8) an analysis of projected tax revenue and benefits to be

¹⁰⁸ *Id.* § 2-1217.02(a), (b). \$500 million of outstanding principal of TIF bonds is allowed, but only \$300 million of TIF bonds allocated to the Central Business District (a downtown area bounded roughly by Massachusetts Avenue NW, 2nd Street NE, D Street SE and SW, 14 Street, and Constitution Avenue NW) is permitted.

¹⁰⁹ *Id.* § 2-1217.02(e).

¹¹⁰ *Id.* § 2-1217.12(a). The DC Ballpark TIF Area is an area surrounding but not including Nationals Park in southwest D.C.

¹¹¹ *Id.* § 2-1217.12(c).

¹¹² *Id.* § 2-1217.02(c); § 2-1217.03.

¹¹³ *Id.* § 2-1217.03(f).

¹¹⁴ *Id.*

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generated by the project.”¹¹⁵ Once the application is approved, a TIF area is established for that particular project, which is sometimes referred to as the “site specific TIF.”¹¹⁶

The CFO is empowered to certify a project if it meets the criteria set out in the DC TIF Act, most notably: (1) financial feasibility; (2) “net increase in taxes payable to the District”; (3) consistency with the District’s Comprehensive Plan; (4) “whether the project’s total anticipated benefits to the District, including public benefits as well as financial benefits, exceed the total anticipated costs to the District”; (5) “whether an allocation of the project’s real property tax increment revenues and sales tax increment revenues will compete with or supplant benefits from other sources”; and (6) “whether the project is one of special merits and there is a reasonable probability that the special merits of the project will not be achieved without the TIF allocation.”¹¹⁷ While the DC TIF Act requires the CFO to consider special merits of a project in her determination of a project’s eligibility, it is not clear whether a project located outside the priority development area may be eligible based on special merits alone.

Upon certification of a project, the CFO is required to submit certification to the Mayor.¹¹⁸ If the Mayor determines that the resolution is consistent with requirements of the DC TIF Act, he or she is required to submit a resolution for approval to the Council. The Council in turn has to approve or disapprove the resolution within forty-five days. The Council, upon recommendation from the Mayor, may abolish, expand, merge or create new TIF areas, either project-specific or with broader scope.¹¹⁹ The CFO is authorized to issue TIF bonds once a project has been approved.¹²⁰ The DC TIF Act authorizes the setting aside of incremental property taxes and sales taxes to cover the costs of projects.¹²¹ In the District, the sales taxes available for TIF bonds are

¹¹⁵ D.C. Code § 2-1217.03(a).

¹¹⁶ *Id.* § 2-1217.05; *see also* Council of Development Finance Agencies, *2008 TIF State-By-State Report* (December 2008).

¹¹⁷ *Id.* § 2-1217.02; § 2-1217.03. In addition to the criteria listed above, the CFO must check if the project satisfies requirements applicable to certain geographic areas of the District such as the “Downtown Area” and “Housing Priority Area.”

¹¹⁸ *Id.* § 2-1217.04.

¹¹⁹ The “Howard Theatre Redevelopment Project TIF Area” (D.C. Code § 2-1217.34c) and the “City Market at O Street TIF Area” (D.C. Code § 2-1217.33c) are the two projects identified so far. Other projects that have been approved for TIF are the Mandarin Oriental Hotel (D.C. Code § 2-1217.32) and the Gallery Place (D.C. Code § 2-1217.31). Although the website of the DC CFO lists the International Spy Museum as “the third project approved by the District to receive tax increment financing”, it is not included in Part B of the TIF subchapter in the DC Code that contains a list of identified projects. (D.C. Code D. I, T. 2, Ch. 12, Subch. IX). However, the success of using TIF assistance for the International Spy Museum was cited as justification for adopting new TIF program under the Retail Incentive Act of 2004 by Michael Jasso, Special Assistant, Office of the Deputy Mayor for Planning and Economic Development.

¹²⁰ The authority of the D.C. CFO will eventually be transferred, if not already, to the Board of Directors of the National Capital Revitalization Corporation. (D.C. Code § 2-1217.11).

¹²¹ D.C. Code § 2-1217.01(26) and D.C. Code § 2-1217.01(27) respectively. *See also* D.C. Code § 2-1217.05.

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5.75% of the regular sales tax (out of 5.75%),¹²² 9% of the restaurant sales tax (out of 10%), and 10.05% of the hotel sales tax (out of 14.5%). The real property tax available for TIF bonds is sixty percent (60%) of all real property tax.¹²³

The DC TIF Act does not prescribe a general maximum length of time for the life of a TIF area. Instead, the life of the TIF area is negotiated between the Mayor and the development sponsor, which can be a private entity. This practice has the possible benefit of tailoring each agreement to fit the needs of the relevant project.

The DC TIF Act does not restrict the use of TIF revenue to blighted areas. Instead, TIF revenue may be used for almost any type of development or redevelopment activity that meets the stated criteria. Technically, only redevelopment and development projects located within designated “priority development areas” are eligible for TIF funding. However, projects located outside “priority development areas” determined to qualify as “special merits projects” by the CFO may also be eligible. Figure V lists examples of projects that successfully received TIF funding.

Figure V

Project Name	Year	Description
City Market at O Street	2008	District authorized \$35 million in TIF bonds toward a mixed-use housing/retail space in the Shaw neighborhood. ¹²⁴ The total cost of the project is approximately \$260 million.
Target/DC USA	2004	District issued \$42 million in TIF bonds to build a parking garage to convert a vacant lot into a retail development. The total cost of the project was approximately \$140 million.
The International Spy Museum	2002	District issued \$6.9 million to fund the \$20 million estimated total cost of the International Spy Museum.
The Mandarin Oriental Hotel Project	2002	District issued \$46 million in TIF bonds to fund the development of the Mandarin Oriental Hotel. Total cost of the development was approximately \$144 million.
Gallery Place Project	1999	District issued \$73.6 million in TIF bonds to fund Gallery Place, a mixed-use urban entertainment complex slightly north of the MCI Center. Total cost of the development was approximately \$274 million.

¹²² In other words, 100% of regular sales taxes.

¹²³ See http://app.cfo.dc.gov/services/economic/tif_program/tax_rates.shtm.

¹²⁴ D.C. Code § 2-1217.33c.

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2) The Retail Incentive Act of 2004

The Retail Incentive Act of 2004¹²⁵ (“Retail Incentive Act”) established a TIF program for retail development in the District. The Committee on Finance and Revenue of the Council of the District of Columbia (“Committee”) describes the purpose and expected outcomes of the Retail Incentive Act as follows:

The District currently has the unique opportunity to revive the downtown retail sector, much in the way the Council's previous efforts have spurred the development of housing, entertainment, and other elements which will contribute to the goal of a living downtown. The legislation will utilize tax increment financing to offset some of the cost associated with building out space specifically for retailers. The legislation will also set up a framework so building owners work in a cooperative fashion with the District to plan and manage the composition of the retail district. The program also will focus on attracting anchor tenants and other retailers that will be unique to the downtown market and new to the District, and will encourage “co-location” efforts. In short, the program for downtown will focus on attracting consumer goods retail businesses with an aim of attracting tenants that will in turn attract other retail.¹²⁶

1. Criteria for selection and process

The Retail Incentive Act is narrowly tailored to use in neighborhoods known as “Retail Priority Areas.” The Act identifies five such neighborhoods, and gives the Mayor authority to name others. Programs utilizing TIF in these neighborhoods will be designed specifically for each area, as they will likely have goals that are different from the downtown area. In several areas, the program will work in coordination with the various Main Streets programs as well.¹²⁷ \$5 million in subsidy is available to building owners for retail uses, to a maximum of \$25 million over the life of the TIF.

The Retail Incentive Act was enacted to “to eliminate . . . barriers to entry and promote Retail Development Projects”¹²⁸ with a special focus on corridor revitalization programs: specifically, “small business retention and attraction; neighborhood branding and marketing; blighted and vacant property mitigation; redevelopment of private property through financial incentives, technical assistance, temporary urbanism initiatives and property acquisition and disposition,

¹²⁵ Retail Incentive Act of 2004, 2004 District of Columbia Laws 15-185 (Act 15-435).

¹²⁶ District of Columbia Committee Report, B. 15-306, 1.

¹²⁷ *Id.* at 1-2.

¹²⁸ Retail Incentive Act of 2004, 2004 District of Columbia Laws 15-185 (Act 15-435). D.C. Code § 2-1217.71.

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among other mechanisms identified by the Mayor; streetscape and roadway infrastructure improvement to enhance walkability, pedestrian safety, lighting, and transportation; and beautification and greening of the public realm, including public art, landscaping, storm water retention, and litter control.”¹²⁹ A Retail Development Project is defined as follows:

[T]he establishment of a business engaged in direct onsite retail sales to consumers or providing a unique entertainment attraction, including the following activities in connection with such business: acquisition, purchase, construction, reconstruction, improvement, renovation, rehabilitation, restoration, remodeling, repair, remediation, expansion, extension, and the furnishing, equipping, and opening for business. In the case of the Downtown Retail Priority Area, Retail Development Projects shall meet the requirements of § 2-1217.73a, shall be limited to restaurants (on a demonstration basis), grocery and specialty food stores and businesses engaged in sales of home furnishings, apparel, and general merchandise goods to specialized customers, or providing a unique entertainment attraction.¹³⁰

Excluded from the scope of the Retail Incentive Act are the following: “liquor stores, nightclubs, hotels, banks, pharmacies, phone stores, service retail outlets and the relocation of a business to the Downtown Retail priority Area from another location within the District, unless the relocation involves a significant expansion of the size of the business.”¹³¹

The Retail Incentive Act authorizes setting aside incremental real property tax¹³² and sales tax¹³³ revenue “to eliminate . . . barriers to entry and promote Retail Development Projects.”¹³⁴ Accordingly, the CFO is instructed to “establish one or more separate tax increment allocation accounts within the General Fund of the District of Columbia for the deposit and application of Available Sales Tax Revenues and Available Real Property Revenues from each TIF area. [The] monies . . . may be used to (1) pay debt services on Bonds, (2) pay other costs due and payable under the applicable financing documents, and (3) to pay any other costs or expenses permitted by this subchapter.”¹³⁵ The available revenues are certified annually by the CFO.

The Mayor is empowered to identify areas within the District where there are “barriers to entry that impede Retail Development Projects and the proceeds of Bonds may be used to eliminate

¹²⁹ D.C. Code § 2-1217.73.

¹³⁰ Additional TIF areas were designated by Retail Incentive Amendment Act of 2012, 2012 District of Columbia Laws 19-288 (Act 19-655).

¹³¹ D.C. Code § 2-1217.71(8)(A) and (B).

¹³² *Id.* § 2-1217.71(2)(1).

¹³³ *Id.* § 2-1217.71(2)(2).

¹³⁴ Retail Incentive Act of 2004, 2004 District of Columbia Laws 15-185 (Act 15-435). D.C. Code § 2-1217.71.

¹³⁵ D.C. Code § 2-1217.76 (allocation of tax increment revenues).

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these barriers to entry and promote Retail Development Projects.”¹³⁶ The Mayor is also empowered to designate “additional Retail Development Areas by submitting to the Council for a forty-five-day period of review.”¹³⁷ The Retail Incentive Act restricts the use of TIF funds with respect to the aggregate principal amount of bonds issued (by specific retail priority area, type of business or tax),¹³⁸ type of businesses covered,¹³⁹ time (either life of the TIF area or deadline after which bonds may not be issued), geographic area (by street or neighborhood), as well as base year for calculation of allocable taxes and maturity of bonds.¹⁴⁰

2. TIF Projects Under the Retail Incentive Act¹⁴¹

Several apparel shops and entertainment destinations in the District’s downtown core have benefitted from the use of TIF bonds from the Retail Investment Act. Subsidies in form of TIF bonds of up to \$5 million have been provided to defray the cost of tenant improvements. Neighborhoods that have benefited from the Retail Incentive Act include H Street and Columbia Heights.

b. Wisconsin

Wisconsin enacted its TIF legislation (“Wisconsin TIF Law”) in 1975.¹⁴² Al Runde notes that significant changes introduced under 2003 Wisconsin Acts 126, 127 and 194 expanded allowable uses of TIF and permitted extensions of the life of some TIF districts. In addition, “the Acts also provided for some oversight of TIF districts by the Department of Revenue (DOR).”¹⁴³

Over the last four decades, Wisconsin has gradually expanded the authority of municipalities to create Tax Incremental Districts (“TIDs”). Cities and villages in Wisconsin were granted the

¹³⁶ *Id.* § 2-1217.73(a)(1)(A),(B).

¹³⁷ *Id.* § 2-1217.73(a)(2).

¹³⁸ *Id.* § 2-1217.72. There are also street and neighborhood specific limitations on the amount (value) of bonds that may be issued. For example: a maximum of \$25 million for the Downtown Retail Priority Area; a maximum of \$15 million (increased from \$10 million by a 2007 resolution of the Council – Res. 17-257; 54 D.C.R. 7194) for Pennsylvania Avenue, S.E., Retail priority Area. (D.C. Code § 2-1217.73(b) and (b-1). See also D.C. Code § 2-1217.73a as added Sept. 24, 2010, D.C. Law 18-223, § 7112(d), 57 D.C.R. 6242.

¹³⁹ *Id.* § 2-1217.71(8)(A) and (B).

¹⁴⁰ Within this basic template, TIF programs vary enormously in size, tax base, location, and type of development supported. A TIF district can be a few square blocks or most of a city. Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. Chi. L. Rev. 65, 68 (2010). See Council of Development Finance Agencies, 2008 TIF State-by-State Report, Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. Chi. L. Rev. 65, 95 (2010)

¹⁴¹ See http://app.cfo.dc.gov/services/economic/tif_program/index.shtm.

¹⁴² Wis. Stat. Ann. § 66.1105, (Tax increment law for cities and villages); Wis. Stat. Ann. § 66.1106 (environmental remediation tax incremental financing); and Wis. Stat. Ann. § 60.23 and § 60.85 (Town tax increment law).

¹⁴³ Al Runde, Wisconsin Tax Increment Financing, Informational Paper 17 (January 2013), p. 1.

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authority to create TIDs in 1975. Environmental remediation TIDs were authorized in 1998. Towns were provided “limited authority” to create TIDs by 2003 Wisconsin Act 231 and 2005 Wisconsin Act 13. The 2005 Wisconsin Act 357 also authorized “certain counties with no cities or villages (Florence and Menominee counties) to create TIF districts.”¹⁴⁴ Perhaps unique to Wisconsin, the legislature “allowed two or more cities and villages to enter into an intergovernmental cooperation agreement to jointly create a multijurisdictional TIF district” with the 2011 Wisconsin Act 77.¹⁴⁵

As a general matter, projects in Wisconsin can only use the incremental tax revenue generated by property taxes.¹⁴⁶ Significantly, the planning, creation, approval, administration (issuance of bonds, payment of debt etc.), and termination of tax incremental districts and allocation of TIF funds fall, primarily, within the power of the municipal governing body. Unlike in the Connecticut, the state government by default has a minimal role in the implementation of TIF legislation in Wisconsin.

The Joint Review Board can, however, involve the Wisconsin state government in the TIF approval process by expressly requesting the Department of Revenue to “review specific facts of documents provided to [the Joint Review Board] by the local legislative body.”¹⁴⁷ The Department of Revenue is then required to investigate the issues raised in the request and send its written response to the Board within ten working days.¹⁴⁸ The state government may also become involved in the TIF process after a TID has been approved if the municipal clerk submits an application to the Department of Revenue for base value certification.¹⁴⁹

According to the Wisconsin Department of Revenue, there are 1,143 TIDs in Wisconsin.¹⁵⁰ In the year 2013 alone, there were a total of 47 new TIDs certified. Fourteen of those were for blight elimination, seven for rehabilitation or conservation, eight for industrial use, and eighteen for mixed-use.¹⁵¹

1) TIF Wis. Stat. Ann. § 66.1105: Cities and Villages

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Council of Development Finance Agencies, *2008 TIF State-By-State Report*, p. 49 (December 2008).

¹⁴⁷ State of Wisconsin, Department of Revenue, Division of State and Local Finance, *Wisconsin Tax Incremental Financing Manual: 4.2 Department of Revenue Review*, available at <http://www.revenue.wi.gov/pubs/slf/tif/4-2.pdf>. (last accessed on August 26, 2014).

¹⁴⁸ Wis. Stat. Ann. § 66.1105(m)(b)4.

¹⁴⁹ *Id.* § 66.1105(4)(gm)(2).

¹⁵⁰ State of Wisconsin, Department of Revenue, Division of State and Local Finance, *Wisconsin Tax Incremental Financing Manual: 1.3 Summary Statistics*, available at <http://www.dor.state.wi.us/pubs/slf/tif/1-3.pdf>. (last accessed on August 26, 2014).

¹⁵¹ *Id.*

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1. Criteria for creating a Tax Incremental District (TID) and approval Procedure

A city or village in Wisconsin may create a TID if “not less than 50 percent, by area, of the real property within the district is”¹⁵²:

- A blighted area;¹⁵³
- In need of rehabilitation or conservation work;
- Suitable for industrial sites and has been zoned for industrial use;¹⁵⁴ or
- Suitable for mixed-use development.

The city or village has to further make a finding that “the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the district [and that] the project costs relate directly to eliminating blight, directly serve to rehabilitate or conserve the area or directly serve to promote industrial development.”¹⁵⁵ Finally, a municipality may not create a new TID if, as a result of the new district, the equalized value of the tax increments would exceed twelve percent (12%) of the municipality’s total equalized value of taxable property.¹⁵⁶

Procedurally, a city or village planning to establish a TID must first hold a public hearing with all interested parties and other taxing entities (technical college district, county, school district as well as affected property owners). The planning commission¹⁵⁷ is charged with initiating the process by developing a project plan, conducting public hearings, and making recommendations on the TID boundaries.¹⁵⁸ The municipality can consider the boundaries of a TID *and* the project plan at the same hearing, or at separate hearings. According to the Wisconsin Department of

¹⁵² Wis. Stat. Ann. § 66.1105(4)(gm)(4). *See also* Wis. Stat. Ann. § 66.1105(4), generally, for detailed requirements for the creation and approval of TIDs and project plans.

¹⁵³ Blighted area is a “slum area . . . conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and is detrimental to the public health, safety, morals or welfare [and] an area which is predominantly open and which consists primarily of an abandoned highway corridor . . . or that consists of land upon which buildings or structures have been demolished . . . substantially impair[ing] or arrest[ing] the sound growth of the community.” *See* Wis. Stat. Ann. § 66.1105(2)(ae)(1)(a) and (b). However, “blighted area does not include predominantly open land area that has been development only for agricultural purposes.” Wis. Stat. Ann. § 66.1105(2)(ae)(2).

¹⁵⁴ *See* Wis. Stat. Ann. § 66.1101 for definition, and policy goals of the State of Wisconsin with regard to industrial development.

¹⁵⁵ *Id.* § 66.1105(4)(gm)(4)(a) and (b).

¹⁵⁶ *Id.* § 66.1105(4)(gm)(4)(c).

¹⁵⁷ *See Id.* § 62.23 (for definition).

¹⁵⁸ *Id.* § 66.1105(4)(a) – (e).

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Revenue, “the *combined hearing* . . . is the simpler and most commonly used method.”¹⁵⁹ Notice is to be given not less than fifteen days prior to the hearing.¹⁶⁰

Following the combined hearing method, the planning commission prepares a proposed project plan including the following: (1) the boundaries of each TID; (2) the identification of the specific property to be classified as either blighted or in need of rehabilitation; (3) a list of the kind, number, and location of the proposed public works or improvements within the district; (4) an economic feasibility study; (5) a list of estimated project costs; (6) a description of financing methods and when the costs or obligations are to be incurred; (7) a map showing existing use and conditions of real property in the district; (8) a map showing proposed improvements and uses; and (9) a description of proposed changes in zoning ordinances, the master plan (if any), the map, the building codes and the municipal ordinance.¹⁶¹ Copy of the hearing notice is then sent to all affected taxing entities and owners of properties within the proposed TID deemed blighted or in need of rehabilitation or conservation. After the public hearing, the planning commission “adopts the plan and designates the recommended boundaries [which] are both submitted to the local legislative body for approval.”¹⁶² The city or village council, if it approves the project plan, then adopts a resolution that the project plan is economically feasible and in keeping with the municipality’s master plan.¹⁶³

At this point a Joint Review Board composed of representatives of the school district, country, technical college district and the municipality as well as a member of the public is convened.¹⁶⁴ The Joint Review Board reviews the “public record, planning documents and the resolution passed by the legislative body”¹⁶⁵ and makes its determination based on a “but-for” test and cost-benefit analysis. Upon approval by the Joint Review Board, the Wisconsin Department of Revenue certifies the base value of the real property within the newly created TID.¹⁶⁶

¹⁵⁹ Wisconsin Department of Revenue, Office of Technical and Assessment, *A Guide to Wisconsin’s Tax Incremental Law: Creating a District*, p. 3, available at <http://www.dor.state.wi.us/pubs/slf/tif/pe-207.pdf> (last accessed August 26, 2014).

¹⁶⁰ In cases where “cash grants [may be] made by the city to owners, lessees, or developers of land that is located within the tax incremental district, the hearing notice shall contain a statement to that effect.” Wis. Stat. Ann. § 66.1105(4)(e).

¹⁶¹ Wisconsin Department of Revenue, Office of Technical and Assessment, *A Guide to Wisconsin’s Tax Incremental Law: Creating a District*, p. 3, available at <http://www.dor.state.wi.us/pubs/slf/tif/pe-207.pdf> (last accessed August 26, 2014).

¹⁶² *Id.* at 5.

¹⁶³ Wis. Stat. Ann. § 66.1105(4)(g).

¹⁶⁴ *Id.* § 66.1105(4m)(a). Note that a standing Joint Review Board may be established and continue to exist for the duration of the life of the specific TID within a given municipality which may range between 20 and 37 years. Wis. Stat. Ann. § 66.1105(3)(g)

¹⁶⁵ *Id.* § 66.1105(4m), (b) and (c).

¹⁶⁶ There are limited instances where the Department of Revenue may refuse to certify base value. For example, the DOR may refuse to certify the incremental base value for mixed-use development TIDs if (1) the lands proposed for newly-platted residential use exceeds 35% of the real property within the TID, or (2) tax increments received by the

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2. What TIF may cover:

Under Section 66.1105 TIF may be used to cover project costs, defined as:

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.¹⁶⁷

Project costs include, but are not limited to the following: (1) capital costs; (2) financing costs; (3) real property assembly costs; (4) professional service costs; (5) imputed administrative costs; (6) relocation costs; (7) organizational costs; and (8) costs related to construction or alteration of sewage treatment plants.¹⁶⁸ Explicitly excluded are the costs “of constructing or expanding administrative buildings, police and fire buildings, libraries, community and recreational buildings and school buildings, unless the administrative buildings, police and fire buildings, libraries and community and recreational buildings were damaged or destroyed before January 1, 1997, by a natural disaster.”¹⁶⁹ In addition, cost of inland lake protection and rehabilitation programs or projects may not be paid from TIF funds.¹⁷⁰ Importantly, it should be noted that under Wisconsin TIF law, properties or projects within the TIF district are automatically certified to qualify to receive TIF funding. This is in contrast to the legislation and practice in Connecticut and the District of Columbia where developers have to submit applications to qualify for TIF funding for each project.

3. Change, Duration and Termination of TIDs

A municipality may amend the boundaries of a TID during its life by either adding or subtracting territory from the district.¹⁷¹ However, there are limitations on the amendments. First, the amendments may not disturb the contiguous nature of a district. Second, they may not result in increasing the equalized taxable property plus the value increment of all existing districts in excess of twelve percent (12%) of the total equalized value of taxable property within the municipality. Finally, a municipality may only amend a TID up to four times, and each amendment must follow the same procedure necessary to create a new TID.

city or village are used to subsidize residential development. *See, See* Al Runde, Wisconsin Tax Increment Financing, Informational Paper 17 (January 2013), p. 2.

¹⁶⁷ Wis. Stat. Ann. § 66.1105.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* § 66.1105(2)(f2).

¹⁷⁰ *Id.* § 33.18.

¹⁷¹ *Id.* § 66.1105(4)(h)2.

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The duration of a TID’s life depends on the timing of its creation as well as type of use. All TIDs created before 1995 have a maximum life of twenty-seven years with no possibility of extension. Blight elimination or rehabilitation TIDs created after October 1995 have a 27-year maximum life with the possibility for extension by amendment. Industrial TIDs created after October 1995 but before October 2004 have a 23-year maximum life with possible extension. Finally, industrial or mixed-use TIDs created after October 2004 are valid for twenty years with a possible extension by amendment. Alternatively, a TID may be terminated by resolution of the city council if the total project costs have been paid, or the city council dissolves the district by a resolution and assumes the debts of the TID.¹⁷²

Figure VI

Project Name	Year	Description
Grand Avenue Redevelopment	2000	Project aimed at revitalizing downtown retail and commercial districts. The TID is authorized until 2025. The district was first used to fund a \$2 million loan to assist the Courtyard Marriott with their \$13,250,000 development cost. ¹⁷³
New Covenant Housing	1992	TID set up to fund the development seventy-two townhouse and apartment units for low- and moderate-income residents. ¹⁷⁴ Funding was used to provide \$650,000 for street improvement related to the project and later \$50,000 for pavement work. ¹⁷⁵
Curry/Pierce Project	1992	TID created with an authorized expenditure of \$750,000 with a life ending in 2019 unless extended by amendment. The TID funded \$73,800 for the redevelopment of the long vacant Currie Pierce Office Building at 400 East Wisconsin Avenue. ¹⁷⁶

¹⁷² *Id.* § 66.1105(7).

¹⁷³ The district was later used to assist renovation of “the former Marshal Fields building” with \$9.4 million, including \$6.4 million in City loans, to convert the project to hotel, office and retail uses as well as to restore its exterior.¹⁷³ Again in November 2000 the district “provide[d] \$5 million for the renovation of the Boston Store building, upgrading the retail space and the regional offices of Boston Store’s owner, Saks, Inc.”

¹⁷⁴ TID 18 – New Covenant Housing Periodic Report (December 31, 2013) *available at* <http://city.milwaukee.gov/ImageLibrary/Groups/cityDCD/business/TIF/2013-Reports/TID18.pdf> (last accessed on August 27, 2014).

¹⁷⁵ *Id.* It should be noted that whenever a TIF district aims to provide for work that was not included in the initial project plan, the district has to be amended before any expenditure may be approved.

¹⁷⁶ The Period Report for this project dated December 31, 2013 credits the redevelopment project with stimulating “additional renovations and private investment along, what was then, a severely declining Milwaukee Street commercial district. This project proved to be the first step in redevelopment efforts that featured such projects as

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2) Wis. Stat. Ann. § 66.1106 Environmental Remediation

Under Section 66.1106, a town, city, village, or county is authorized to “use an environmental remediation tax increment to pay the eligible costs of remediating environmental pollution on contiguous parcels of property that are located in an environmental remediation tax incremental district within the political subdivision and that are not part of a tax incremental district created under Section 66.1105.”¹⁷⁷

Environmental remediation tax increments may be used “to pay the cost of remediating environmental pollution of ground water without regard to whether the property above the groundwater is owned by the [same] political subdivision.”¹⁷⁸ Any political subdivision desiring to use an environmental remediation tax increment has to first prepare a written proposal to be reviewed and approved by a Joint Review Board.¹⁷⁹

When reviewing the proposal, the Joint Review Board considers the following: (1) whether the remediation will take place without the TIF; (2) whether “the economic benefits of remediated property as measured by increased employment, business and personal income and property value, are insufficient to compensate for the cost of improvements”; and (3) “whether the benefits of the proposal outweigh the anticipated environmental remediation tax increments to be paid by the owners of property in the overlying taxing districts.”¹⁸⁰ If the Joint Review Board approves the proposal, it is then submitted to the Department of Revenue for certification.¹⁸¹

The tax increment collected under the provisions of Section 66.1106 may be used to cover eligible costs including: “capital costs, financing costs, and administrative and professional service costs, incurred or estimated by the political subdivision” for activities enumerated in Section 66.1106(1)(c). The legislative body of the respective political subdivision is required to adopt a resolution describing the boundaries and creating the TID.¹⁸²

Hotel Metro, the Grain Exchange Condominiums, office renovations for the Metropolitan Milwaukee Association of Commerce (MMAC), and numerous entertainment and dining venues.” TID 17 – Curry/Pierce Project Periodic Report (December 31, 2013), *available at* <http://city.milwaukee.gov/ImageLibrary/Groups/cityDCD/business/TIF/2013-Reports/TID17.pdf> (last accessed on August 27, 2014).

¹⁷⁷ Wis. Stat. Ann. § 66.1106

¹⁷⁸ *Id.* § 66.1106(2).

¹⁷⁹ *Id.* § 66.1106(2)(a).

¹⁸⁰ *Id.* § 66.1106(3)(b)(2).

¹⁸¹ *Id.* § 66.1106(2)(a).

¹⁸² *Id.* § 66.1106(1m).

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The TID created for environmental remediation expires fifteen years after being certified by the Department of Revenue.¹⁸³ However, a TID it may donate its excess tax increment to another TID created by the same governing body (e.g., Milwaukee City council).

3) Wis. Stat. Ann. § 60.23 and § 60.85 (Town tax increment law)

1. Criteria for Creation and Approval Procedure

a. Section 60.23

Section 60.23 gives Wisconsin towns the right to exercise all the powers cities have to create TIDs and issue TIFs under Section 66.1105, discussed above. Towns creating TIDs and issuing TIFs under Section 60.23 are subject to the duties and limitations as cities exercising those powers under Section 66.1105. There are, however, three additional requirements that a town has to meet before it can create a TID:

- The equalized value of all taxable property in the two previous years must be at least \$500 million;
- The previous year's population must be at least 3,500;
- Sewer service must be currently provided or will be provided to the proposed TID.¹⁸⁴

b. Town TIDs Section 60.85

Under the provisions of Section 60.85, a town may create a TID and define its boundaries and undertake all the necessary actions to commit to obligations, as it deems necessary to effectuate the purpose of the TID.¹⁸⁵ However, towns may only spend money or incur monetary obligations as a project cost for the following reasons:

1. "Agricultural projects
2. Forestry projects
3. Manufacturing projects
4. Tourism project
5. Residential development, but only to the extent that it has a necessary and incidental relationship to a project listed in subds. 1. to 4
6. Retail development that is limited to the retail sale of products that are produced due to a project that is developed under subd. 1, 2. or 3 . . .

¹⁸³ *Id.* § 66.1106(2)(b).

¹⁸⁴ All the substantive and procedural requirements relating to cities and villages discussed apply to towns in this category *mutatis mutandis*.

¹⁸⁵ Wis. Stat. Ann. § 60.85, (2)(a)1 to 4.

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7. A project that is related either to retail purposes, or to a purpose for which a city may create a district under Section 66.1105, except that this subdivision applies only to the town of Brookfield in Waukesha County, and the town may create only one district to which this subdivision applies.”¹⁸⁶

The procedural requirements and conditions for approval by the Joint Review Board as well as certification by the Department of Revenue are the same as those applicable for cities and villages discussed above.¹⁸⁷

c. Iowa

Iowa first enacted its TIF legislation by amending its Urban Renewal Law in 1969.¹⁸⁸ The Iowa TIF statute permits cities, towns, and to a limited extent counties to use incremental property tax revenues “to finance public improvements such as streets, sewers, sidewalks, and other infrastructure related to residential, commercial, or industrial development; to develop slum or blighted areas; to fund private economic development; and to finance construction of low and moderate income housing.”¹⁸⁹ The Urban Renewal Law authorizes the establishment of an urban renewal in slum areas, blighted areas, and economic development areas.¹⁹⁰

1. Criteria for establishment and approval procedure

A municipality may approve an urban renewal project only after the local governing body has determined that a proposed area is “a slum area, blighted area, economic development area or a combination of those areas” and “designated the area as appropriate for an urban renewal project.”¹⁹¹ (Generally, economic development areas refer to areas that are designated to receive government assistance.) This finding must state the reasons why an area is appropriate for designation. But it should be noted that the Urban Renewal Law gives broad powers to municipalities in determining what constitutes a slum, blighted, or economic development area.¹⁹²

¹⁸⁶ *Id.*

¹⁸⁷ *See also Id.* § 60.85, (2)

¹⁸⁸ Iowa Code § 403.19 *cum* Iowa Code § 403.1. *See also*, generally, Susan Cowley, *Legislative Guide to Urban Renewal and Tax Increment Financing* (Legislative Services Agency, December 2013), available at <https://www.legis.iowa.gov/DOCS/Central/Guides/urbannew.pdf> (last accessed on August 27, 2014).

¹⁸⁹ Susan Cowley, *Legislative Guide to Urban Renewal and Tax Increment Financing*, p. 1 (Legislative Services Agency, December 2013), available at <https://www.legis.iowa.gov/DOCS/Central/Guides/urbannew.pdf> (last accessed on August 27, 2014).

¹⁹⁰ Iowa Code § 403.5 (Urban renewal plan).

¹⁹¹ *Id.* § 403.5 (1).

¹⁹² Susan Cowley, *Legislative Guide to Urban Renewal and Tax Increment Financing*, p. 2, note 12 (Legislative Services Agency, December 2013).

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After determining the boundaries and description of the proposed area, the municipality must prepare an urban renewal plan that includes the objectives of the area. The urban renewal plan should also include an assessment of the base value of the property in the designated district. Finally, it must provide notice of the proposed plan to affected taxing entities such as community colleges and school districts.¹⁹³

This notice serves to solicit input from the affected taxing entities. Those entities may submit recommended modifications to the proposed plan, including the division of revenue from the tax increment.¹⁹⁴ After receiving consultations from affected entities, the municipality must hold a public hearing. The local legislative body can then approve the plan.

Iowa law provides great flexibility for amending the TID area. There are only three limitations. First, if the urban renewal is an economic development area, the maximum duration of the TID is twenty years.¹⁹⁵ Second, a slum or blighted urban renewal area “may not include real property assessed as agricultural property for tax purposes.”¹⁹⁶ Third, TIF proceeds may not be used to relocate businesses within municipalities.¹⁹⁷

In general the Iowa TIF legislation gives broad powers to municipalities in the planning, implementation, and termination of urban renewal areas as well as in determining how tax increment revenues may be used. After a TID has been established, developers whose property is located within the district may apply to the municipality for TIF funding by showing “a public benefit to the project financial gap” that can be filled only by city funding.¹⁹⁸

While there are no restrictions on how tax increment revenues may be used in slum or blighted urban renewal areas, the Iowa TIF statute does place an important restriction on those established for economic development. Specifically, it requires that a certain percentage of the funds be used to “provide assistance related to housing for families whose incomes do not exceed 80% of the median income in the county.” The statute does not indicate exactly what percentage of the funds are to be designated for housing assistance.¹⁹⁹

¹⁹³ Iowa Code § 403.5(2).

¹⁹⁴ *Id.* See also Susan Cowley, *Legislative Guide to Urban Renewal and Tax Increment Financing*, p. 3 (Legislative Services Agency, December 2003).

¹⁹⁵ There is no comparable limit on slum or blighted area. This limitation on economic development areas was introduced in 1994; Iowa Code § 403.17(10).

¹⁹⁶ Iowa Code § 403.17(5) and (22).

¹⁹⁷ *Id.* at § 403(19).

¹⁹⁸ City of Iowa City, *Understanding Iowa City's due diligence process for gap financing with TIF*, available at http://www.icgov.org/site/CMSv2/file/planning/econDev/EcDevPolicies/2_UnderstandinggapanalysisTIF.pdf.

¹⁹⁹ Anthony G. Girardi, *Iowa Tax Increment Financing: Tax Credits Program Evaluation Study*, p. 5 (December 2013); see also Robert E. Josten, *What is Tax Increment Financing?: Questions and Answers About TIF*, p. 3, available at https://www.pdiowa.com/media/13133/559c4what_is_tif_q_a.pdf (last accessed August 27, 2014).

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Figure VII

Project Name	Year	Description
Chauncey Tower	2014	Iowa City approved a “request for \$14.1 million in financial assistance for the \$49 million Chauncey tower.” ²⁰⁰ \$12.1 million of this amount was TIF. ²⁰¹
Northgate Corp Park Urban Renewal Area	2004	Created “to facilitate urban renewal program using private and public resources to develop the area for office, research, production and/or assembly uses.” ²⁰² This is an economic development urban renewal area (as opposed to blighted or slum).
Plaza Towers	2002	High-rise residential, office, hotel and grocery mixed-use property. Received \$6 million in TIF financing. ²⁰³
Park@201	2002	Also high-rise residential, office, hotel, and grocery mixed-use property. Received \$2.8 million in TIF financing. ²⁰⁴
Sheraton Walkway	1999	Public access improvement to mall and 118 E College Street for renovating former Vito’s building for office and retail. Received \$250,000 in TIF financing. ²⁰⁵

d. Maine

Maine first introduced TIF in 1977.²⁰⁶ Under the Maine TIF statute, cities and plantations²⁰⁷ are authorized to establish tax increment financing districts (TIF districts) “to provide financial assistance to local development projects – from infrastructure improvements to business expansions – by using new property taxes that result from commercial investment and

²⁰⁰ Mitchell Schmidt, *Iowa City Press-Citizen*, Committee Approves Chauncey funding model, (July 14, 2014).

²⁰¹ *Id.*

²⁰² Iowa City, Annual Urban Renewal Report, Fiscal Year 2011-2012, pp. 17–19, available at <http://www.icgov.org/site/CMSv2/file/planning/econDev/URA2012Report.pdf>

²⁰³ *Id.* at 22–24.

²⁰⁴ *Id.*

²⁰⁵ Mitchell Schmidt, *Iowa City Press-Citizen*, Committee Approves Chauncey funding model, (July 14, 2014).

²⁰⁶ 30-A M.R.S.A. § 5221 - 30-A M.R.S.A. § 5235 (Municipal Development Districts), and 30-A M.R.S.A. § 5241 - 30-A M.R.S.A. § 5244 (State Tax Increment Financing).

²⁰⁷ Previously, the Maine statute allowed “unorganized territories” as well to establish tax increment financing districts. The provisions, however, have been repealed. 30-A MRSA §5251–5261. However, the Maine TIF Manual does not indicate the repeal of the sections dealing with TIF for unorganized territories.

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corresponding increase in property value.”²⁰⁸ Accordingly, “a municipality or plantation may retain all or part of the tax increment revenues generated from increased assessed value of a tax increment financing district [captured assessed value] for the purpose of financing the [municipal] development program.”²⁰⁹ The respective legislative body in the municipality “may authorize, issue and sell bonds, including but not limited to, general obligation or revenue bonds or notes, that mature within 30 years from the date of issue to finance all project costs needed to carry out the development program within the district.”²¹⁰ The TIF revenues generated may be used to cover the following:

- capital costs (acquisition or construction of land, improvements, buildings, structures; demolition, alteration, repair, reconstruction; site preparation and finishing work; fees and expenses)
- financial costs (interest, premiums)
- real property assembly costs
- professional services
- reasonable administrative expenses
- relocation costs
- organizational costs related to the establishment of the [TIF] district, such as environmental impact and other studies, and costs to inform the public about the district.²¹¹

The TIF revenues may also be used to cover costs that are outside of the district, but are directly related or become necessary because of the establishment or operation of the TIF district, and “costs for economic development, environmental improvements or employment training within the municipality.”²¹² However, TIF revenues may not be used to cover costs “for facilities, buildings or portions of buildings used predominantly for the general conduct of government, or for public recreational purposes. Examples include city halls and other headquarters of government where the governing body meets regularly, courthouses, jails, police stations and other state and local government office buildings, recreation centers, athletic fields and swimming pools.”²¹³ In addition to the municipal TIF program, Maine has also had a state-level TIF program.

²⁰⁸ Maine TIF Manual 2011, p. 1.

²⁰⁹ 30-A M.R.S.A. § 5227(1). The *captured assessed value* is defined as “the amount, as a percentage or stated sum, of increased assessed value that is utilized from year to year to finance the project costs contained within the [municipal] development program.” *see* 30-A M.R.S.A. § 5222(2).

²¹⁰ *Id.* § 5231.

²¹¹ Summary is taken from Maine TIF Manual (2011), p. 3. *See also*, 30-A M.R.S.A. § 5225.

²¹² *Id.* *See also*, 30-A M.R.S.A. § 5225(B) and (C).

²¹³ *See* 30-A M.R.S.A. § 5225(2); Maine TIF Manual (2011), p. 4.

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1. Criteria for establishment and approval procedure (Municipal TIF districts) 30-A M.R.S.A. § 5221 - 5235.

A municipality may establish a TIF district if at least twenty-five percent (25%) of the proposed district is blighted or in need of rehabilitation, redevelopment, or conservation, or is suitable for industrial and commercial use.²¹⁴ A TIF district may be established in one of two ways: the first approach is initiated by a potential developer or business entity whereby the business or developer presents “a proposal for investment in which a TIF district would provide financing.”²¹⁵ Alternatively, “a town might take advantage of an already-planned and financed project and create a TIF district around it, capturing a portion of new property tax revenue for specific uses.”²¹⁶ However, there may be variations from one municipality to another.

The legislative body of the municipality desiring to establish a TIF district has to “consider whether the proposed district or program will contribute to the economic growth or well-being of the municipality or plantation or to the betterment of the health, welfare or safety of the inhabitants of the municipality or plantation.”²¹⁷ In addition, the legislative body of the city or plantation must provide a reasonable opportunity to interested parties to present their testimony at a public hearing. If any interested party presents evidence that the proposed TIF district or development program will present “substantial detriment to that party’s existing business,” then the legislative body is required to consider whether “adverse economic effects of the proposed district or program on that interested party’s existing business in the municipality or plantation is outweighed by the contribution made by the district or program to the economic growth or well-being of the municipality or plantation or to the betterment of the health, welfare or safety of the inhabitants of the municipality or plantation” in making its determination.²¹⁸

Decisions of the local legislative body are made by majority vote and are subject to approval by the Maine Department of Economic and Community Development’s Commissioner.²¹⁹ In the case of a downtown TIF district, the Maine Department of Agriculture, Conservation and Forestry and the Department of Transportation shall review the proposal and provide advice to assist the commissioner in making a decision under this subsection.²²⁰ Alteration of any TIF district must be done in accordance with the provisions of the statute following the same

²¹⁴ See *id.* § 5223(3).

²¹⁵ Maine Department of Economic and Community Development, *Municipal Tax Increment Financing*, available at https://www.maine.gov/decd/start-grow/tax-incentives/tax_increment_financing.shtml (last accessed September 3, 2014).

²¹⁶ *Id.*

²¹⁷ See 30-A M.R.S.A. § 5223(2).

²¹⁸ *Id.*; see also § 5226(1) (Notice and hearing).

²¹⁹ *Id.* § 5226(2).

²²⁰ *Id.* § 5226(2).

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procedure as for the original creation. The Maine TIF statute places the following limitations on the creation and administration of TIF districts:

- *Maximum acreage*: no single district may exceed two percent (2%) of the total acreage of the municipality and the total of TIF districts may not exceed five percent (5%) of the total acreage of the municipality;²²¹
- *Maximum value*: the value of all taxable property within the proposed district, plus the value of all existing TIF districts may not exceed five-percent (5%) of the municipality's total value of taxable property;²²² and
- *Maximum indebtedness*: a ceiling of \$50 million within any one county.²²³

2. Sample TIF District and Included Projects: Town of Fairfield, Maine (Thomas M. Teague Technology Park)

TIF is used extensively in Maine. The Department of Economic and Community Development reports that “hundreds of Maine communities have TIF districts, from Caribou to Biddeford, Rumford to Machias.”²²⁴ The Town of Fairfield’s amended Municipal Development and TIF Districts (as amended in 2011) is selected as an example. By a resolution adopted by the town council, the Town of Fairfield, Maine decided to “capture and retain 100% of the increased assessed value from the Teague Districts and 201 Districts and allocate such funds between the Town’s TIF Projects . . . and to the particular developer on an *ad hoc* basis.”²²⁵ According to the Town’s resolution, “[any] allocation to a developer will be in the form of a credit enhancement agreement between the Town and such developer and will be evaluated and negotiated as each District is developed.”²²⁶ According to the Financial Plan contained in the resolution, the Town “will retain 100% of the increased assessed value from all real and personal property within each of the Teague Districts and within each of the 201 districts for a term of 30 years commencing with the Town’s 2005-2006 fiscal year and ending with the Town’s 2034-2035 fiscal year.”²²⁷

²²¹ *Id.* § 5223(3)(B).

²²² *Id.* § 5223(3)(C).

²²³ Maine TIF Manual (2011), p. 6.

²²⁴ Maine Department of Economic and Community Development, *Municipal Tax Increment Financing*, https://www.maine.gov/decd/start-grow/tax-incentives/tax_increment_financing.shtml (last accessed September 3, 2014).

²²⁵ Town of Fairfield, Maine, Omnibus Development Program, *Thomas M. Teague Technology Park Municipal Development and TIF Districts, Amended and Restated*, p. 4 (May 9, 2011) (underlining in original).

²²⁶ *Id.*

²²⁷ For detailed description and financial breakdown of the TIF Districts and individual projects, see generally the attachments in Town of Fairfield, Maine, Omnibus Development Program, *Thomas M. Teague Technology Park*

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3. Other Tax Increment Financing Programs: State Tax Increment Financing 30-A M.R.S.A. §§ 5242-5244; Maine Employment Tax Increment Financing Act. 36-M.R.S.A. § 6751-6761.

A state-level TIF program was introduced to allow Maine TIF districts to be designated as “state TIF districts.” According to Section 5242 of the Maine statute, only TIF districts whose captured assessed value is created after July 30, 1991 and before June 30, 1996 are eligible to be designated state TIF districts. The state TIF district may relate to the whole or a portion of an existing TIF district within a municipality.²²⁸ These provisions introduced the option of using sales tax increment revenues in addition to property tax increment revenue.²²⁹ Accordingly, the state tax increment may be used to cover project costs as defined in 30-A M.R.S.A. § 5225 of the statute.²³⁰

In addition to the now-defunct state-level TIF program, the currently operating Employment Tax Increment Financing program was introduced “to encourage the creation of new quality jobs in [Maine], improve and broaden the tax base and improve the general economy of the State.”²³¹ Administered by the State, the Employment TIF program “helps new and established Maine businesses to hire new employees by refunding from 30-80% of the state withholding taxes paid by the business for up to ten years.”²³² The Department of Economic and Community Development reports that “in 2010 the program helped almost 100 Maine companies claim \$8 million in reimbursements for more 6,000 new, well-paid jobs with retirement and health care benefits.”²³³

Municipal Development and TIF Districts, Amended and Restated p. 13 *et seq.* (May 9, 2011) (underlining in original).

²²⁸ 30-A M.R.S.A. § 5241(16) *cum* 30-A M.R.S.A. § 5242.

²²⁹ *Id.* § 5242(4).

²³⁰ *Id.* § 5241(14) and (15) *cum* 30-A M.R.S.A. § 5225.

²³¹ *Id.* § 6752.

²³² Maine Department of Economic and Community Development, *Employment Tax Increment Financing*, available at https://www.maine.gov/decd/start-grow/tax-incentives/employment_tax_increment_financing.shtml.

²³³ *Id.*

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