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Municipal Finance Issues: The Budget Process and Levy Limits; TIF Law Update

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Levy Limit Law

- First applied to 2005 levies for 2006 budget
- Various changes have been made to the law with each successive state budget
- Current limit:
  - The prior year's actual levy may be increased by a percentage equal to net new construction in the preceding year (or zero, if none)
  - Additional adjustment in the year following closure of a Tax Incremental Finance District
  - Subject to numerous adjustments that may reduce or increase allowable levy

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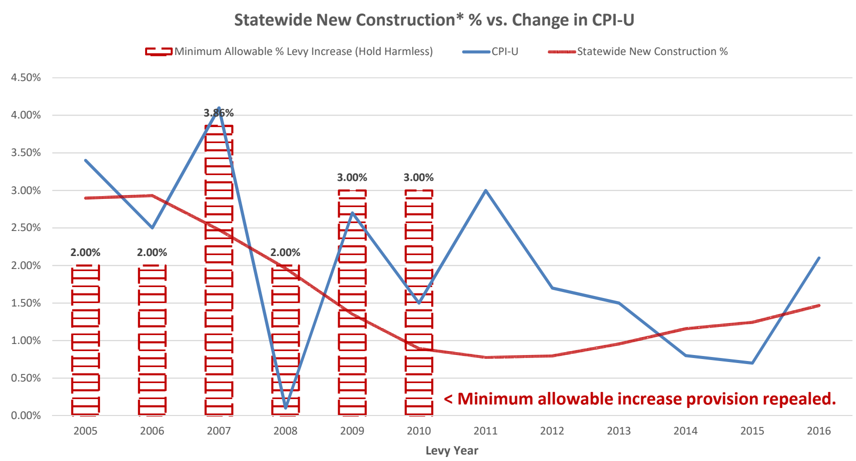
Allowable Increases – Historical Perspective



* Historic Net New Construction percentages are not posted on DOR's website. The New Construction percentages shown do not reflect demolition or other non-economic loss of value.

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Key Exemptions & Adjustments

- Debt Related Exemptions
  - General Obligation debt principal and interest payments are exempted from levy limits
    - Special rules for debt authorized prior to July 1, 2005
  - Shortfalls to be made up via the tax levy for revenue bonds issued under
    - Wis. Stat. § 66.0621 (Utility Revenue Bonds)
    - Wis. Stat. § 66.0713(4) (Special Assessment B Bonds)
  - ***Lease revenue debt and other lease structures not exempted***

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Key Exemptions & Adjustments (cont.)

- Intergovernmental Agreement Cost Shifts
  - Used to increase or decrease your levy limit for cost shifts related to provision of consolidated services with another governmental entity
    - There must be an intergovernmental cooperation agreement in place under Wis. Stat. § 66.0301
    - The cost shift must be a result of an agreement to change apportionment of costs to reflect a more equitable distribution

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Key Exemptions & Adjustments (cont.)

- Intergovernmental Agreement Cost Shifts (cont.)
  - Example: Community A and B fund a joint library. The basis for the cost share changes from valuation to population, resulting in an increase in Community A's share of the joint library cost

Community A

- Increases its share of cost to pay for service
- Amount of levy increase claimed as Adjustment H

Community B

- Decreases its share of cost to pay for service
- Amount of levy decrease claimed as Adjustment H
- Amount of decrease must be the same as the amount of the Community A increase

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Key Exemptions & Adjustments (cont.)

- Joint Fire Departments
  - Adjustment for increases in charges assessed by a joint fire department* which exceed the limit
  - Can only be claimed if the following two conditions are met:
    - The increase over the prior year cannot exceed the change in the CPI**, plus 2%
    - Each governing body served by the joint department must adopt a resolution in favor of exceeding the limit

* *Organized under Wis. Stat. § 61.65(2)(a)3., 62.13(2m), or 66.0301(2)*

** *Change in the U.S. CPI for urban customers, U.S. city average, as determined by the U.S. Department of Labor for the preceding 12 months ending on September 30 in the year of the levy*

Key Exemptions & Adjustments (cont.)

- Transfer of services **to** other governmental units
  - If a service was transferred to another political subdivision in the preceding year, **subtract the levy amount** that would have been incurred to provide this service
  - *Example* – a county assumes responsibility for providing health department services in a city that previously provided this service – the city must decrease its levy limit by the amount it levied last year to provide that service

Key Exemptions & Adjustments (cont.)

- Transfer of services **from** other governmental units
  - If political subdivision increases its services to provide a service transferred from another government that provided the service in the preceding year, **add the levy** increase needed to provide this service
  - *Example* – a city decides to start its own library, and was previously served by a county wide library system - the city may increase its levy by the amount needed to provide the new service

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Key Exemptions & Adjustments (cont.)

- Covered Services Negative Adjustment
  - Levy limit reduction imposed on a municipality that implements or increases user fees for certain “covered services” on or after July 2, 2013:
    - Garbage collection (excludes recycling)
    - Snow plowing
    - Storm water management
    - Fire Protection (pending State budget includes clarification that public fire protection charges are *excluded*)
    - Street Sweeping
  - Only applies if the covered service was funded in whole or in part by the tax levy for the 2013 budget year

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Key Exemptions & Adjustments (cont.)

- Covered Services Negative Adjustment (cont.)
  - The negative adjustment is equal to the amount of estimated fee revenue resulting from implementation of a user fee, or an increase in an existing user fee
  - Does not apply to increased revenues resulting from increased usage of covered services – fee must actually be increased
  - Also applies to PILOT agreements entered into on or after July 3, 2013 to the extent the PILOT payments are intended to reimburse the municipality for provision of one or more covered services

Other Available Adjustments

- Carryforward – up to five years with a 5% cap
- Refunded or rescinded taxes
- Referendum approved amounts (one-time or ongoing)
- Unreimbursed emergency expenditures
- Annexation
- General fund shortfall resulting from loss of water sale revenue due to a discontinued manufacturing operation

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Levy Limits – Municipal Attorney's Role

- Recognize events that may have levy limit impacts
  - Intergovernmental agreements involving services or facilities funded by more than one municipality or governmental entity
  - Initial and subsequent agreements pertaining to Joint Fire Departments
  - Non-general obligation financing, especially leases
  - Implementation of new user fees or user fee increases for covered services
  - Preparation of PILOT agreements (exclude covered services)

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Recent TIF Law Changes

- 2014 Legislative Council Study Committee on the Review of Tax Increment Financing
  - Formed to:
    - evaluate current TIF laws and to recommend legislation that could improve their effectiveness
    - study how they impact a local governmental unit's finances and property taxes; economic and community development; and job growth
  - Committee developed 17 proposals for TID law amendments
  - Reduced and consolidated proposals to eight which were subsequently introduced as bills, four of which were enacted

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TID Legislative Study Committee Outcomes

- Three Year Life Extension (2015 Wis. Act 254)
  - Permits a three year extension for any TID which saw diminished revenues as a result of 2013 Wis. Act 145
  - Act 145, which reduced technical college levies, first impacted the 2014 tax levy for 2015
  - Also permits one additional territory amendment to the already permitted four
  - JRB must approve extension if independent audit indicates it is needed to recover project costs, otherwise JRB has discretion
  - Available extension can be added to already available 3 and 4 year extension for certain TIDs

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TID Legislative Study Committee Outcomes

- Vacant Land & Municipal Land (2015 Wis. Act 255)
  - Eliminated 25% vacant land test
    - Had been an impediment to creating blighted area and in need of rehabilitation or conservation TIDs as dilapidated or underutilized parcels were often deemed vacant under the statutory definition
  - Eliminated requirement to assign value to tax-exempt land
    - Assignment of value to municipally owned exempt land created artificial decrement that had to be overcome before positive tax increments could be created

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TID Legislative Study Committee Outcomes

- Technical Corrections (2015 Wis. Act 256)
  - Clarified that the maintenance of industrial zoning requirement does not apply to mixed use TIDs
  - Changed public hearing notice requirement from Class 2 to Class 1 for TID amendments
  - Eliminated the creation date “timing penalty”
  - Extended timeframe for final JRB meeting from 30 to 45 days
  - Required DOR to use TID OUT value when calculating the allowable levy limit increase following TID closure

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TID Legislative Study Committee Outcomes

- Annual Reports (2015 Wis. Act 257)
  - Requires submission of an annual TID Report (DOR Form PE-300) by July 1
  - Requires the JRB to meet to review the report
  - DOR required to post filed reports online
  - $100 per day penalty imposed for past due reports

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TID Legislative Study Committee Outcomes

- Four bills not enacted
  - Increase in TID EV limit from 12% to 15% (Neither chamber brought to a floor vote)
  - Allowing all types of TIDs to be recipients of shared increment (died in Assembly)
    - Current law specifies that recipients must be blighted area, in need of rehab or conservation, or distressed
  - Base value redetermination (died in Assembly)
    - “Old” base reset provision still on the books
  - Extension of October 1, 2015 sunset on distressed TID provisions (died in Assembly)

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TIF Law Changes – What Lies Ahead

- Some optimism that bill to increase the TID EV limit from 12% to 15% may be again taken up this session
- Remaining three study committee bills not likely to be resurrected this session
- Current session
  - SB 51 – TIF technical changes (DOR)
    - Passed by Senate and Assembly; enrolled pending enactment
    - Of note, moves forward from May 15 to April 15 the date by which a municipality must determine whether to close a TID or continue to collect increment

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TIF Law Changes – What Lies Ahead

- Current session (cont.)
  - AB 179/SB 173 – Future environmental TIDs (E-TIDs) would be created under Wis. Stat. § 66.1105
  - AB 277 – Elimination of personal property tax – potential detrimental impact on TID cash flows
  - AB 291/SB 223 – Allow for a TID to make expenditures within adjacent municipality or town
  - Workforce Housing TID (not yet introduced)

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TIF Law Changes – What Lies Ahead

- TIF concerns expressed by some legislators may result in initiatives to curtail or restrict use of TIF
  - Any needs for near-term relief may be best addressed as special legislation
- 2015 Assembly Bill 349 - TID Financial Accountability
  - Did not reach floor for a vote in either chamber, but would have required all future TIDs to self impose one of the following restrictions
    - Require that at least 51% of any public improvement costs be financed by a developer
    - Limit expenditures to the first half of the expenditure period
    - Recover project costs within 90% of the TIDs maximum life

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TIF Law Changes – What Lies Ahead

- Other unintroduced "TIF reform" proposals that may be forthcoming
  - Limit donor to TIDs to providing increment to a single recipient TID, and requiring a unanimous JRB vote for donor TID amendments
  - Requiring unanimous JRB approval for any TID amendment that would lengthen projected payback
  - Requiring clawback provisions in all development agreements involving TIF incentives
  - Limit new TIDs to one permitted territory addition (current law allows up to four)
  - Disallow use of State Trust Fund Loans to finance TID projects

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TIF In Practice

- Tax Incremental Financing has been the most powerful tool available to local government to stimulate growth
- All growth occurs at the local level– municipalities need to make investment decisions up front that all other jurisdictions benefit from in perpetuity
- Recent Data has shown that for every dollar spent over $4.60 in new taxable value has been created
- TIF has been a major job generator in Wisconsin communities
- Annually revenue from Wisconsin TIF districts is 15 times the total budget for WEDC's Business Development tax credit program

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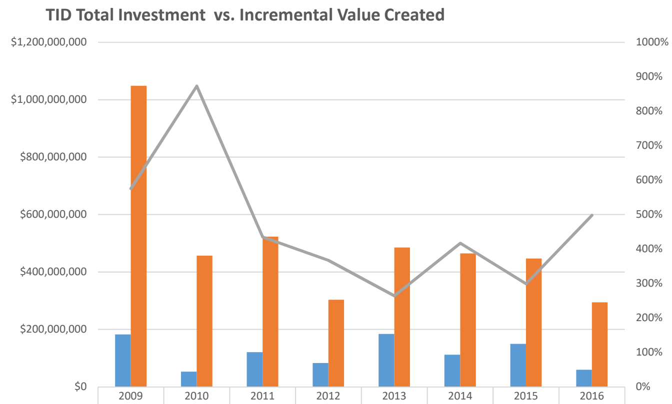
TIF In Practice



	2009	2010	2011	2012	2013	2014	2015	2016
Total TID Investment Cost3	182,188,702	52,280,443	120,293,179	82,419,099	183,592,217	111,410,124	149,346,039	59,020,618
Total Increment Created	1,047,970,000	456,316,350	522,774,250	302,686,150	484,715,850	464,282,000	446,592,600	293,860,900
Increment Created to Total Investment Cost %	575%	873%	435%	367%	264%	417%	299%	498%

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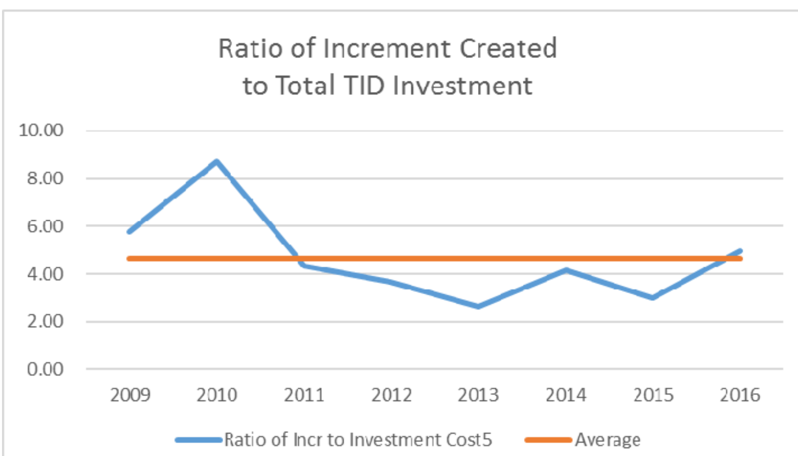
TIF In Practice



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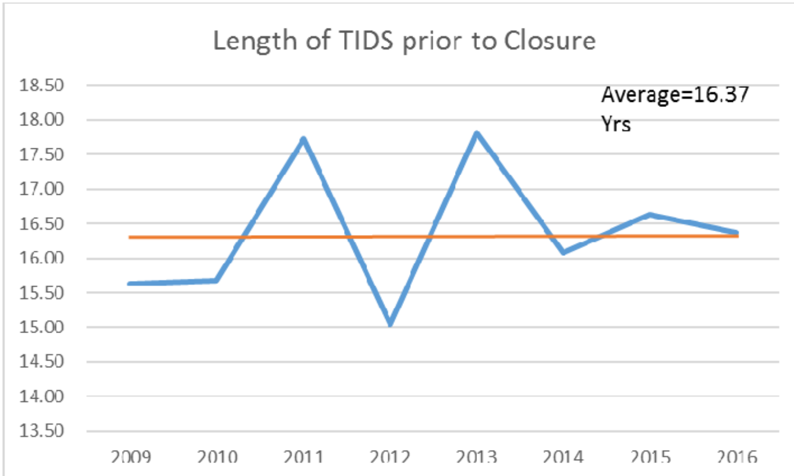
TIF In Practice



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TIF – Municipal Attorney's Role

- Encourage responsible use of TIF
  - Sound reasoning to evidence "but for" test
    - Ideally, thorough review of developer's sources, uses and cashflow to quantify need for, and appropriate amount of any public investment
  - Protection of taxpayer investment in developer agreements
    - "Pay as you go" preferred
    - LOCs, escrows, special assessments, mortgages, etc. to provide security when municipal debt involved
    - Lookback provisions

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