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November 10, 2003

TO: Members
Joint Committee on Finance

FROM: Al Runde, Fiscal Analyst

SUBJECT: Assembly Bill 437: Granting Towns Limited Authority to Create Tax Incremental Financing (TIF) Districts

Assembly Bill 437 (AB 437) was introduced on July 21, 2003, and referred to the Assembly Committee on Rural Development. On October 29, 2003, Assembly Amendment 1 (AA1) was introduced and adopted by the Committee on a vote of 8 to 0. Assembly Amendment 2 (AA2) was introduced and adopted by the Committee on a vote of 7 to 1. AB 437, as amended, was recommended for passage by the Committee on a vote of 8 to 0. The bill was referred to the Joint Committee on Finance on November 4, 2003.

CURRENT LAW

Tax incremental financing (TIF) is a mechanism for funding development and redevelopment projects. City and village governments may create a TIF district if 50% or more of the proposed district's area is "blighted," in need of rehabilitation or conservation work, or suitable for industrial sites. Property that was vacant for the seven years preceding creation of a TIF district cannot comprise more than 25% of the district's area, unless the district is created to promote industrial development. Land acquired through condemnation is excluded from this requirement. An area designated as suitable for industrial sites must be zoned for industrial use both at the time the TIF district is created and throughout the life of the project. Currently, cities and villages have created 791 TIF districts in the state.

Once a TIF district has been created, a "tax incremental base value" is established for property within the district at the time it was created. The base value includes the equalized value of all taxable property and the value of municipally-owned property, as determined by the Department of Revenue (DOR). The "tax increment" equals the general property taxes levied on the value of the TIF district in excess of its base value (this is the "value increment"). The amount equals the value increment multiplied by the tax rate for all taxing jurisdictions--municipal, county, school district, technical college district, and special purpose districts. Therefore, tax increments can only be generated by an increase in the equalized value of taxable property within a TIF district.

SUMMARY OF THE BILL

AB 437 would provide towns the limited authority to exercise all the powers of cities and villages related to the creation of TIF districts. If a town board exercises this limited authority, the town board would be subject to the same duties as a city's common council and the same duties and liabilities as a city under state TIF law.

Under the bill, a town could only exercise the authority to create a TIF district, and expend money or incur monetary obligations for projects costs related to that TIF district, for the following types of projects: (a) projects related to tourism; (b) projects related to agriculture; (c) projects related to forestry; (d) projects related to residential development, but only to the extent that the development would have a necessary and incidental relationship to a tourism, agriculture, or forestry related project; and (e) projects related to retail development, but only to the extent that the development is related to the retail sale of products that are produced due to the development of an agricultural or forestry TIF project.

The bill would extend the public purpose finding under the original 1975 TIF law to include the TIF authority provided to towns under the bill.

ASSEMBLY AMENDMENT 1

AA 1 would exclude any residential development project costs eligible under the bill from the current law provision that excludes such costs or related monetary obligations for newly-platted residential areas from eligible TIF costs for any TIF district that has a project plan that was approved after September 30, 1995.

The amendment would specify that if a city or village annexes town territory that contains part of a town TIF district, the tax incremental base of the district would have to be redetermined if the redetermined base is less than the district's original tax incremental base. The base would be redetermined by subtracting the value of the taxable property that is annexed from the existing district from the original tax incremental base. The taxable property included in this calculation would equal the following: (a) the taxable property as of the January 1 next preceding the effective date of the annexation if the annexation becomes effective between January 2 and September 30; (b) the taxable property as of the January 1 next subsequent to the effective date of the annexation if the annexation becomes effective between October 1 and December 31; and (c) the taxable property on January 1 if the annexation of property is effective on that date.

The amendment would also specify that if a city or village annexes town territory that contains part of a town TIF district, the city or village and the town would be required to negotiate an agreement under which the city or village agrees to reimburse the town for the TIF district related costs for which the town is liable and which would have been paid for by annual tax increments allocated to the town. In addition, if a city or village annexes town territory that contains an entire TIF district, the town would be required to dissolve the district and the city or village and the town would be required to negotiate an agreement under which the city or village assumes the liabilities for all or part of the TIF district's outstanding project costs or other related district liabilities.

The amendment would also specify that the bill would take effect on October 1, 2003.

ASSEMBLY AMENDMENT 2

AA 2 would specify that towns would not be allowed to exercise power under the TIF authority provided under the bill within the extraterritorial zoning jurisdiction of a city or village, as defined in statute, unless the governing body of the city or village adopts a resolution that approves the exercise of such power by the town.

The amendment would also specify that allowable retail development in a town TIF would be limited to the retail sale of agricultural and forest products, rather than being related to such sale. The amendment would define residential development that could be included in a town TIF under the bill to include sleeping quarters for employees who work for an employer engaged in a tourism, agricultural, or forestry project, but would specify that such residential development does not include hotels, motels, or general residential housing development within the proposed TIF district.

FISCAL EFFECT

While TIF districts established under current law are created and managed at the local level, the Department of Revenue (DOR) carries out the state's limited administrative functions related to the districts. Central and regional office staff in DOR's Bureau of Property Tax and Bureau of Local Government Services carry out these administrative functions.

For each newly created or amended TIF district, the Department reviews the TIF project plan, the required local resolutions related to the creation of the district, the district boundary descriptions and parcel lists, the public notices of affected landowners, and public hearing actions. Subsequent to these reviews, the Department is required to determine the equalized value of each class of property within the TIF district in order to certify the value base of the TIF district and the value increment (the equalized value of property in the District less the base value of the District). Annually, the Department certifies the value increment for each existing TIF district and works with municipalities to determine the share of each taxing jurisdiction's levy that is to be allocated to the TIF district.

Under existing TIF law, approximately 60%, or 349, of the 587 city and village governments in the state have created TIF districts. DOR estimates that approximately 2.5 staff positions are required to carry out the Department's administrative functions associated with these TIF districts. DOR indicates that, in addition to the work associated with the annual certification of the TIF district value increment, approximately 61 new TIF districts (17.5% of the 349 municipalities that have created a TIF district) are created each year and 24 TIF districts (7% of the 349 municipalities that have created a TIF district) are amended each year. As a result, on average, the Department works on a total of 85 new or amended TIF districts each year.

DOR's fiscal estimate assumes that half (632) of the 1,264 town governments in the state would create a TIF district. Using current TIF district activity as a model, DOR estimates 110 towns (17.5% of the 632 towns) will create a TIF district each year and 44 towns (7% of the 632 towns) will amend a TIF district each year. Therefore, the Department estimates that a total of 154 town TIF districts would be created or amended each year. DOR indicates that this would be a 181% increase in the Department's current annual workload for such districts. Aside from the workload associated with working on the creation of and amendment of town TIF districts, DOR staff indicate that additional workload would also occur under the bill associated with the required annual certification of a larger number of TIF district values.

As a result this analysis, DOR anticipates that a 200% increase in its current staff would be needed to carry out the Department's required administrative functions relative to creation of town TIF districts, as allowed under the bill. Therefore, its fiscal estimate indicates that the additional workload associated with the bill would increase Department costs by $347,000 GPR and 5.0 GPR positions on an on-going basis and $47,500 GPR on a one-time basis.

The authority for towns to create TIFs would be limited to tourism, agriculture, and forestry projects, and the residential and retail development related to some of these projects. Therefore, the rate at which towns will create these districts may be more limited than the current rate for creation of city and village TIF districts. In addition, in the early years of having this authority, the use of town TIF authority would likely be more limited than the rate at which cities and villages are currently using TIF districts to finance development. Therefore, the degree of additional Department workload associated with towns creating TIF districts may also be somewhat limited, especially in the early years in which towns have such authority. As various towns use this new authority for different types of development, the DOR workload could increase as other towns draw on the experience of successful TIFs created by the initial usages of the authority.

The bill would not provide any additional funding or staff to carry out the Department functions required under the bill. Therefore, DOR would have to absorb any incremental workload created by town TIFs with existing staff.

Prepared by: Al Runde