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November 7, 2013

Senate Committee on Workforce Development, Forestry, Mining, and Revenue
Public Hearing
10:00 AM – 400 Southeast

Chairman Tiffany and Members of the Committee:

I want to thank you for the opportunity to speak on behalf of AB 484/SB 378. This legislation serves as a follow-up to the tax reform package enacted by the 2013-15 biennial budget. The bill also updates policy to streamline the administration of existing tax credits and it more closely mirrors federal treatment of net operating loss (NOL) carrybacks.

AB 484/ SB 378 includes provisions to the following areas: printers sales tax exemption language clarification, NOL federalization and administration streamlining, computation order adjustment, limited relocation credit claimant grandfathering, electronic medical records sunset certainty and jobs tax credit calculations.

This bill creates certainty for issues involving individuals, businesses and their regulators.

Thank you,

Dale Kooyenga

Dale P. Kooyenga

# Background on TIF & Parking Structures

Parking is important to economic development, and particularly to development projects that support jobs. While a residential project may only have 1 parking stall per 1,000 square feet of development, commercial projects typically require 3 to 4 parking stalls per 1,000 SF and retail or health related uses can require 5 or more per 1,000.

Structured parking is expensive to build and the market won't always allow companies or developers to charge enough to recover all the costs. This market failure might require a public investment to correct and TIF is an ideal and appropriate vehicle.

As an example, the City of Madison is looking at redeveloping the block that the Madison Municipal Building sits on and the city-owned parking structure across from DOA. This project has numerous positive economic benefits:

1. It will create approximately $100 million of property tax base and substantial sales and income tax base as well.
2. It will take two partial city blocks that are currently off the tax rolls and put them back on the rolls in private use
3. It will feature a convention center hotel that will help attract more visitors and companies to events held in Wisconsin
4. It will allow the Monona Terrace to expand its book of business and create more efficient mix of business. The business that Monona Terrace gives up will benefit other hotels and venues
5. Additional visitors will strengthen air travel, ground transportation, other hotels, and local businesses
6. The project will create additional amenities and restaurants downtown for employees, residents, students, and visitors
7. One projection indicates the development will create approximately 1,200 construction jobs and 150-200 permanent jobs
8. The construction project will inject approximately $150 to $180 million into Wisconsin's economy and may be financed with money from out-of-state

# TIF for Public Parking Structures

**ISSUE**

The city of Madison has 5 downtown parking structures, the oldest of which was built in 1958, and is in imminent need of replacement. As these are replaced, the city would like to rebuild the structures underground to free up the above-ground real estate for development, creating economic growth.

The City of Madison parking utility has historically funded the construction of its public parking solely through revenue bonds. However, the cost of building underground parking would far exceed the revenues from parking fees. Thus, the city would need to find a source of funding for the gap between the parking revenue and the construction costs. State law currently prohibits Madison from using TIF for this purpose.

**CURRENT LAW**

State law provides that TIF funds cannot be used for a facility ". . . if the city generally finances similar facilities **only** with utility user fees" (emphasis added). This law was not aimed at parking structures. The prohibition stems from a 1981 Legislative Audit. That audit criticized the use of TIF funds to pay for large-scale water and sewage facilities because such facilities typically serve areas outside of the TIF district. Further, the audit noted revenue bonds ". . . are designed for and capable of funding these types of improvements."

There appears to be no other community in the state that has a parking utility, nor has any other community financed parking exclusively through revenue bonds. Other communities can and have used TIF in this manner, so the impact of a legislative change should be minimal, but would help redevelopment activities in Madison

**APPLICATION**

As an example, the city is looking to redevelop blocks 88 (across from City Hall) and 105 (current site of Government East parking ramp) to add hotel space, retail/restaurant, residential, office space and public and private parking. The project is a significant economic development opportunity and will support the Monona Terrace Community and Convention Center, an important economic generator for the region. An impediment to the continued growth of business at Monona Terrace is the lack of a sufficient hotel room block to attract groups from outside of the region. A recent study indicated that the city has lost 81,000 attendees due to lack of an adequate hotel room block to support the conventions and meetings. That same study indicated that a new hotel could bring in up to $8.1 million in revenue, and add 200,000 attendees. In addition to the economic activity generated through the convention center, the development of these underused blocks is expected to bring in significant property, room and sales tax revenues to the state, city and county.

**PROPOSED CHANGE**

Section 66.1105 (2) (f) 2. b. could be amended to say:

66.1105 (2) (f) 2. b. The cost of constructing or expanding any facility, <u>except a parking structure that supports redevelopment activities,</u> if the city generally finances similar facilities only with utility user fees."

Nicholas Zavos
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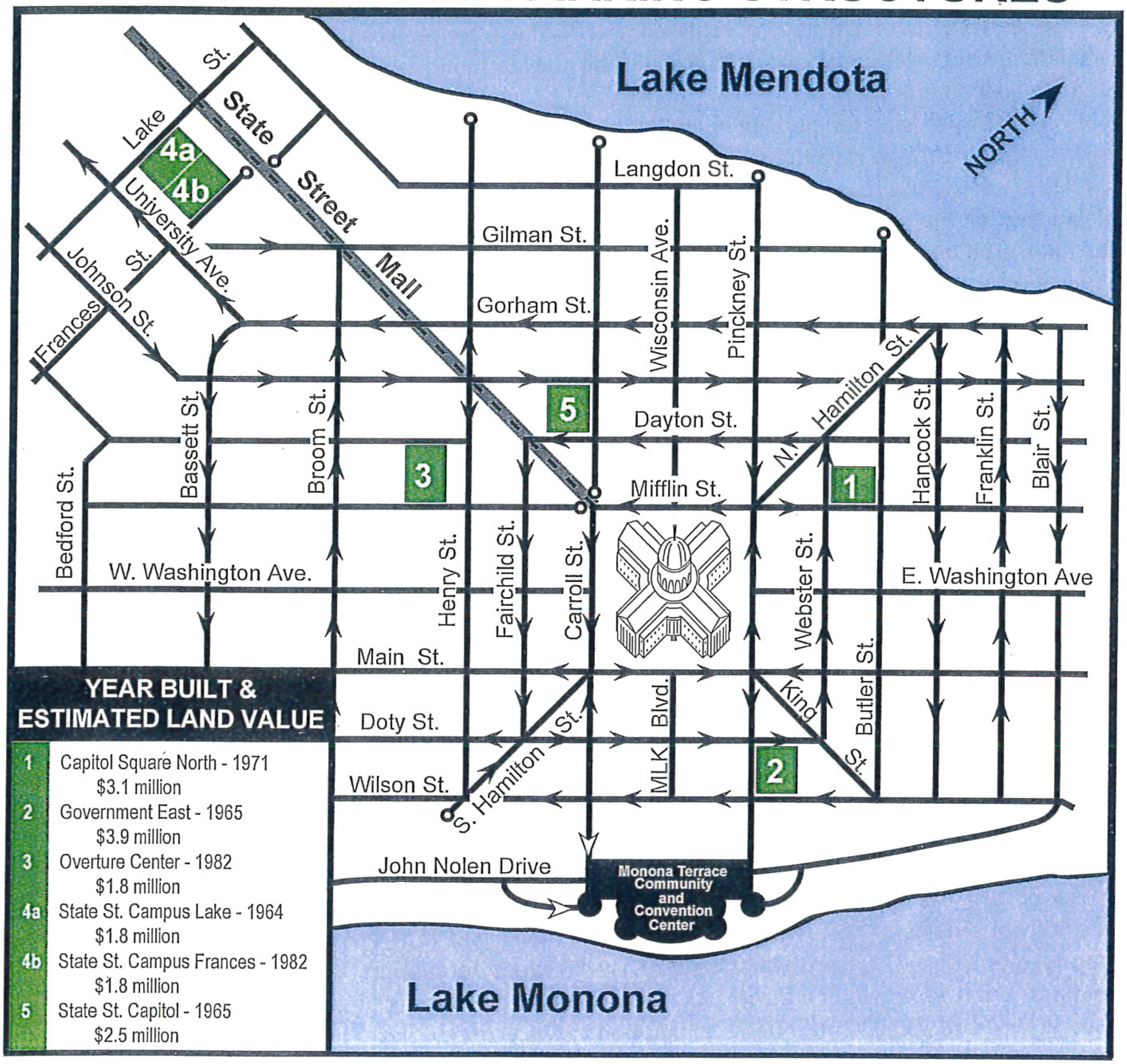
# CITY-OPERATED PARKING STRUCTURES



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# THE TAX INCREMENTAL FINANCING LAW

## SECTION 66.46

## WISCONSIN STATUTES



AN EVALUATION BY:

THE STATE OF WISCONSIN

LEGISLATIVE AUDIT BUREAU

81-1

- Nashotah TID #1 - A municipal building including a public works garage and recreation center and a fire engine garage are included as project costs. Administrative costs listed in the project plan include a portion of salaries for law enforcement officials.

- Lake Mills TID #1 - Project costs include police station/garage renovations and a fire truck.

- Grafton TID #1 - The list of project costs includes a meeting hall, firehouse renovation, a police station, a library, a senior citizens' center, parks, and police and fire vehicles.

- Sussex TID #2 - A dump truck, a street sweeper, and a fire truck are included on the project list.

New development in TIDs will undoubtedly place extra demands on municipalities for some services. However, the practice of including in TIF plans the entire cost of projects that will serve the whole community is not consistent with the intent of TIF and uses revenues from overlying taxing districts inappropriately. Some costs for services will not be increased by the new development, and some expenditures for service buildings and equipment will not spur development in the TIDs.

Funding "User Fee" Facilities

There is little direct relationship between portions of project costs and TIF development when large-scale water and sewage facilities* will serve areas of the municipality that are not in the TID. These facilities may encourage new development

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*We emphasize user fee facilities in contrast to improvements such as sewer interceptions and lift stations that are normally funded with municipal revenues rather than utility user fee revenues.

in the TID, but costs for constructing these facilities is usually recouped by municipalities through prorated user fees. Examples of municipalities that have included large-scale water or sewage facilities as TID expenditures include:

- Seymour - $6,920,000 total utility costs. Plans for TID #1 and TID #2 each include utility costs for: waste water treatment - $2,450,000; water study - $10,000; water well and pump station - $225,000; water reservoir - $350,000; and water mains - $425,000. Both TIDs were created under the justification that they contained blighted areas.

- Plover - $2,235,000 total utility costs. Plans for TID #1 include: water study - $50,000; sewer costs - $60,000; and waste water treatment plant improvements - $1,400,000. Plans for TID #2 include: water study - $50,000; sewer costs - $25,000; and waste water treatment plant improvements - $650,000. Both TIDs were created because area within them is suitable for industrial sites.

- Holmen - $1,305,000 for a waste water treatment plant in TID #1. The district was deemed to have blighted areas and areas suitable for industrial sites.

When TIF is used in this way, it has the effect of charging taxpayers outside of the municipality using TIF for reduced utility costs in the municipality using TIF. This is especially true when development would have occurred without TIF.

We also believe that the use of TIF revenue to fund revenue generating improvements such as a sewage treatment facility is unnecessary as well as inappropriate. The construction of these types of facilities are typically funded by the proceeds of mortgage revenue bonds or notes issued by municipalities under s. 66.066. These bonds and notes are not considered an indebtednes of the municipality and are not included as municipal debt subject to the State's constitutional debt limit. A mortgage lien on the facility to the holders of bonds or notes secures the investment. The bonds and notes are issued based on the potential for the facility to generate revenue.

We believe it is inappropriate to use TIF revenue (property tax monies) to fund the debt service on mortgage revenue bonds and notes and unnecessary since these bonds and notes were designed for and are capable of funding these types of improvements.

## Funding Prior Costs

The definition of project costs included in s. 66.46(2)(f) uses terms which indicate that project costs are expected to occur in the future, after the TID is created. Project costs are "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 . . ." (emphasis added). According to s. 66.46(4)(f), a "project plan shall include a statement listing the kind, number, and location of all proposed public works or improvements within the district, . . . an economic feasibility study, a detailed list of estimated project costs, and a description of the methods of financing all estimated project costs and the time when the costs or monetary obligations related thereto are to be incurred" (emphasis added).

Excluding these types of projects from funding with TIF revenue limits the use of TIF funds for projects not related to TID objectives and meets other legislative objectives as well. With these restrictions, TIF can no longer be used to take property off the tax rolls and use it for city halls, police stations, and swimming pools. Exclusion of general government buildings and services from the list of eligible costs also limits the possibility that TIF may be used to circumvent Minnesota's levy limits.

We believe these types of changes should be considered for Wisconsin's TIF law to address the same problems and objectives. *We, therefore, recommend the statutes be amended to exclude from permissible project costs:*

- *Construction or expansion of buildings and facilities used for the general conduct of government.*
- *Construction of schools and educational facilities.*
- *Construction of large-scale user fee facilities.*
- *Other general government expenses.*

*We also recommend that the Legislature consider requiring that no more than an appropriate pro rata share of project costs be included in TIF expenditures of projects such as:*

- *Purchase of equipment.*
- *Improvements located in TIDs that are normally funded with municipal revenues such as sewer interceptors or lift stations.*

In addition to spending TIF revenues on projects which are not directly related to development, thereby violating the intent of the law to the harm of overlying taxing districts, some TIDs have the long-term potential for negatively affecting the planned development and financial viability of the municipality itself.

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*Scott Walker*
*Governor*

*Richard G. Chandler*
*Secretary of Revenue*

November 7, 2013

**DOR Testimony on Senate Bill 378**
**Senate Committee on Workforce Development, Forestry, Mining, and Revenue**

Senate Bill 378 serves as a follow-up to the tax law changes included in the biennial budget, 2013 Wisconsin Act 20. The provisions included in Senate Bill 378 will generally help align legislative intent with taxpayers' experience and DOR's administration of the tax law changes.

We strongly support the technical provisions in the bill and appreciate that Senator Grothman included them at DOR's request. The technical provisions include the allocation correction associated with the Electronic Medical Records Credit and the statutory language clarification associated with the printers sales tax exemptions.

Descriptions of the provisions follow.

**Electronic Medical Records Credit Sunset Allocation Correction**

The Electronic Medical Records Credit is an expiring tax credit equal to 50% of a claimant's expenses related to hardware and software purchases used to create and store electronic medical records. This credit is unique in that it has an annual cap of $10 million. Since more than $10 million in claims come in every year, DOR must allocate the credit to claimants based on their proportion of all credits claimed. In other words, the equation is: (Individual Claimant's Amount / The Amount Claimed by All Taxpayers in the Tax Year) x $10 million = Individual Claimant's Credit. 2013 Wisconsin Act 20 sunsets this credit on January 1, 2014.

-This bill contains a technical provision to align DOR's final allocation of the credit. This ensures 2013 expenses coincide with a claimant's deadline to make qualifying purchases by December 31, 2013. This change affects fiscal year filers who would otherwise claim their 2013 credit after DOR's final allocation.

-In short, this provision ensures that the final credit allocation can take place at one time and that the appropriated funds are available to all potential claimants for the final year of the credit.

**Printers Sales Tax Exemption Language Clarification**

The budget created new sales tax exemptions for commercial printers. Generally, the newly exempted items are computers and servers used to store copies of the product sent to a printing press and purchases from out-of-state sellers of items that are temporarily stored and not used in this state. The language included in the budget is difficult to administer because it does not adequately link technical printing terms with technical tax terms. The provisions in Senate Bill 378 preserve the legislative intent and at the same time prevent both overly broad and overly specific language from creating unwanted outcomes. This bill accomplishes these goals in the following three ways:

-Replaces trade jargon with clarifying industry tax codes, which are more effective for tax administration.

-Specifies that the exemption for computers and servers only applies to computers and servers *primarily* used in prepress or postpress activities or to store copies of products for later printing.

-Clarifies that the temporary storage exemption only applies to goods that are delivered and used *solely* outside of Wisconsin.

**Jobs Tax Credit Calculation**

The Wisconsin Economic Development Corporation (WEDC) certifies and awards the jobs tax credit to businesses meeting certain qualifications. WEDC may generally only award credits up to $10 million in a calendar year. Taxpayers claim these credits when filing annual tax returns with DOR, which is the extent of DOR's involvement in the credit.

-This bill clarifies that jobs relocated to Wisconsin from another state are included in the calculation of net employment growth for a person claiming the Jobs Tax Credit.

-The provision does not change the statutory credit limit and thus does not affect DOR.

**Net Operating Loss (NOL) Federalization and Administration Streamlining**

NOLs are only available to individual taxpayers, generally businesses operating as sole proprietorships. Corporate taxpayers cannot claim an NOL. 2013 Wisconsin Act 20 made changes toward federalizing Wisconsin's treatment of NOLs and include allowing taxpayers to carryback the NOL for the previous two years. Carrybacks work similarly to carry forwards in that they allow a taxpayer to offset tax liability in a different year than the loss (or any liability reduction) occurs.

The provisions of Senate Bill 378 further federalize the state treatment of NOL carrybacks and address what is likely a drafting oversight. The NOL provisions of the bill are as follows:

-Prohibits DOR from paying interest on amended returns that result in a refund due to a carryback. This change mirrors federal treatment. The IRS does not pay interest on amended returns that generate a refund based on an NOL carryback.

-Allows taxpayers to choose whether or not use a carryback without losing the benefit of the carryback if the taxpayer does not use it as soon as possible. In other words, the provision removes the current "use or lose it" standard. This change mirrors federal treatment.

-Adds NOL *carrybacks* to the calculation of household income for Homestead Tax Credit purposes, just as NOL *carry forwards* are treated under current law. The inconsistency in current statutes as created by Act 20 is likely a drafting oversight.

**Computation Order Adjustment**

Tax credits are either calculated before or after the Alternative Minimum Tax (AMT). Statutes specify the order. The AMT only affects individual taxpayers because there is no AMT for corporations.

-Senate Bill 378 Moves the computation of the Manufacturing and Agriculture Credit from sec. 71.10 (4) (cr), Wis. Stats., to (fm). This change results in *individual taxpayers/pass-through entities* being able to fully utilize the Manufacturing and Agriculture Credit just as corporations (which are not subject to AMT) are able to under current law.

**Limited Relocation Deduction/Credit Claimant Grandfathering**

The Relocation Credit/Deduction is a two-year incentive for businesses that relocate to Wisconsin from another state or country. The incentive takes the form of a deduction for businesses filing as individuals and as a credit for businesses filing as corporations. Businesses may claim this incentive for two consecutive years, the first of which is the year the business relocates to Wisconsin. This incentive sunsets on January 1, 2014.

> -Senate Bill 378 would allow a business first claiming this incentive in 2013 to also claim the second portion of the incentive in 2014, while preserving the existing sunset date for all other taxpayers.
>
> -The credit would sunset for the grandfathered businesses on January 1, 2015.

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