

COMMENT

TIF-FOR-TAX: UPHOLDING TIF’S ORIGINAL PURPOSE AND MAXIMIZING ITS USE AS A CATALYST FOR COMMUNITY ECONOMIC DEVELOPMENT

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With shrinking state aid and growing needs, local governments are constantly searching for ways to increase their tax revenue. One significant policy in the toolbox of local governments in Wisconsin is Tax Increment Financing (TIF). Through TIF, municipalities aim to grow future revenues by attracting private investments in new real estate development. TIF was originally intended to assist communities in addressing urban blight, yet legislative enactments over the past few decades have significantly broadened TIF to make eligible projects that are not in metropolitan or blighted areas, thereby diluting TIF’s intended purpose.

Past calls for reforming TIF have suggested only small modifications, often advocating for expanding TIF’s applicability and use in an even greater number of development projects. However, legislators should instead support comprehensive reforms to this place-based investment instrument that improve clarity and predictability, increase measured objectiveness, and adjust spending restrictions in order to better utilize TIF as a catalyst for equitable Community Economic Development (CED). Through analyzing historic and contemporary uses and misuses of TIF in Wisconsin, as well as its risks and rewards, this Comment proposes specific reforms to realign TIF laws with its original purpose of addressing urban blight and better utilize the tool to attract and finance economic, community, and equitable development.

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INTRODUCTION TO TAX INCREMENT FINANCING

Sometimes you have to spend money to make money. State and local governments are constantly searching for tools to encourage or entice private development projects.¹ With growing needs and shrinking budgets,² a significant tool in the toolbox of local governments in Wisconsin is Tax Increment Financing (TIF).³ Through TIF, municipalities leverage future growth in property values to finance aspects of development and the rebuilding of public infrastructure to attract and support private projects.⁴ These improvements and projects often redevelop struggling properties, bringing higher property values

1. Interview with Joe Gromacki, City of Madison TIF Coordinator, in Madison, Wis. (Oct. 29, 2015) [hereinafter Gromacki].

The Author developed an interest in this topic through serving as an Alderperson on the City of Madison Common Council from 2009–2011.

2. MATTHEW MAYRL, *REFOCUSING WISCONSIN'S TIF SYSTEM ON URBAN REDEVELOPMENT: THREE REFORMS, CENTER ON WIS. STRATEGY*, vi (Mar. 1, 2005) (discussing municipalities facing the combination of shrinking state revenue and property tax freezes). “Faced with budget shortfall, cuts to local governments, and rising property tax rates, the debate over how TIF should be used is becoming ever more important.” *Id.* at 8.

3. WIS. STAT. § 66.1105 (2013–14); *see* MAYRL, *supra* note 2, at 9 (quoting a real estate developer that Wisconsin “doesn’t have a whole lot of other options available for municipalities [besides TIF]”); Duke Behnke, *Fox Cities Towns Exercise New TIF Powers*, APPLETON POST-CRESCENT (Sept. 5, 2015), <http://www.postcrescent.com/story/news/local/2015/09/04/fox-cities-towns-exercise-new-tif-powers/71596656/> [<https://perma.cc/3PDN-WVEP>] (quoting Bob Buckingham, Grand Chute’s director of community development, describing TIF as “the most prized tool in the economic development toolbox”); *see generally*, Pete Millard, *TIF: Development Tool or Corporate Welfare?*, MILWAUKEE BUS. J. (Feb. 23, 2001), <http://www.bizjournals.com/milwaukee/stories/2001/02/26/story3.html> [<https://perma.cc/9QBG-Y6ZY>].

4. David N. Farwell, *A Modest Proposal: Eliminating Blight, Abolishing But-For, and Putting New Purpose in Wisconsin’s Tax Increment Financing Law*, 89 MARQ. L. REV. 407, 414 (2005). Farwell argues that if the legislature is going to implicitly endorse a more expansive use of TIF, then state laws should explicitly codify such policies through eliminating certain requirements and statutory language. *See generally id.* This Comment argues the opposite: focus TIF laws through more precise statutory language, more detailed eligible project categories, and use of the financial tool to attract and finance community development.

that translate into increased tax dollars for the coffers of local governments.⁵ Put another way, cities “spend” a portion of the projected increase in tax dollars in the short-term to “make” more in future tax dollars through increased property values over the long-term. TIF aims to produce a win-win outcome for private developers *and* taxpayers by contributing public equity up-front to attract and help finance private development that, in return, produces higher property tax revenues for local governments and public schools.⁶

In addition to often providing direct financial assistance to private projects,⁷ TIF’s future tax revenues can be used to construct public and private improvements, thereby incentivizing developers to invest money in depressed or underdeveloped areas.⁸ These infrastructure enhancements may include improving streets, power lines, utilities, sewer and water mains, and sidewalks.⁹ Outside of TIF, money for such improvements typically comes from general revenue funds of municipal budgets for public works or is levied against adjacent properties through special assessments.¹⁰ As public budgets shrink, states and localities search for alternative financing mechanisms; through TIF, municipalities use non-traditional financing sources to pay for these public projects.¹¹ Municipal bonds, which do not count toward

5. See John Kovari, *Research Brief: Too Much or Not Enough? A Statistical Analysis of Tax Incremental Financing in Wisconsin*, 97 PUB. POL’Y F., no. 3, July 2009, at 1.

6. Property taxes are one major source of funding for Wisconsin’s public schools. For more information on the state’s funding formula and restrictions on local government expenditures, see RUSS KAVA & CHRISTA PUGH, WIS. LEGIS. FISCAL BUREAU, STATE AID TO SCHOOL DISTRICTS: INFORMATION PAPER 24 (Jan. 2015), https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2015/0024_state_aid_to_school_districts_informational_paper_24.pdf [<https://perma.cc/2XW4-BNLT>]; RUSS KAVA & RICK OLIN, WIS. LEGIS. FISCAL BUREAU, LOCAL GOVERNMENT EXPENDITURE AND REVENUE LIMITS: INFORMATION PAPER 12 (Jan. 2015), https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2013/0012_local_government_expenditure_and_revenue_limits_informational_paper_12.pdf [<https://perma.cc/MC73-ELFZ>].

7. See *infra* 196 and accompanying text.

8. See Farwell, *supra* note 4, at 413–14.

9. § 66.1105(2)(f)1.a.–n. TIF projects can fulfill multiple purposes to multiple actors through the elimination or reduction of blight, rehabilitation of properties declining in value, improvement to public infrastructure, attraction of new businesses to a community, retention and expansion of existing businesses, as well as an increased tax base for municipalities, school districts, counties, and technical colleges.

10. Farwell, *supra* note 4, at 414.

11. § 66.1105(9). TIF projects are often funded by sources other than traditional municipal funding sources such as direct tax revenue or general obligation debt borrowing. Many TIF projects are funded through municipal bonding sources. In addition, a considerable number of public infrastructure improvements would not occur without TIF financing. Gromacki, *supra* note 1.

state-imposed levy limits,¹² most often provide capital for TIF projects up-front.¹³ In theory, as TIF projects occur, the result is an increase in the taxable value of the area.¹⁴ The tax revenue generated by the increased assessed property value, the “tax increment,”¹⁵ repays portions of the public and private costs and repays the bond debt.¹⁶ Accordingly, a successful TIF covers its own costs and ultimately adds higher assessed values to the property tax rolls once the project’s debt is repaid and the property’s increased value is returned to the tax rolls of all overlying tax jurisdictions.

TIF is the most widely used economic development tool among the nation’s local governments, and its use in Wisconsin is no exception.¹⁷ However, current Wisconsin TIF laws are a hodgepodge of ambiguous language, ineffective limitations, and tailored exceptions.¹⁸ This lack of uniformity and predictability in TIF’s application—both within and

12. Levy limits restrict the year-to-year increases in county and municipal property tax levies—the amount of total taxes that local governments are allowed to generate. *See KAVA & OLIN, supra* note 6, at 10 (The state’s levy limit programs “prohibit any county, city, village, or town from increasing its ‘base’ levy in any year by more than the percentage change in the local government’s January 1 equalized value due to new construction, less improvements removed, between the previous year and the current year, but not less than zero percent. The base levy is defined as the prior year actual levy for the county or municipality.”). Wisconsin Governor Scott Walker’s signature legislation, 2011 Wisconsin Act 10, which is known primarily for largely eliminating collective bargaining for public-sector employees, also placed restrictive levy limits on municipalities, significantly constraining their ability to generate taxes to fund costs and services. *See Don Walker, City Official Challenges Scott Walker on Statement over Act 10 Savings*, MILWAUKEE J. SENTINEL (Aug. 8, 2013), <http://archive.jsonline.com/news/milwaukee/city-official-challenges-scott-walker-on-statement-over-act-10-savings-b9971636z1-218903641.html> [<https://perma.cc/CN67-RHNT>].

13. AL RUNDE, WIS. LEGIS. FISCAL BUREAU, TAX INCREMENTAL FINANCING: INFORMATIONAL PAPER 17, at 7 (Jan. 2003), https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2003/0017_tax_incremental_financing_informational_paper_17.pdf [<https://perma.cc/ZQR2-TZGV>]. Municipal bonds are a separate source of funds from traditional general obligation debt. Bonds for TIF typically do not impact a municipality’s debt rating or draw funds away from general-purpose funds for traditional municipal expenses like roads, sanitation, or police or fire costs. Gromacki, *supra* note 1.

14. Kathleen Knavel, *Wisconsin’s Tax Incremental Finance Law: How Wisconsin’s Cities Subsidize Sprawl*, WIS. ENVTL. L.J., Spring 2002, at 115, 117.

15. § 66.1105(5). Farwell explains tax increment through an example:

[I]magine that the “tax increment base” of a TIF district is \$1,000,000. Next, suppose that after five years the value of the property within the district raises to \$1,500,000. The “tax increment” is the amount of tax levied on \$500,000, or the difference between the base and the new value.

Farwell, *supra* note 4, at 415 n.70.

16. § 66.1105(6), (9).

17. Kovari, *supra* note 5, at 1.

18. *See generally* § 66.1105.

between municipalities—invites skepticism of TIF’s purpose and invites criticism because of its potential to generate unhealthy competition or conflict.¹⁹ Past commentators have called for loosening or eliminating major TIF restrictions.²⁰ However, this approach is misguided because it would provide increased TIF assistance to questionable or undeserving projects and adversely distort the tool’s efficacy to catalyze urban revitalization. Instead, updated state policies should uphold TIF’s original purpose, prioritize the tool’s worthy application, and focus its utility to attract and finance equitable community development.

TIF can be contentious because it often involves multiple stakeholders with aligned—but not always identical—motivations, interests, costs, and risks.²¹ Players include private developers, local

19. See Betsy Bloom, *Group Calls for Audit of City of La Crosse TIFs*, LA CROSSE TRIB. (Apr. 28, 2012), http://lacrossetribune.com/news/local/group-calls-for-audit-of-city-of-la-crosse-tifs/article_cff18da0-90e7-11e1-9dbc-0019bb2963f4.html [https://perma.cc/N3NB-4UWZ]; Editorial, *Proposed TIF Bill Further Warps a Once Useful Law*, DAILY REP. (Sept. 13, 2013, 1:09 PM), <http://dailyreporter.com/2013/09/13/proposed-tif-bill-further-warps-a-once-useful-law/> [https://perma.cc/94WX-TQN5]. Reactionary, piecemeal legislative changes to TIF often layer complicated, limited resolutions onto an already complex statutory scheme. See *id.* This editorial revealed that Wisconsin’s seventy-three changes to TIF laws between 1975 and 2011 mostly loosened the rules governing TIF, how TIF can be used, and how long it takes to pay back TIF bonds as well as argued that “[e]very time the state bent the law, the risk to taxpayers became greater.” *Id.*

20. Farwell, *supra* note 4, at 416. Farwell proposed eliminating the blight requirement and the “but-for” test from TIF statutes entirely. *Id.* Following § 66.1105(4m)(c)1.a, one factor on which policymakers must base their decision for whether to approve or deny a TIF proposal is “Whether the development expected in the tax incremental district would occur without the use of tax incremental financing,” commonly known as the “but-for” test: that without TIF, the project would not occur.

21. See Gena Kittner, *Middleton Project Raises TIF Issue*, WIS. ST. J., June 5, 2007, at B1; Dean Mosiman, *A Tale of Two Cities’ TIFs*, WIS. ST. J., Oct. 22, 2008, at A1 (reporting quotes of Matthew Mayrl, author of a report on Wisconsin TIF practices: “It’s an imbalance of power. . . . The developer can put you over a barrel. You have to call the bluff or capitulate. Across the state, a lot of communities are capitulating.”); Elliot Hughes, *Dollar General’s Historic TIF Deal Gets Janesville City Council Approval*, JANESVILLE GAZETTE (Sept. 15, 2015), http://www.gazettextra.com/20150915/dollar_generals_historic_tif_deal_gets_janesville_city_council_approval [https://perma.cc/EEH9-DXNW]; Dan Shaw, *Looser TIF Laws Prompt Skepticism*, DAILY REP. (Oct. 10, 2014), <http://dailyreporter.com/2014/10/10/looser-tif-laws-prompt-skepticism/> [https://perma.cc/55XA-8YAM]; see also Lisa T. Alexander, *Stakeholder Participation in New Governance: Lessons from Chicago’s Public Housing Reform Experiment*, 16 GEO. J. POVERTY L. & POL’Y, 117 (2009).

The Author’s experiences with TIF as an Alderperson on the City of Madison Common Council, especially related to the Edgewater Hotel redevelopment project, illuminated the complexities, controversies, and significance of TIF. Years later, the issue remains a hot topic for many local governments throughout Wisconsin and across the country. These experiences and lessons-learned sparked the impetus for this Comment.

elected officials, banks, businesses, school districts, and taxpayers. While some stakeholders often share common goals, participants often leverage their particular advantages through the TIF process or try to secure certain terms most favorable to their individual interests.²² Additionally, TIF's financial costs and risks can cause angst and conflict among and between these same stakeholders.²³ If a project or TIF district does not produce the anticipated tax increment—when TIF costs exceed increment revenue—the municipality must make up the difference through its own general obligation taxes and debt.²⁴

TIF's complexities arising from multiple stakeholders extend into the intricacies of its approval process. In concept, TIF involves five foundational steps.²⁵ First, municipalities create a Tax Incremental District (TID), a specific geographic area of one or more parcels, aimed to encourage certain types of projects: blight or environmental remediation, industrial development, or mixed-use development.²⁶ Second, municipalities negotiate with developers on a proposed project to determine financing needs and project the added tax increment that the improvements are anticipated to generate.²⁷ Local decision-makers must approve an agreement between the municipality and developer setting the terms of TIF, including amount, use, financing, timing, and any guarantees.²⁸ Third, property tax revenues to overlying tax jurisdictions (country, school district, and technical college) are frozen at pre-project assessed values and overlying jurisdictions continue to

22. For example, a developer may leverage the promise of job creation projections to city policymakers, one municipality may leverage more TIF funds as compared to another neighboring municipality competing for the same development project, or a business may threaten to move away if TIF funds are not approved.

23. See generally *supra* notes 19, 21.

24. Gromacki, *supra* note 1. This is possibly the “worst case scenario”—when costs exceed the actual increment, TIF can end up more like traditional spending or debt and often lands at the feet of taxpayers to cover costs. Under this unfavorable scenario, taxpayers can be left absorbing TIF's costs out-of-pocket.

25. In practice, TIF often involves more than five steps, but outlining these five helps simplify for explanatory purposes. See Farwell, *supra* note 4, at 412–15 for a detailed discussion of the process.

26. WIS. STAT. § 66.1105(4) (2013–14); see also MAYRL, *supra* note 2, at i. TIDs are the defined boundaries in which TIF projects may occur. Before a TIF project is financed, municipalities must establish and approve a TID.

27. Gromacki, *supra* note 1. One issue that can be contentious during negotiations between a municipality and a developer is the financing “gap” that the developer says is needed through TIF. This financing “gap” represents the amount that the developer (says it) is unable to finance the project themselves or through traditional financial institutions like banks or other private investors. *Id.*

28. Gromacki, *supra* note 1. See *infra* Part II.B.2 for proposed potential guarantees such as jobs, wages, etc.

collect only that baseline tax²⁹ until the project recoups its costs through the tax increment or for a set number of years.³⁰ Fourth, as the project develops, improvements occur and property values in that TID rise. The tax increment above the baseline tax is diverted from the overlying jurisdictions, paid to the municipality, and is spent assisting aspects of the development and/or on infrastructure enhancements (immediately or down the road before the TID closes).³¹ Fifth, after the costs of the projects are recouped or the life of the TID expires,³² the TID is closed and the increased property value of the entire development is added to the tax rolls, assessed, and taxed as ordinary property.³³ Then, all overlying tax jurisdictions receive the full, captured value of the baseline tax plus the added increment.³⁴

TIF is not a financial tool available to most people and, therefore, is not the simplest to understand or the cleanest to implement.³⁵ Because of the complexities, costs, and risks, the general public—not to mention local decision-makers themselves—can experience misunderstanding, misinformation, and ongoing questions surrounding TIF.³⁶ TIF is not a typical grant or loan; it is a complex financial tool that, like any investment, carries its own risks and rewards. To help explain and understand TIF, this Comment will apply its concepts and processes to a hypothetical case study: Acme is a fictional private development

29. § 66.1105(2)(j) (“‘Tax incremental base’ means the aggregate value, as equalized by the [D]epartment of [R]evenue, of all taxable property located within a [TID] on the date as of which the district is created.”).

30. § 66.1105(5)–(6). The typical maximum TIF life is twenty-seven years. Kovari, *supra* note 5, at 3.

31. See WIS. STAT. § 66.1105(2)(f)1.a.–p. (2015–16) for a list of allowable spending of tax increment. See section 66.1105(2)(f)2.a.–d. for a list of things for which tax increment may not be used. Unpermitted spending of tax increment includes administrative buildings, police and fire buildings, libraries, community/recreational buildings, and school buildings.

32. § 66.1105(7). TIDs traditionally terminate when the municipality has “received aggregate tax increments with respect to the district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan for the district” except when positive tax increments are allocated, following restrictions in section 66.1105(6) “until the district to which the allocation is made has paid off the aggregate of all of its project costs under its project plan.” § 66.1105(7)(a).

33. Gromacki, *supra* note 1.

34. *Id.*

35. For a review of literature illuminating the complexities of evaluating TIF through the lens of empirical and statistical models, see generally Jan K. Brueckner, *Tax Increment Financing: A Theoretical Inquiry*, 81 J. PUB. ECON. 321 (2001); Richard F. Dye & Jeffrey O. Sunberg, *A Model of Tax Increment Financing Adoption Incentives*, 29 GROWTH & CHANGE 90 (Winter 1998); Gonzalo E. Fernandez, *Tax Increment Financing: Interaction Between Two Overlapping Jurisdictions*, 55 J. URB. ECON. 151 (2004); David F. Merriman et al., *Do Tax Increment Finance Districts Stimulate Growth in Real Estate Values?*, 39 REAL EST. ECON. 221 (2011).

36. Gromacki, *supra* note 1; see also Bloom, *supra* note 19.

company interested in constructing a building with housing and office space in the downtown of Anytown, Wisconsin.

This Comment argues that state policies should be reformed to uphold TIF's original purpose, refocus the policy to prioritize its most worthy application, and increase its effectiveness and utility to attract and finance equitable community development. Part I of this Comment provides background on TIF's history and explains how the complex financial tool works. Part II identifies particular problems within current TIF laws and proposes specific reforms that advance two major goals: (1) uphold TIF's original purpose to address urban blight; and (2) utilize TIF to attract and finance worthy and equitable community development. Absent reform, TIF policies and practices will continue to stray from their original purposes and, in too many instances, actually diminish progress toward accomplishing these major goals. This Comment concludes with a call to action to analyze and enact specific legislative reforms that advance these goals.

I. TIF OVER TIME: THE FUNDAMENTALS OF TIF IN WISCONSIN

Before analyzing specific reforms, more explanation of TIF's history, statutory text, and statistics help provide a better understanding of this complex financial tool. TIF projects often involve multiple purposes, processes, and players. Knowledge of the "why" and the "how" behind TIF will help illustrate the incentives motivating the different stakeholders who interact with TIF, as well as illuminate the purposes of past and proposed changes to Wisconsin's TIF laws.

A. History, Text, and Data

TIF's origins trace back to federal urban development programs of the 1940s.³⁷ In 1952, California became the first state to pass TIF legislation.³⁸ Wisconsin enacted TIF in 1975³⁹ at a time when the availability of federal money for urban development was in decline.⁴⁰ By enacting TIF, Wisconsin provided creative ways to finance urban

37. Jeffrey Kleeger, *Flexible Development Tools: Private Gain and Public Use*, 46 URB. LAW. 377, 379 (Spring 2014) (citing Jonathan Davidson, *Tax Increment Financing as a Tool for Community Redevelopment*, 56 U. DET. J. URB. L. 405, 443 (1979)).

38. Craig L. Johnson & Kenneth A. Kriz, *A Review of State Tax Increment Financing Laws*, in TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT: USES, STRUCTURES, AND IMPACT 31, 31 (Craig L. Johnson & Joyce Y. Man eds., 2001).

39. 1975 Wis. Sess. Laws 464.

40. J. Drew Klacik & Samuel Nunn, *A Primer on Tax Increment Financing*, in TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT: USES, STRUCTURES, AND IMPACT 15, 18 (Craig L. Johnson & Joyce Y. Man eds., 2001).

redevelopment in disinvested areas and revitalize blighted metropolitan areas.⁴¹ However, TIF in Wisconsin was not limited to this purpose. The law also aimed to address various “inequities and disincentives” that resulted when municipalities bore the entire cost of public improvements that ultimately benefited surrounding communities through increases in the regional tax base.⁴² To address this concern, TIF provided an incentive for municipalities to make public improvements by leveraging future increased tax revenues to pay for the improvements first.⁴³ Over the years, TIF has evolved into more than a mere tool to eliminate blight: it has become a means to control the nature of development⁴⁴ as a general economic development tool.⁴⁵

In convoluted language,⁴⁶ Wisconsin’s TIF laws outline a number of specific statutory restrictions⁴⁷ and carved-out exceptions.⁴⁸ First,

41. Farwell, *supra* note 4, at 407.

42. *Sigma Tau Gamma Fraternity v. City of Menomonie*, 288 N.W.2d 85, 88 (Wis. 1980).

43. Farwell, *supra* note 4, at 407 n.4.

44. *Id.* at 408–09.

45. See generally Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65 (2010).

46. Judge Learned Hand once said that the language of law must not be foreign to the ears of those who are to obey it. GERALD GUNTHER, *LEARNED HAND: THE MAN AND THE JUDGE* (2d ed. 2011). Consequently, laws should be worded and structured in ways to foster clarity and understanding. Yet, Wisconsin’s TIF statutes have been likened to Frankenstein because of its messy amalgamation of changes to the law over the years. Gromacki, *supra* note 1. Wisconsin’s TIF statute, section 66.1105, is a labyrinth of definitions, authorizing language, restrictions, processes, amendments, and exceptions. Changes to Wisconsin TIF laws have taken a piecemeal approach. Farwell, *supra* note 4, at 409. Between 1975 and 2011, Wisconsin enacted seventy-three TIF laws. Editorial, *supra* note 19. Many of these changes followed well-publicized risky TIF deals “gone wrong” and led to statutory restrictions or exemptions to certain projects or locations. Gromacki, *supra* note 1. Some commentators have also argued that these changes often twisted the TIF laws to accommodate the whims of local officials and that each legislative change has increased the risks to taxpayers (“Every time the state bent the law, the risk to taxpayers became greater.”). Editorial, *supra* note 19. “Wisconsin’s lawmakers have spent nearly 40 years repeatedly twisting the tax increment financing law to accommodate local officials’ whims.” *Id.* A complete redraft of Wisconsin’s TIF statutes would provide much-needed clarity for those who are to follow it.

47. See generally WIS. STAT. § 66.1105 (2015–16); see also Wis. Dep’t of Revenue, *Tax Incremental District (TID) Criteria Matrix*, <https://www.revenue.wi.gov/pubs/slf/tif/tif-trix.pdf> [<https://perma.cc/HRJ7-U9UE>] (last visited Mar. 6, 2017).

48. Many scattered provisions include carved-out changes for individual municipalities such as Pleasant Prairie (section 66.1105(4)(h)8., (17)(c)), Middleton (section 66.1105(4)(h)9., (6)(a)10., (6)(am)2.em.), and Wales (section 66.1105(6)(a)12., (6)(am)2.g.). Other sections are similarly separable and rather amusingly nonspecific, bordering on opaque. Many of these exceptions read like a name-that-city trivia game question: can you name the city with a population of at least

compared to towns and villages, cities have more flexibilities and privileges with respect to TIF.⁴⁹ Second, depending on the type of project, TIDs must be retired within twenty to twenty-seven years.⁵⁰ Third, municipalities are restricted from using more than twelve percent of their total property value for TIF.⁵¹ Fourth, within a TID, the property must be in need of rehabilitation or conservation, suitable or zoned for industrial sites, suitable for mixed-use development, or fifty percent or more of the real property must be blighted.⁵² These regulations serve as safeguards for municipalities from taking excessive risks with TIF as well as restrain potential overdevelopment.⁵³ However, Wisconsin's TIF laws do not provide for regional or statewide monitoring, enforcement, or penalties for violating these restrictions.⁵⁴

Many sections of Wisconsin's TIF laws are broad and leave selective interpretation to municipalities.⁵⁵ For example, the statute provides a general definition of "blighted area" as:

50,000 that was incorporated in 1853 and that is in a county which has a population of at least 140,000 and that contains a portion of the Fox River and Lake Winnebago? *See* § 66.1105(6)(dm)3.b. If so, you're the winner of knowing to which municipality this section applies. (If you guessed Oshkosh . . . You're right! (The Author thinks)). The basis for some of this obscure language is a state constitutional provision that prevents the legislature from specifically naming a municipality in a piece of legislation unless the change is within a stand-alone bill. Interview with John Soper, Chief of Staff, Wis. State Sen. Duey Strobel, in Madison, Wis. (Nov. 12, 2015). Accordingly, such peculiar language may have been needed because many of TIF's legislative changes and exceptions were contained within other, larger bills, including the state budget. *Id.* Therefore, significant cleanup is needed through a stand-alone bill redrafting TIF to promote consistency and transparency.

49. Kovari, *supra* note 5, at 3. Towns were granted limited TIF powers in 2003 but, compared to cities, are more limited in the quantity and durations of certain TIDs. *Id.*

50. *Id.*

51. § 66.1105(4)(gm)4.c.; *see* Kovari, *supra* note 5, at 3–4. Many municipalities in Wisconsin exceed this twelve percent limit. Of the three hundred eighty-five cities and villages using TIF in 2008, more than one in four—twenty seven percent—exceeded the state's TIF limit. *Id.* at 4.

52. § 66.1105(4)(gm)4.a.

53. Kovari, *supra* note 5, at 3.

54. Gromacki, *supra* note 1. Municipalities that exceed this twelve percent amount are limited by the Department of Revenue from approving additional TIF projects until that amount is below twelve percent. The policy is quasi-prospective—it only kicks in when the policy is already violated—by limiting future TIF deals rather than serving as a protection to prevent or alter proposed deals that would cause a municipality to exceed this threshold in the first place. *See also* Kovari, *supra* note 5, at 3–4 (noting the high number of municipalities exceeding TIF limits).

55. § 66.1105(3). Cities, not the state, create and define the boundaries of tax incremental districts, prepare, approve and implement TIF plans, issue bonds and notes, enter contracts and agreements, and create a standing joint review board to oversee TIF proposals and projects. *Id.* Again, the absence of state-wide standards or

a. An area, including a slum area, in which the structures, buildings or improvements, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.⁵⁶

b. 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 and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.⁵⁷

Notably, the statutes do not provide any quantitative guidance or measurable rubric for determining blight, but do add that the definition does not include predominantly open land areas that have been developed only for agricultural purposes.⁵⁸ Similarly, the statutes provide indefinite instructions for local decision-makers to approve or deny a TIF proposal, broadly outlining three imprecise criteria.⁵⁹ Under

definitions causes disparity, unpredictability, and inconsistency within and between municipalities—which allows for a “race to the bottom” between municipalities competing for a project to “give away” more TIF and/or require fewer guarantees from developers (as well as inconsistencies in approvals or TIF amounts between different developers proposing similar TIF projects in the same municipality). Ideally, TIF should not be used as a political or financial wedge within or between municipalities.

56. § 66.1105(2)(ae)1.a. (note the vague, undefined terms, including “morals” and “welfare”).

57. § 66.1105(2)(ae)1.b. (note the vague, undefined terms, including “deterioration” and “sound growth”).

58. § 66.1105(2)(ae)2. Many articles provide additional analysis to the challenges of defining blight. See, e.g., Christopher S. Brown, *Blinded by Blight: A Search for a Workable Definition of “Blight” in Ohio*, 73 U. CIN. L. REV. 207 (2004); Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305 (2004).

59. § 66.1105(4m)(c)1.a. Whether the development expected in the TID would occur without the use of tax increment financing (often referred to as the “but for” test). For more on the “but for” test, see DEP’T OF REVENUE, DIV. OF STATE & LOCAL FIN., THE “BUT FOR” TEST, <https://www.revenue.wi.gov/pubs/slf/tif/5-1.pdf> [<https://perma.cc/64UU-86XB>]; § 66.1105(4m)(c)1.b. (whether the economic benefits of the tax incremental district—as measured by increased employment, business and personal income, and property value—are insufficient to compensate for the cost of the improvements); § 66.1105(4m)(c)1.c. (whether the benefits of the proposal outweigh

one criterion, the project would not occur “but-for” TIF.⁶⁰ (This condition can lead to much angst.⁶¹) While decision-makers are required to issue a written explanation describing why any proposal it rejects fails to meet one or more of the criteria, no requirements exist for explaining the approval of any TIF proposal.⁶² Broad and ambiguous definitions like these provide local decision-makers great flexibility in deciding the financial need for—and worth of using—TIF, leading to much criticism.⁶³

Use of TIF in Wisconsin has grown considerably and, on the whole, is producing positive overall economic results for municipalities.⁶⁴ Over a recent eighteen-year period, TIF utilization in the state grew 400 percent, making Wisconsin one of the most prolific users of TIF in the nation.⁶⁵ The state’s total value of TIF increment jumped from just under \$3 billion in 1990 to more than \$13 billion in 2006.⁶⁶ By 2008, there were nearly one thousand active TIF projects worth over \$15 billion in assessed value throughout the state.⁶⁷ Statewide, for every \$1 increase of TIF value, total property value is estimated to increase by \$6, as measured by equalized assessed value (EAV).⁶⁸ Moreover, in Wisconsin’s largest cities, every dollar in TIF translates into more than \$13 of growth in EAV.⁶⁹ While these statistics

the anticipated increments to be paid by the owners of property in the overlying taxing districts).

60. § 66.1105(4m)(c)1.a. *See also* Gromacki, *supra* note 1.

61. *See* Gromacki, *supra* note 1. Under this “but for”/gap analysis, developers can assert that they “need” the TIF (the project couldn’t happen but-for it) without much hard evidence or data (while some do provide more than others). This can lead to angst because of inconsistencies and unpredictability within and between municipalities—disparities for developers, local decision-makers, city staff, and taxpayers.

62. § 66.1105(4m)(c)2.

63. *See generally* Farwell, *supra* note 4, at 421–23; Gromacki, *supra* note 1; Kovari, *supra* note 5.

64. This Comment does not propose nor support eliminating TIF. There have been hundreds, if not thousands, of successful and worthy TIF projects in Wisconsin throughout TIF’s enactment. Rather, this Comment advocates for reforms that better support TIF’s original purposes and utilize the tool to better catalyze equitable CED.

65. Kovari, *supra* note 5, at 1. Between 1990 and 2008, TIF utilization in the state grew 400 percent. *Id.* TIF use in the state grew an additional 40 percent between 2000 and 2013. JOHN KOVARI ET AL., *THE TWO SIDES OF TIF: AN ANALYSIS OF TAX INCREMENTAL FINANCING IN THE GREATER LA CROSSE REGION 1* (2013).

66. Kovari, *supra* note 5, at 5.

67. *Id.* at 3.

68. *Id.* at 7. Equalized assessed value captures the value of all taxable property within municipal boundaries, including residential, commercial, industrial, and agricultural properties. *Id.*

69. *Id.* at 7 n.5. Wisconsin’s metropolitan cities are the most populous within metropolitan statistical areas (MSAs), defined by the United States Census: Milwaukee,

reveal that TIF—particularly in urban areas—often produces positive economic returns, the data also shows that loosening TIF restrictions and following imprecise or subjective requirements—such as the definition of blight—can lead to proliferation of TIF in non-urban areas.⁷⁰ This significant expansion does not align with TIF’s original purpose to address urban blight. Also, on average, not only do suburban and rural areas have less actual blight, but compared to urban areas, they also produce less economic returns on TIF.⁷¹

B. How TIF Works: Big Picture

The details and nuances of designing, negotiating, approving, and implementing TIF deals can be intricate and confusing.⁷² Three theoretical models illustrate TIF in practice: a classic or optimistic model, a critical model, and a pessimistic model.⁷³ This section outlines these models and applies their assumptions to the Comment’s hypothetical case of Acme real estate developer in Anytown, Wisconsin to illustrate the models in practice.

Waukesha, West Allis, Racine, Kenosha, Madison, Janesville, Beloit, Green Bay, Fond du Lac, La Crosse, Wausau, Sheboygan, Oshkosh, Appleton, and Eau Claire. *Id.*

70. See MAYRL, *supra* note 2, at 4.

71. Kovari, *supra* note 5, at 9–10.

72. See Farwell, *supra* note 4, at 412–15 for a detailed process of TIF approvals and implementation.

73. These terms referencing different models are taken from the source of the diagrams, the Minnesota Department of Revenue. Similar models are common in the industry. See Gromacki, *supra* note 1.

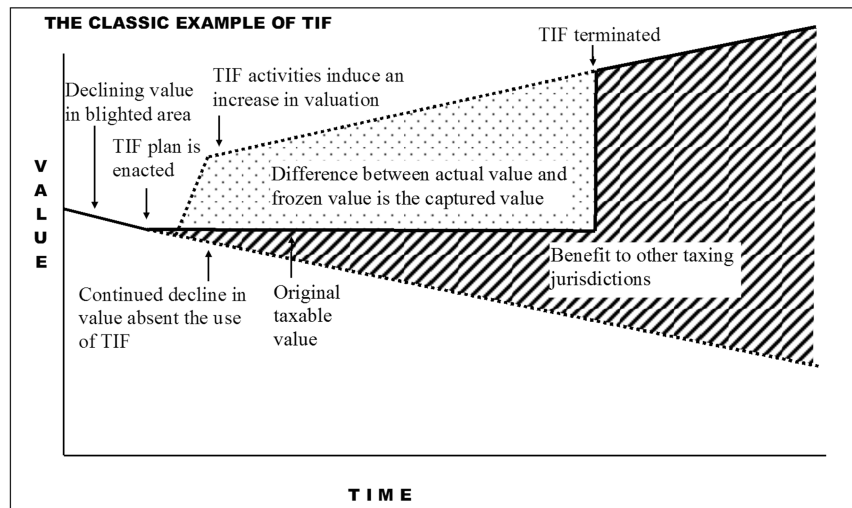
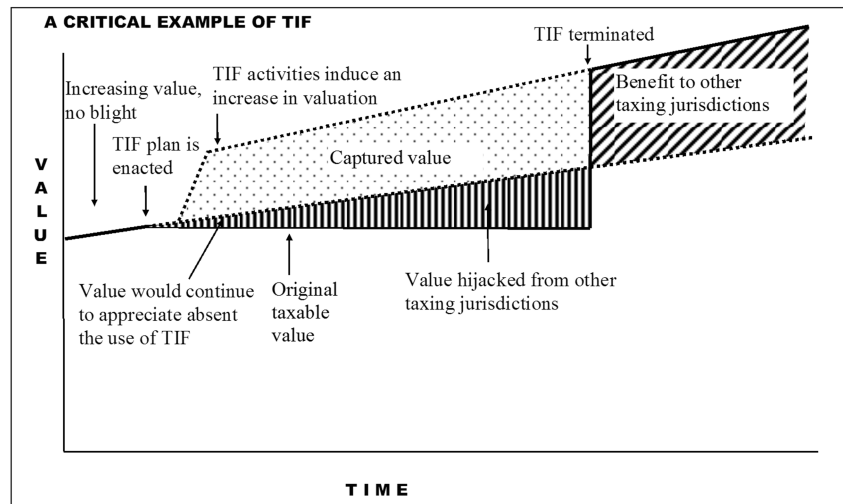
Figure 1: Optimistic Model⁷⁴

Figure 1 depicts an optimistic illustration of the benefits of TIF. In this model, property values are steadily declining absent intervention. Implementing TIF freezes property values in the TID and TIF investments raise property values, calibrating the properties within the TID on a trajectory of positive growth. Taxes from increased values are captured to pay for investments, plus all taxing districts realize benefits because further tax base erosion is prevented and additional taxes are added upon termination of the district.⁷⁵ Under this model, if the blighted downtown of Anytown, Wisconsin, was experiencing decreases in property values, the municipality could form a TID to incentivize Acme to redevelop certain properties using TIF. This TIF plan could finance needed public infrastructure improvements such as new water and sewer lines and road resurfacing as well as pay for other aspects of Acme's project. Ideally, these improvements would increase Acme's property values and generate tax increment funds to finance expenditures as well as return the property to the tax rolls with increased assessments generating increased property tax revenues for all taxing jurisdictions.

74. MINN. DEP'T OF REVENUE, AUDITOR/TREASURER MANUAL PROPERTY TAX ADMINISTRATION CHAPTER 12: ECONOMIC DEVELOPMENT AND SPECIAL PROGRAMS, FIGURE 12.01-1, http://www.revenue.state.mn.us/local_gov/prop_tax_admin/at_manual/atmanual.pdf [https://perma.cc/F2FX-ZRXU].

75. *Id.*

Figure 2: Critical Model⁷⁶

In Figure 2, the premise is that the property value—even if the TIF activities do induce a boost—would already increase over time and the freezing of the taxable value essentially takes value away from the taxable base of the taxing districts. In this scenario, there is some benefit down the road after the district terminates, but the benefit must be weighed against the cost of the lost tax base in the interim.⁷⁷ Under this model, for example, Anytown's TID is not actually blighted and instead experiences steadily—albeit perhaps slower than desired—increasing property values. Through the use of TIF to incentivize Acme's project, other taxing jurisdictions temporarily lose out on funds from gradually increasing assessments. Yet, if the project performs to plan, all taxing jurisdictions would experience an increased tax base over time.

76. *Id.* (Figure 12.01-2).

77. *Id.*

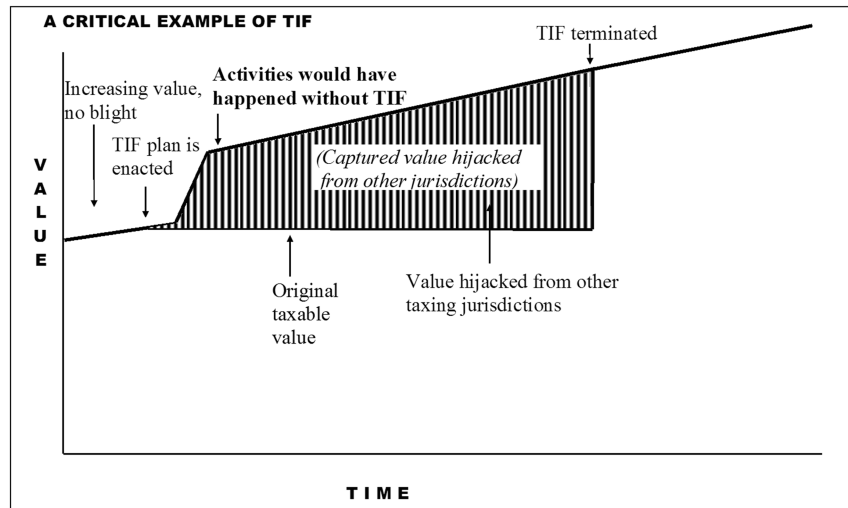
Figure 3: Pessimistic Model⁷⁸

Figure 3 depicts the most pessimistic view: that the development would have occurred without TIF and therefore all of the captured value is “hijacked” (i.e. a loss to the affected taxing districts, with no positive benefit associated with what amounts to a pure subsidy).⁷⁹ Under this model, for example, Anytown’s TID is again not actually blighted and instead experiences steadily increasing property values. Here, however, Acme receives TIF even though it could have privately financed the entire project without using the tax increment generated by the project to cover any expenses. Consequently, here the project would receive TIF even though it did not meet the “but-for” condition previously outlined.⁸⁰ Under this scenario, TIF would be a public subsidy to a private project and unnecessarily withhold funds from all taxing jurisdictions.⁸¹

78. *Id.* (Figure 12.01-3).

79. *Id.*

80. Much of the most vocal criticism of TIF by citizen and neighborhood groups critique using TIF on a private project which, they argue, would have or could have occurred without TIF. *See supra* note 19 and accompanying text. Especially because TIF projects divert the added tax increment away from other tax jurisdictions—like counties, technical colleges, and school districts—critics often voice strong disapproval against projects they argue would hurt these other entities, especially public schools. Compounding this argument is a similar argument for using TIF in the first place: both cities and schools face decreasing state aid, yet growing needs in both areas require increased funds to finance these needs.

81. This is perhaps the most common—and contentious—criticism of TIF: using public dollars on private projects that, arguably, could have been financed without taxpayer-backed financial resources or risks (i.e. the project did not actually meet the “but-for” test). This criticism often parallels arguments surrounding public funding of professional sports arenas. For interesting arguments on this somewhat

The goals and reforms presented in this Comment aim to address the problems associated with the second, critical model and primarily the third, pessimistic model. Absent any reform, or by implementing previous calls to loosen TIF restrictions,⁸² policymakers will allow TIF to further stray from its original purpose as a tool to address blight, especially in urban areas. By supporting reforms proposed in this Comment, policymakers will better utilize TIF and focus its potential to catalyze equitable Community Economic Development (CED).

II. THE TIFF WITH TIF: WHAT TO CHANGE AND WHY

On the whole, TIF in Wisconsin has been a worthy and financially successful public policy.⁸³ However, strategic changes will re-align TIF

related topic, see Richard Florida, *The Never-Ending Stadium Boondoggle*, ATLANTIC: CITYLAB (Sept. 10, 2015), <http://www.citylab.com/politics/2015/09/the-never-ending-stadium-boondoggle/403666/> [https://perma.cc/A37M-5U4N]; Elaine S. Povich, *Why Should Public Money be Used to Build Sports Stadiums?*, PBS NEWSHOUR, THE RUNDOWN (July 13, 2016, 9:47 AM), <http://www.pbs.org/newshour/rundown/public-money-used-build-sports-stadiums/> [https://perma.cc/FM4K-PUZA]; David Swindell & Mark S. Rosentraub, *Who Benefits from the Presence of Professional Sports Teams? The Implications for Public Funding of Stadiums and Arenas*, 58 PUB. ADMIN. REV., no. 11, 1998, at 1, 12.

Another provoking critique is that TIF tends to only increase the tax base of already wealthy districts “as opposed to blighted properties it was designed to reinvigorate.” Abigail Becker, *City Council Approves 800 Block Project’s Development Agreement*, CAP. TIMES (Nov. 2, 2016), http://host.madison.com/ct/news/local/govt-and-politics/city-council-approves-block-project-s-development-agreement/article_5d4a7203-a4b1-5a8f-b683-680ef951e335.html [https://perma.cc/77WD-83NA]. When this happens, as one Madison Alderperson put it, “This is TIF at its most incestual self.” *Id.* In reply, the Mayor of Madison said, “When you do a TIF, it’s not just about the districts, it’s about what happens when [the TIF] is closed out and the millions of dollars of tax revenue that go in the general funds of the city, hopefully forever.” *Id.* The mayor also said that TIF keeps Madison “competitive” with area suburbs like Middleton, DeForest, and Waunakee. *Id.*

The ways in which TIF has transformed into a “competition” between municipalities can lead to a “race to the bottom” to see which municipality is willing to leverage (or “give away”) more TIF. *See also supra* note 55 and accompanying text. Policymakers should not approach TIF as a win-lose scenario between neighboring communities; supporting reforms to Wisconsin’s TIF statutes, like the ones advocated in this Comment, aim to decrease the problems caused by this approach.

82. *See generally* Farwell, *supra* note 4.

83. *See* Kovari, *supra* note 5, at 3–7. Granted, because municipalities have transacted and implemented thousands of TIF deals over the last forty years, this inquiry analyzes only a fraction of past deals in Wisconsin. Numerous financially successful TIF deals have generated large monetary returns. For example, between 1992 and 2012 property values in La Crosse’s TIF district near Front and King streets increased 857%, from \$894,800 to more than \$8.5 million. Patrick B. Anderson, *TIFs Carry Benefits, Risks for Local Communities*, LA CROSSE TRIB., Oct. 1, 2013, at B1. In West Salem’s business park TIF district, property values nearly tripled in five years between 2007–2012 from \$4.9 million to nearly \$14 million. *Id.*

with its original purpose of addressing urban blight and integrate an innovative priority of using TIF to attract and finance equitable development.⁸⁴ Equitable development is based within the theories, policies, and practices of CED. CED is broader than economic development because it includes community building and the improvement of life beyond a purely economic lens.⁸⁵ The goal of the CED movement is to “restructure market incentives to leverage private investment for development of community-based-businesses, affordable housing, and financial institutions.”⁸⁶ Based in these roots, equitable development seeks to ensure that everyone—particularly low-income people and people of color—has access to the essentials for success in our society: family-supporting jobs, quality schools, decent housing, safe streets, healthy neighborhoods, and efficient transportation.⁸⁷ Equitable development is a set of principles, policies, and practices to ensure that everybody reaps a fair share of public and private investments.⁸⁸ Wisconsin’s TIF policies should be reformed to include and prioritize equitable development because the current narrow focus on economic returns comes at the expense of equitable returns. Rather than focusing on just dollars and cents, state and local policymakers should emphasize TIF as a restructuring of market incentives to

84. Part II serves as an aspirational (and in some ways a more theoretical) framework rather than hardnosed policy prescriptions. It also aims to provoke a deeper and continued review of TIF as well rigorous reflection on other public investment tools and resources. For another thorough critique of TIF, see Julie A. Goshorn, *In a TIF: Why Missouri Needs Tax Increment Financing Reform*, 77 WASH. U. L. REV. 919 (1999).

85. Roger A. Clay, Jr. & Susan R. Jones, *What is Community Economic Development?*, in BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY DEVELOPMENT FOR ADVOCATES, LAWYERS, AND POLICYMAKERS 3–4 (A.B.A. 2009) (“From theoretical and practical perspectives, CED has been commonly described as a quintessentially local project, one in which communities reconstruct dysfunctional markets as a way of reconstituting social relations and building political strength. As a social policy, CED emphasizes local participation in the design and implementation of affordable housing, job creation, and financing programs.”) (citing Scott L. Cummings, *Global Local Linkages in the Community Development Field*, in PROGRESSIVE LAWYERING, GLOBALIZATION AND MARKETS: RETHINKING IDEOLOGY AND STRATEGY (Clare Dalton ed., 2006)).

86. See *id.* at 11 (citing Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 438 (2001)).

87. Angela Glover Blackwell, *Equitable Development*, in BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY DEVELOPMENT FOR ADVOCATES, LAWYERS AND POLICYMAKERS 179–88 (A.B.A. 2009) (“Equitable development is, in effect, economic and financial policy, housing policy, land use policy, health policy, food policy, environmental policy, transportation policy, and employment policy, all in one. . . . [T]o help America make good on the promise that ours is a land of opportunity for all.”).

88. *Id.*

leverage private investment in disinvested areas and provide that TIF's benefits—primarily its returns of added tax increment—are spent to advance access to, and equity in, resources that provide opportunities for individual and community revitalization.

Through analysis of both real-world, practical examples⁸⁹ and theoretical concepts, this section presents multiple policy proposals⁹⁰ to address two major goals dealing with where TIF projects occur and how to spend TIF's added tax increment dollars: (1) uphold TIF's original purpose of reducing urban blight;⁹¹ and (2) utilize TIF as a powerful tool to attract and finance equitable community development.⁹² Earlier commentators have proposed eliminating certain language, including the blight requirement and “but-for” test.⁹³ However, these changes would set a new, even lower baseline for municipalities that would significantly alter the scope and purpose of TIF as a broad, generic public funding source. In many ways, these past calls would just formalize what has already been happening: a steady dilution of TIF that further opens the door to its unworthy application, especially in already affluent areas. Instead, policymakers should reform TIF by doing the opposite: include more precise language and mechanisms to promote TIF's innovative purpose and enhance its potential as a catalyst for equitable development through directing tax increment at programs and projects that invest in and revitalize disadvantaged communities.

89. Though many of the examples within this Comment involve deals that did not go so well, the aim of these examples is not to serve as an indictment of TIF in general. Alternatively, examples in this Comment serve as case studies or illustrations from which to learn and upon which to improve. The Author acknowledges the fact that evaluating past TIF deals allows for the clarity of hindsight and that local decision-makers face their own motivations and pressures to support or oppose particular TIF projects. Many of the examples in this Comment illustrate the complexities and competing motivations behind TIF and can serve as teachable lessons for future TIF projects.

90. Rather than prescribed solutions, these proposals serve as a menu of options for policymakers and academics to review and consider.

91. See *infra* Part II.A.

92. See *infra* Part II.B.

93. See Farwell, *supra* note 4, at 430–33. The Author does not support eliminating the “but-for” requirement; instead, policymakers should either require enough detailed financial information from developers which objectively proves their reasonable need for TIF and inability to secure the financial investments from traditional sources like banks or private investors or receive other guarantees, such as new job creation (paired with clawback provisions and/or personal guarantees). Farwell's critique of the “but-for” test is persuasive. The test is far from perfect because it allows considerable subjective interpretation and decision making. However, the test provides *some* measure of quantitative analysis and serves as a condition for developers to demonstrate the “need” for public dollars or worthiness because of providing certain guarantees, such as increased jobs. Options for reforming—not eliminating—this “but-for” test deserves further analysis and additional study.

A. Goal 1: Uphold TIF's Original Purpose to Address Urban Blight

TIF's original intent was primarily to provide crucial assistance for urban development projects.⁹⁴ Upon signing the bill authorizing TIF in Wisconsin, then-Governor Patrick Lucy characterized the program as “an additional means of redeveloping areas primarily urban in character.”⁹⁵ At the time, the state viewed TIF as “an alternative to deferral categorical aids for urban redevelopment which were being phased out.”⁹⁶ Because land and development costs required for developing urban areas often exceed those of suburban areas, TIF sought to reduce or eliminate this competitive disadvantage faced by urban areas.⁹⁷

Currently, TIDs may be created for three categories of projects: blight or environmental remediation, industrial development, and mixed-use development.⁹⁸ Prior to 2004, TIF included only the first two categories; during the 2003–2004 legislative session, TIF underwent a major overhaul, expanding to include mixed-use developments.⁹⁹ Notably, mixed-use and industrial TIF projects have no blight requirements, and the language currently in place defining blight under this first category is imprecise and un-measurable.¹⁰⁰ Expanding TIF to include mixed-use developments allowed suburban and rural

94. See MAYRL, *supra* note 2, at i. As noted, the legislature has carved out TIF exceptions for projects in many non-urban municipalities, including Wales (population 2,564) in Wisconsin statute section 66.1105(6)(a)12, Weston (population 14,934) in section 66.1105(6)(a)13, Denmark (population 2,169) in section 66.1105(6)(am)2.e., and Biron (population 824) in section 66.1105(6)(e)1.f. As Farwell notes, another purpose was “to cure the ‘inequities and disincentives’ in the then-existing system of property tax allocation between tax levying authorities.” Farwell, *supra* note 4, at 431–32. This Comment does not support limiting TIF to strictly urban areas or limiting the tool to only blighted areas. Farwell illuminated the fact that both have been rejected by past commentators and legislatures. Farwell, *supra* note 4, at 431 n.158, 432 n.162.

95. MAYRL, *supra* note 2, at ii (citing 1000 FRIENDS OF WIS., WISCONSIN'S TAX INCREMENTAL FINANCE LAW: LENDING A HAND TO BLIGHTED AREAS OR TURNING CORNFIELDS INTO PARKING LOTS? 8 (1999)).

96. MAYRL, *supra* note 2, at 4 (citing THE STATE OF WIS. LEGIS. AUDIT BUREAU, THE TAX INCREMENTAL FINANCING LAW SECTION 66.46 WISCONSIN STATUTES 17 (1981)).

97. MAYRL, *supra* note 2, at 4.

98. WIS. STAT. §§ 66.1105(4)(gm)1., 6. (2015–16); § 66.1105(2)(cm). “Mixed-use development” means development that contains a combination of industrial, commercial, or residential uses, except that lands proposed for newly platted residential use may not exceed thirty-five percent, by area, of the real property within the district. *Id.*

99. 2003 Wisconsin Act 126, 2003 Wis. Sess. Laws 642–48 (2004).

100. See *supra* notes 56–58.

communities to substantially increase their use of TIF.¹⁰¹ However, by treating all potential projects equally (urban, suburban, and rural), TIF's expansion hindered urban areas' ability to use the tool as a competitive equalizer to incentivize development to address actual blight and decaying infrastructure.¹⁰²

Because of the unique and often higher costs of development and public infrastructure in urban areas, urban municipalities could leverage TIF to attract private real estate investment that may otherwise be drawn to less-expensive suburban or rural areas. However, under TIF's current structure and limited requirements within eligible TID categories, urban and non-urban projects are treated the same. Just as blighted areas receive little attention under traditional (non-TIF) pure market incentives, urban projects are increasingly ignored under TIF.¹⁰³ This reduced incentive has changed TIF's purpose, becoming less of a tool to address urban blight and more of a generic financial source for a municipality (of any size) to attract private development.¹⁰⁴ Moreover, these changes have occurred as gradual, piecemeal alterations¹⁰⁵ to TIF statutes rather than as identified, assessed, debated, or voted-on stand-alone legislative acts.¹⁰⁶

Also problematic is that lands in industrial and mixed-use TIDs—the category of TIDs most used by non-urban municipalities—carry a higher potential for misuse since these parcels currently have minimal barriers or requirements for development.¹⁰⁷ Current state law provides

101. Kovari, *supra* note 5, at 2 (noting a 400 percent increase in TIF over a recent eighteen-year period).

102. MAYRL, *supra* note 2, at ii. This Comment does not propose eliminating TIF in suburban or rural areas. Rather, it argues that dilution in TIF laws over the years has lessened the ability for urban areas to leverage TIF to attract projects as a competitive equalizer compared to less expensive suburban and rural areas. This Comment proposes reforms that would still allow all municipalities currently using TIF to continue using the tool, while providing added safeguards and incentives that realign the tool with its primary purpose of targeting the remediation of urban blight.

103. *Id.* In an attempt to define “urban” here, and throughout this Comment, one possible source is using Wisconsin’s metropolitan statistical areas (MSAs), defined by the United States Census as Milwaukee, Waukesha, West Allis, Racine, Kenosha, Madison, Janesville, Beloit, Green Bay, Fond du Lac, La Crosse, Wausau, Sheboygan, Oshkosh, Appleton, and Eau Claire. Kovari, *supra* note 5, at 7 n.5.

104. For example, if Acme was deciding between building their development in the blighted downtown of urban Anytown for a cost that includes one million dollars in TIF and alternatively building in a suburban or rural area also offering the same amount, Anytown has lost a significant competitive advantage to attract Acme to its city.

105. Farwell also described the legislative response to the evolution of TIF as “piecemeal” and “incremental.” Farwell, *supra* note 4, at 436.

106. Editorial, *supra* note 19. Instead, such significant changes are worthy of comprehensive review, debate, and vote rather than piecemeal actions—especially past practice of using the state budget to make TIF policy changes.

107. See MAYRL, *supra* note 2, at ii.

a mechanism to limit the amount of a municipality's total property value in a TIF district to no more than twelve percent by requiring Department of Revenue approval for TIF funds.¹⁰⁸ However, as of late 2014, about a quarter of the more than 400 cities, villages, towns, and counties in Wisconsin with at least one TIF district were over the twelve percent limit.¹⁰⁹ Furthermore, smaller municipalities with non-blight-focused TIDs are more prone to getting into trouble with TIF (i.e. not receiving the projected increment).¹¹⁰ Additionally, while most TIDs have a maximum twenty-seven years to collect enough tax increment to retire its debt, when districts get into trouble and are unlikely to meet that deadline, state law allows them to be deemed "distressed," providing an additional thirteen years to retire the debt.¹¹¹ In cities of more than fifty thousand people, the distressed numbers are close to just one percent.¹¹² Yet in cities, villages, and towns with a population between two and five thousand, the number of distressed TIF districts is around eight percent.¹¹³

One study analyzing TIF in Wisconsin even found that certain levels of TIF use in suburban and rural areas can actually negatively impact their own property values as well as hurt urban areas.¹¹⁴ Data from current high rates of TIF in the state's suburban communities with relatively healthy economic foundations suggests that TIF can create a competitive disadvantage among municipalities, especially those with more sluggish local economic growth.¹¹⁵ Under this scenario, excessive TIF use by some already affluent areas is hurting the economic development of other depressed areas truly in need of incentives for private investment.¹¹⁶ The study also found that small and mid-sized municipalities tend to over-utilize TIF, and this use beyond optimal levels has the potential to be detrimental to the municipality's own property values.¹¹⁷ Small communities are causing much of the growth

108. WIS. STAT. § 66.1105(4)(gm)4.c. (2015–16).

109. See Shaw, *supra* note 21; see also Gromacki, *supra* note 1. There are little to no consequences for municipalities for violating this twelve percent rule. Most of the time municipalities request that the legislature provide an exception for them in statute—hence the many carved out exceptions in section 66.1105. Gromacki, *supra* note 1.

110. See Shaw, *supra* note 21 (citing John Kovari). Many questions remain as to exactly why and how this happens. Perhaps it is a difference in sophistication to review and analyze project proposals by staff and/or policymakers or differences in the quantity and quality of project options and political incentives.

111. § 66.1105(4e).

112. See Shaw, *supra* note 21.

113. *Id.*

114. Kovari, *supra* note 5, at 6–10.

115. *Id.* at 6.

116. *Id.*

117. *Id.* at 8.

in TID-creation rates, yet they also have fewer conditions warranting blighted TID creation.¹¹⁸ Accordingly, it is likely that smaller communities are predominantly creating industrial or mixed-use TIDs, additionally supporting the assertion that current TIF use has strayed from its original intent of addressing urban blight.¹¹⁹

Also troubling is the finding that use of TIF in suburban communities can actually depress property values in urban cities.¹²⁰ Another major TIF study quantified that for every additional dollar increase in suburban TIF increment, the equalized value in central cities is estimated to decrease by \$2.16.¹²¹ Suggested rationale for this relationship is that higher TIF utilization in suburban areas creates an artificial market that attracts development away from central cities.¹²² Coupled with the finding that the EAV of properties grows at much higher rates in urban cities as opposed to a statewide average of all municipalities,¹²³ state statutes should prioritize TIF's purpose of addressing urban blight and establish guidelines and parameters to prevent suburban or rural overuse of TIF from dis-incentivizing urban investments. These reforms will help recalibrate TIF away from its current "mission drift" as a generic financial tool and instead provide reasonable incentives and safeguards to leverage the most bang-for-the-buck from strategic, targeted use.

1. ESTABLISH MORE SPECIFIC CONDITIONS WITHIN EACH TID CATEGORY

Currently, too much flexibility and limited constraints within Wisconsin's three categories of eligible TIF projects (blight or environmental remediation, industrial, and mixed use) provide minimal safeguards to prevent or deter municipalities from using TIF on questionable projects. For example, one TID created in Baraboo funded the construction of a Wal-Mart Superstore despite the fact that the company boasted sales of one-hundred-thirty-seven billion dollars in the TID's base year, a Wal-Mart already existed just two miles away, and the company's corporate real-estate manager admitted that the

118. See MAYRL, *supra* note 2, at 7 (noting a one 151 percent increase in the average number of TIDs created in small communities over a five-year period).

119. *Id.*

120. Kovari, *supra* note 5, at 9–10.

121. *Id.* at 9.

122. *Id.*

123. *Id.* at 7. ("All else being equal, for every dollar increase in TIF increment, EAV has the potential to grow by over six dollars. However, in Wisconsin's largest metropolitan cities, every dollar increase in TIF translates into more than thirteen dollars of EAV growth.").

development would have still occurred without TIF assistance.¹²⁴ Using TIF under these circumstances blurs the lines between a purposeful financial tool, unnecessary corporate welfare, and wasteful spending of tax dollars—current issues the political left *and* right should support reforming to reign in abuse and misuse.¹²⁵

In another eyebrow-raising TIF deal, the Village of Warrens approved a development project in 1998 to finance Three Bears Resort—which included a hotel, waterpark, and condominiums.¹²⁶ After a few years of operation, the resort did not generate enough business and closed.¹²⁷ The property went into foreclosure and values of the property within the TID dropped by over fifty percent.¹²⁸ As a result, Warrens—with a population of just 360—had a TID debt of \$18 million.¹²⁹ The village does not anticipate being able to pay off this debt by the 2025 deadline, predicting difficulties making debt payments while also funding village services if the state does not extend the looming deadline.¹³⁰

Similarly questionable was the Village of Plover's 2004 TIF deal with H2O Development to build three water skiing lakes, a twenty seven-hole golf course, a four-story hotel and convention center, a fifty thousand square foot indoor waterpark, and acres of commercial and residential development.¹³¹ Before the TIF deal was even finalized, a private lending company boasted in a press release that Plover was close to signing an agreement to bring water and sewer facilities to the site and would assist in building the site's infrastructure.¹³² Although the developer initially declared that the project would be completed by 2006, by May of that same year construction on the project had not

124. MAYRL, *supra* note 2, at 11; 1000 FRIENDS OF WIS., WISCONSIN'S TAX INCREMENTAL FINANCE LAW: LENDING A HAND TO BLIGHTED AREAS OR TURNING CORNFIELDS INTO PARKING LOTS? (1999).

125. For the left, the reforms presented in this Comment advance policies which reduce corporate welfare, target investments in depressed urban areas, and provide needed funding for equitable community development programs. For the right, the reforms presented in this Comment reduce wasteful spending of tax dollars, decrease taxpayer-backed financial risks, as well as provide more predictability and clarity for developers. *See also supra* note 81 and accompanying text.

126. *See* Tom Daykin, *Recession Shriveling TIF Revenue Returns*, MILWAUKEE J. SENTINEL (July 11, 2009), <http://archive.jsonline.com/business/50509682.html> [<https://perma.cc/XG6L-USHE>].

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *See* Patrick Thornton, *Project Struggled Early*, STEVENS POINT J., Sept. 3, 2008 (on file with author).

132. Press Release, Kennedy Funding Lends \$2.7 Million to Aquaplex Project in Wisconsin, Kennedy Funding (June 2, 2008).

even started and the City asked the developer to restructure their TIF agreement to reduce its share of the costs.¹³³ No revised agreement was signed and no complex was ever built.¹³⁴ However, Plover did end up paying for sewer and water utilities, roadwork, and one million dollars in a developer's incentive to H2O Development.¹³⁵

One way to deter these types of questionable projects is to institute a more specific classification system with particular targets, descriptions, conditions, and limits for each TID category. Critics of the current minimal requirement that municipalities must merely state into which allowable TID category a project is approved have proposed establishing goals for each current classification.¹³⁶ Another option is to create tailored qualifications within each TID category. Detailed qualifications provide increased checks on measuring and evaluating the types and permitted uses of increment from different projects. These qualifications could include particular duration limits, qualifying geographic areas or blight requirements, and permitted spending of increments.¹³⁷ Minnesota is one state that follows this model by outlining seven district types with differentiated conditions within each TID category. Figure 4 outlines Minnesota's TID categories and their tailored conditions and provides a statistical reference to the number of each TID in 2011:

133. Thornton, *supra* note 131.

134. *Id.*

135. *Id.*

136. MAYRL, *supra* note 2, at iii–iv, 26–28. These goal include: (1) blighted TIDs should focus on urban redevelopment projects; (2) industrial TIDs should focus on growing Wisconsin's manufacturing sector; (3) mixed-use should focus on fostering commercial, retail, and residential growth not occurring in blighted areas. *Id.*

137. Minn. House of Representatives, House Research Dep't, *TIF District Types: Applicable Limits and Characteristics* (Nov. 2012), <http://www.house.leg.state.mn.us/hrd/issinfo/tif/dist.aspx> [https://perma.cc/3EP5-XNYB] [hereinafter Figure 4].

Figure 4¹³⁸

District Type	Duration Limit (after receipt of first increment)	Geographic Areas That Qualify	Permitted Uses of Increments	Number of Districts and % of Total (2011)*
<u>Compact Development</u>	25 years	- 70% occupied by buildings - planned development increases the square footage of C/I buildings by three times or more	- Land acquisition and site preparation - Public infrastructure except roads, parking, or similar to service passenger vehicles	None (New law as of 2010)
<u>Economic Development</u>	8 years	No restrictions	- Manufacturing - Warehousing - R&D facilities - Telemarketing - Tourism in qualifying counties - Commercial developments in small cities	312 17%
<u>Housing</u>	25 years	No restrictions	Housing for low- or moderate-income renters or homeowners	541 30%
<u>Hazardous Substance Subdistricts</u>	25 years	Parcels in a TIF district containing polluted sites and contiguous parcels	Site acquisition and cleanup	28
<u>Redevelopment</u>	25 years	- 70% occupied by buildings, 50% of which are substandard or - certain railyards - tank facilities	Correction of conditions justifying creating district	880 49%
<u>Renewal and Renovation</u>	15 years	70% occupied by buildings, 20% of which are substandard and another 30% require renovation	Correction of conditions justifying creating district	30 2%
<u>Soils Condition</u>	20 years	Site contains pollution and cost of cleanup exceeds lesser of \$2/sq. ft. or the fair market value of the land	Site acquisition and cleanup	14 1%

Notably, Minnesota TIF laws shorten the TID duration for its Economic Development category as well as provide a specific TID targeted at housing development for low-or-moderate-income renters or homeowners.¹³⁹ Each of the seven categories contains additional details on specific conditional requirements and permitted uses, with a balance between incentives for targeted uses, restrictions, and duration.¹⁴⁰

Under this model—following this Comment’s hypothetical example—to incentivize housing for low-or-moderate-income renters or homeowners, Acme would not be limited by any geographic qualifications. This is much less restrictive compared to general redevelopment or compact redevelopment requirements. Furthermore, Acme may be incentivized to invest in urban commercial or compact development over development in less populated cities because the duration is shortened from twenty-five to eight years in smaller cities, which both supports incentives to follow TIF’s original purpose and

138. *Id.*

139. *Id.*; compare Figure 4, with WIS. STAT. § 66.1105(4)(gm)6. (2015–16) (Wisconsin’s broad general categories of industrial, conservation or rehabilitation, mixed-use, or blighted). Wisconsin has three broad project categories and Minnesota has seven detailed categories.

140. See Figure 4, *supra* note 139.

reduces risks to more TIF-problem-prone, smaller municipalities. This model does not completely eliminate TIF in suburban or rural areas or remove current types of TIDs in Wisconsin, nor should it. Instead, reorganizing TIDs with added differentiation provides flexibility and incentives for TIF projects most aligned with its original purposes— incentives for developers to invest in metropolitan areas otherwise financially dis-incentivized—as well as opportunities for suburban and rural areas to utilize TIF under certain measurable conditions.

One of the most discussed—and controversial—TIF projects in Wisconsin is the Pabst Farms development project in the City of Oconomowoc.¹⁴¹ This TID supported the development of fifteen hundred acres of farmland into a business park, housing, and upscale shopping mall with more than one hundred stores, a cinema, a hotel, and restaurants.¹⁴² The project was developed by WISPARK, a wholly owned subsidiary of the \$4.8 billion Wisconsin Energy Corporation.¹⁴³ Oconomowoc provided WISPARK with \$24 million in TIF to support the development,¹⁴⁴ yet the city's 543-acre TID contributed just \$20,470 a year in baseline property tax assessments to the city's general fund¹⁴⁵ because the TID's baseline assessment tax freeze occurred when the property was zoned as farmland.¹⁴⁶ As the development grew and required additional snow plowing, police, fire, and other city services, the city could not get any extra property tax funds from the site to pay for those services because the project's tax increment was paying only for the TID's bonds.¹⁴⁷ These costs overstretched the City since the

141. Amy Rinard, *Transit to Pabst Farms Questioned*, MILWAUKEE J. SENTINEL (Oct. 1, 2007), <http://fullyarticulated.typepad.com/sprawledout/2007/10/pabst-farms-a-s.html> [https://perma.cc/5DAC-MBX7].

142. *Id.*

143. *Citizens United for Responsible Land Use: Past Time for TIF Reform*, WIS. LANDSCAPES Q. NEWSL. (1000 Friends of Wis., Madison, Wis.) Winter 2001, at 1.

144. *Id.*

145. Sean Ryan, *City of Oconomowoc Tapped Out Paying for Pabst*, DAILY REP. (Feb. 18, 2008), <https://www.highbeam.com/doc/1P2-15344623.html> [https://perma.cc/AU9U-V8GH].

146. In Wisconsin, property taxes for farmland are significantly lower than for other zoned land like residential, industrial, or mixed-use. Therefore “locking-in” the Pabst Farm baseline tax at its farmland-assessed value created such a low amount, especially in comparison to its size and expenses after redevelopment. For a critique of the policy of determining agricultural property taxes based on “use value” rather than “market value,” see Douglas Hoffer, *Ending Agricultural Use Assessment Abuse*, MARQ. U. L. SCH., FAC. BLOG (Feb. 4, 2013), <https://law.marquette.edu/facultyblog/2013/02/04/ending-agricultural-use-assessment-abuse/> [https://perma.cc/FU2W-PTHX].

147. See Ryan, *supra* note 145 (noting that the city administrator expressed worries about being overstretched).

Pabst Farm development accounted for \$1.5 million of the \$12 million the City spent on municipal services in 2008.¹⁴⁸

Replicating Minnesota's model would serve Wisconsin well, especially in an effort to promote added transparency and consistency. Doing so would also assist municipalities in differentiating questionable TIF projects from worthy TIF projects, thus better realigning TIF with its original purpose of incentivizing private investment in distressed areas.¹⁴⁹ This structure and specificity allows for creative policymaking by setting particular standards for each condition in each TID category. For example, Minnesota's system, like Wisconsin's industrial TIDs, does not establish blight requirements for Economic Development TIDs, but it does further limit the duration for this type of district and specifically names the projects eligible to receive TIF within this category.¹⁵⁰ Similarly, the model allows policymakers to set different blight requirements and maximum durations between different categories.¹⁵¹ Having differentiated categories and conditions could have required projects discussed in this Comment—like Wal-Mart or Pabst Farms—to tailor its proposals, requests, and spending to be more targeted and purposeful rather than, arguably, a taxpayer give-away to profitable corporations funding suburban sprawl.¹⁵² This model would likely also have decreased the fiscal hardships faced by places like Warrens and Plover.¹⁵³

148. *Id.* Furthermore, Oconomowoc couldn't add new staff to its Police, Fire, or Public Works Departments to meet the needs of growing work from the Pabst Farms development because of state-imposed levy limits. *Id.* Levy limits provide the maximum amount a municipality or county may implement as a property tax levy on parcels within their boundaries. Municipalities are bound by the levy limit to determine the maximum allowable property tax levy they can implement without potentially receiving a penalty under Wisconsin statute section 66.0602.

149. This Comment argues that the more detailed categories, definitions, and requirements in Minnesota's TIF laws are comparatively better than Wisconsin's current TIF laws concerning its broad, eligible categories.

150. *See* Figure 4, *supra* note 137. Doing so would allow TIF to be used as a general economic development tool—admittedly not in complete alignment with its original purpose—but the added requirements to increment spending and shorter TID duration provide additional boundaries and safeguards.

151. *See id.* (compare Duration Limit with Geographic Areas That Qualify).

152. The Author is not necessarily arguing the Pabst Farm project should have received no TIF, but rather that a more differentiated TID model, like Minnesota's, could have tailored the project's TIF in a more targeted and fiscally responsible manner. All TIF projects carry risk. The point is to create safeguards and pre-implementation reviews that limit that risk. *See generally* Jeremy L. Hall & Christopher E. Bartels, *Management Practice Variation in Tax Increment Financing Districts: An Empirical Examination of the Administrative Theory of Performance*, 28(3) *ECON. DEV. Q.* 270 (2014).

153. *See supra* Part II.A.1. Just a few years ago, the Village of Warrens had a 78.9% TIF utilization rate, significantly above the 12% limit imposed by the state. Warrens is "TIF'd out." Kovari et al., *supra* note 65, at 6.

A differentiated model would also aid developers in increasing their understanding of the TID requirements and support more objective predictability in the approval or denial of particular TIF proposals. Compared to the state's current broad categories, a model similar to Minnesota's would provide added specifics for projects to fit within. While this model may deter some TIF projects, it offers needed details that provide guidance and notice to both policymakers and developers. By removing certain blight requirements for targeted projects—such as low-to-moderate income housing—and, at the same time, more precisely defining blight and structural requirements in other categories, this improved model allows policymakers to design and balance incentives and restrictions to encourage worthy projects in *all* TID categories and in *all* locations: urban, suburban, *and* rural.

2. PRECISELY DEFINE BLIGHT

As discussed, TIF's primary original purpose was to address urban blight.¹⁵⁴ Wisconsin's current definition of blight uses imprecise language to describe deteriorating conditions that meet this term,¹⁵⁵ centering on two broad themes: property "detrimental to the public health, safety, morals or welfare,"¹⁵⁶ or property that "substantially impairs or arrests the sound growth of the community."¹⁵⁷ These descriptions are overly subjective and invite inconsistencies—or even bias—in a TIF project's approval or denial. Additionally, under current TIF statutes, only fifty percent of the area included in a TID needs to be "blighted" in order to qualify for this TID category.¹⁵⁸ Because of this broad, interpretive definition with flexible qualitative standards, critics have analyzed how misuse of TIF can subsidize sprawl.¹⁵⁹ As Greg LeRoy, executive director of Good Jobs First,¹⁶⁰ notes, TIF "has

154. *See supra* Part II.A.

155. *See supra* notes 56–57.

156. WIS. STAT. § 66.1105(2)(ae)1.a. (2015–16).

157. § 66.1105(2)(ae)1.b.

158. § 66.1105(4)(gm)4.a. This fifty percent quantitative measure is arguably meaningless under the current subjective definitions of blight.

159. *See* Knavel, *supra* note 14; *see also* *Citizens for Responsible Land Use: Past Time for TIF Reform*, *supra* note 143 ("Using TIF for open space development just compounds the problem of sprawl."); MAYRL, *supra* note 2, at 11 (discussing negative environmental consequences of urban sprawl, including increased commutes, road traffic, and air pollution).

160. GOOD JOBS FIRST, <http://www.goodjobsfirst.org/about-us> [<https://perma.cc/YM6W-9ANE>] (last visited Mar. 23, 2017) ("Good Jobs First is a national policy resource center for grassroots groups and public officials, promoting corporate and government accountability in economic development and smart growth for working families.").

morphed from a tool for inner-city revitalization into a widely used suburban program frequently associated with disputes about sprawl.”¹⁶¹

One study found that an estimated thirty-thousand acres of open land in Wisconsin has been developed with assistance from TIF, and that almost half of TIDs have been used to develop at least some green space.¹⁶² State TIF specialists with the Department of Revenue have even identified applications of blight’s current nebulous definition to fund “blighted” projects that include the expansion of a golf course and nearly \$20 million dollars to a vacation resort.¹⁶³ For opponents of using TIF in an already affluent area or to subsidize sprawl, in addition to more targeted TID types with more detailed conditions,¹⁶⁴ another possible deterrent is providing a more precise definition of blight in Wisconsin’s TIF statutes.¹⁶⁵ A more precise definition of blight would provide added deterrence of using TIF on unworthy projects in already affluent areas and instead prioritize its use in truly blighted areas.¹⁶⁶

Two states present valuable guidance on alternative statutory definitions of blight. First, Nebraska limits blighted TIDs to areas that meet one of the following conditions:

[A]n unemployment rate of at least 120 percent of the state or national rate; residential or commercial units with an average age of 40 years; more than half of the plotted and subdivided property unimproved for the last 40 years; a per capita

161. Greg LeRoy, *TIF, Greenfields, and Sprawl: How an Incentive Created to Alleviate Slums Has Come to Subsidize Upscale Malls and New Urbanist Developments*, 60(2) PLANNING & ENVTL. L. 3 (2008). “Scholars of sprawl point out that one of its root causes is the lack of regional cooperation and zero-sum tax-base competition among neighboring localities within metropolitan areas.” *Id.* at 6.

162. MAYRL, *supra* note 2, at ii (citing 1000 FRIENDS OF WIS., *supra* note 95); see *Citizens for Responsible Land Use: Past Time for TIF Reform*, *supra* note 143.

163. MAYRL, *supra* note 2, at 27 (citing a personal interview by Author with Judie Gibbon, (January 21, 2004, Madison, Wis.) as well as citing data from Waupaca, Wis. TID #7 and Fontana, Wis. TID #1).

164. See Figure 4, *supra* note 137.

165. § 66.1105(2)(ae)1.a.–b.

166. A more precise and measurable definition could also deter using TIF as a form of corporate welfare, forcing decision-makers to follow more objective, data-driven metrics instead of, currently, being able to pretty much deem anything “blighted.” For more on blight being interpreted as overly broad, see Daniel McGraw, *Tax Increment Financing: A Bad Bargain for Taxpayers*, REASON MAG. (Jan. 2006), http://reclaimdemocracy.org/tax_increment_financing/ [https://perma.cc/6MX6-L4MR]. McGraw quotes Jake Haulk, director of the Pittsburgh-based Allegheny Institute for Public Policy, who stated that, based on broad criteria for blight, one could “declare the entire Western world blighted.” *Id.* The article even mentions Baraboo’s Wal-Mart TIF deal, discussed in *supra* note 124 and accompanying text.

income below the average income of the city or village; or a stable or decreasing population over the last two decades.¹⁶⁷

This definition provides added objective, statistical measures compared to Wisconsin's current subjective blight description. It also allows for flexibility to choose a particular condition option within the definition that best fits a particular TIF project. Notably, this definition also includes non-physical-structure-based measures of blight, including unemployment. Incorporating creative qualifications like unemployment—arguably even more data-driven than structural measurements—would allow policymakers across Wisconsin to utilize TIF in economically depressed areas, no matter their size or population, as an additional tool in their toolbox to support economic *and* equitable development.¹⁶⁸ Especially at a time when many suburban areas are experiencing an influx of poor residents,¹⁶⁹ including this type of condition within the definition of blight would be valuable to finding creative ways to fight poverty, wherever it is found.

Second, to qualify under the most commonly used blight test in Minnesota,¹⁷⁰ seventy percent of the area of the district must be occupied by buildings, streets, utilities, or other improvements, and more than fifty percent of the buildings must be structurally substandard.¹⁷¹ Within this definition of blight, buildings are substandard if they have sufficient defects or other problems to justify substantial renovation or clearance.¹⁷² For example, this definition would give Acme added notice and specificity of whether their TIF proposal objectively meets or does not meet this requirement. Data-driven definitions like these help discourage unpredictable, subjective decision-making and inconsistent approval or denial by policymakers—variations and inconsistencies that are characteristic within Wisconsin's current subjective definition of blight.

Wisconsin's current three TID categories are inadequate and the state's current definition of blight is outdated. These descriptions are

167. MAYRL, *supra* note 2, at 27 (quoting Alyssa Talanker et al., *Straying From Good Intentions: How States are Weakening Enterprise Zone and Tax Increment Financing Programs*, GOOD JOBS FIRST 1, 18 (2003)).

168. At the very least, municipalities should report how they interpret blight in TIF applications to the Department of Revenue.

169. See generally ELIZABETH KNEEBONE & ALAN BERUBE, *CONFRONTING SUBURBAN POVERTY IN AMERICA* (2013).

170. See Figure 4, *supra* note 137.

171. Minn. House of Representatives, House Research Dep't, *Redevelopment TIF Districts*, (Oct. 2012), <http://www.house.mn/hrd/issinfo/tif/redev.aspx> [https://perma.cc/2RY9-UDLS]; see also MINN. STAT. § 469.174.10(a)–(c) (2016).

172. § 469.174.10(a)–(c). The local authority must determine this after conducting an interior inspection of the property, unless the property owner refuses to permit an inspection.

excessively broad and provide limited clarity, consistency, or predictability. Replicating data-driven blight standards to include employment, income, or population-based metrics like Nebraska, and (or in the alternative) structure-based metrics like Minnesota, would enhance TIF's use targeting actual blight in Wisconsin. Redrafting Wisconsin's TIF statutes to more precisely define blight and provide creative conditions within each TID category would: (1) uphold TIF's intended purpose of eliminating actual blight; (2) reduce the tool's use on questionable or unworthy projects, especially in already affluent areas; (3) advance the law's transparency and consistency for local decision-makers and developers; and (4) utilize the powerful financial instrument to support economic *and* equitable development in areas truly lacking private investment.

B. Goal 2: Utilize TIF to Attract and Finance Equitable Community Economic Development

How policy makers raise and spend money speaks directly to their priorities. As Vice President Joe Biden has said, "Don't tell me what you value. Show me your budget, and I'll tell you what you value."¹⁷³ Accordingly, how and where TIDs are designed and on what TIF's tax increment is spent—or not spent¹⁷⁴—speaks to the municipality's values and priorities.¹⁷⁵ The proposed reforms to address Goal 1 seek to better realign TIF with its original purpose of addressing urban blight. Yet, readjusting TIF's categories to prioritize investment in urban areas does not automatically ensure optimal use of the tool to catalyze equitable development. Put simply, the reforms within Goal 1 address more of the "where" and "what" of TIF, whereas the proposed reforms within Goal 2 target more of the "why" and "how" TIF should be used to finance projects, programs, and services that support equitable CED. Wisconsin's current TIF statutes overly restrict the targets eligible for receiving tax increment spending.¹⁷⁶ These limits hinder TIF's potential

173. *Biden's Remarks on McCain's Policies*, N.Y. TIMES (Sept. 15, 2008), <http://www.nytimes.com/2008/09/15/us/politics/15text-biden.html> [<https://perma.cc/TG7Z-4M7Y>].

174. Granted, state law places significant restrictions on what tax increment can and cannot be spent on, a serious problem the author argues to change *infra* in Part II.B.1.a.

175. Similarly, state-imposed restrictions placed on spending tax increment also speak to the state legislature's values and priorities.

176. See *supra* note 31 (Unpermitted spending of tax increment includes administrative buildings, police and fire buildings, libraries, community/recreational buildings, and school buildings. Currently, tax increment also cannot be spent on social services, direct education, parks, public transportation, or affordable housing).

to attract and finance equitable community development—investments that help catalyze immediate *and* long-term revitalization.

1. INCREMENT SPENDING: WHERE AND ON WHAT MATTERS

Although many of the examples of TIF deals in this Comment have focused on questionable projects,¹⁷⁷ the reality is that there have been hundreds, if not thousands, of successful¹⁷⁸ TIF projects in Wisconsin.¹⁷⁹ An important follow-up question becomes: on what kinds of things can or should municipalities spend the tax increment generated by successful TIF projects?

Especially for revenues from projects in already affluent areas or increment from supporting profitable developers or corporations, it is important to examine how municipalities appropriate tax increment and question whether these distributions are fair, just, and purposeful in advancing equitable CED. Assessing the increment spending from these types of TIF-supported projects is particularly crucial because prudent or imprudent increment-spending from these projects reveals many of the concerns at the heart of arguments to reform TIF: whether leveraging public funds to attract private development really produces not just economic, but also—and arguably more importantly—equitable returns on these investments. Essentially, while the track record of *private* benefits may be more directly observable or tangible, what are the *public* benefits of TIF? What returns do TIF produce, not just for a private developer, but to the community at large?

Assessing a TIF project requires identifying who, and what geographic area, benefits in both the short-term and long-term. Recently evolving real estate markets giving rise to the boon of cities also deserve close attention because “the urban renaissance is very much a class-based story.”¹⁸⁰ As Paul Krugman recently noted, “Upper-income Americans are moving into high-density areas, where they can benefit from city amenities; lower-income families are moving out of such areas, presumably because they can’t afford the real

177. See *supra* notes 124–29 and accompanying text.

178. Here, the Author is referring to a TIF project being “successful” as in the deal created net-positive tax increment for the city and overlaying tax jurisdictions upon the closing of a TID. Here, success means pure dollars and cents—a definitional standard the Author argues to reevaluate *infra* in Part II.B.2.

179. For an example of a recent high-profile TIF windfall, see Jeff Glaze, *Verona Prepares to Cash Out Epic Systems TIF District for Estimated \$21.2M*, WIS. ST. J. (Apr. 27, 2016), http://host.madison.com/wsj/news/local/govt-and-politics/verona-prepares-to-cash-out-epic-systems-tif-district-for/article_6602ac4f-f0b6-5ae3-bd6c-7b6675beb626.html [https://perma.cc/6MLR-VEP8].

180. Paul Krugman, Op-Ed, *Cities for Everyone*, N.Y. TIMES (Apr. 4, 2016), <http://www.nytimes.com/2016/04/04/opinion/cities-for-everyone.html> [https://perma.cc/397F-57M9].

estate.”¹⁸¹ One city facing these concerns is Chicago. A 2002 study by the Neighborhood Capital Budget Group, a coalition of two hundred Chicago organizations that studies local public investment, found that of the \$1.6 billion the city invested in TIF projects, \$1.3 billion in economic development would have occurred anyway.¹⁸² Consequently, the study found that the city invested \$1.6 billion for a net-positive \$300 million in revenue growth, therefore diverting significant tax dollars from the local school districts to a tune of \$632 million for development that would have occurred even without TIF.¹⁸³

A second study analyzing TIF in Chicago found that nearly half of the \$1.3 billion in tax increment funds spent by Mayor Rahm Emanuel since 2011 has gone to the Central Business District (the Loop and surrounding areas), even though those neighborhoods only account for five percent of Chicago’s geographic area and eleven percent of its population.¹⁸⁴ In contrast, the far south side—which includes some of the city’s poorest neighborhoods—received just four percent of TIF-generated increment spending.¹⁸⁵ Furthermore, while Mayor Emanuel proudly professed using increment to pay for school construction,¹⁸⁶ this spending amounts to a mere eight percent of recent increment spending.¹⁸⁷ Critics of the city’s current TIF policies observe an irony that TIF is “governed by a formula that collects more money for rapidly gentrifying communities than anywhere else, including the city’s poorest, most blighted areas.”¹⁸⁸ Granted, under state law, the city has little ability to move funds from one part of town to the other,¹⁸⁹ but the disparities do reveal significant inequities to where TIF is prioritized and where its increment is and is not spent.¹⁹⁰ These disproportions have even lead to the drastic—but deservingly

181. *Id.*

182. McGraw, *supra* note 166, at 37.

183. *Id.* This is based on the assumption that developments would have occurred without TIF and uses a calculation based on the school district’s properties being frozen at their baseline values during the life of the TIDs.

184. Ben Joravsky & Mick Dumke, *Who Wins and Loses in Rahm’s TIF Game?*, CHI. READER (Mar. 26, 2015), <http://www.chicagoreader.com/chicago/mayor-rahm-emanuel-tif-funds-downtown-neighborhoods/Content?oid=17009841> [<https://perma.cc/7CA5-R4T2>].

185. *Id.*

186. *Id.* Illinois allows TIF’s tax increment to be spent on schools. *Id.*

187. *See id.*

188. *Id.* (quoting City of Chicago Alderman Willie Cochran, 20th District).

189. *Id.*

190. State laws, including those in Illinois and Wisconsin, regarding the transfer of tax increment between and among TIDs deserves additional analysis—especially as it relates to spending increment in areas analyzed by income, poverty, and race.

provoking—question of whether Chicago’s TIF policies are “racist” based on the racially disparate impact of its increment spending.¹⁹¹

Although not on the same scale as cities like Chicago, Wisconsin’s spending of tax increment deserves similar inspection and reflection. To advance increased transparency and accountability on increment spending—in addition to traditional public reports—Wisconsin should develop, and require, an accountability and transparency scheme similar to Chicago’s public TIF Portal—a web mapping application linked to each district and its associated projects.¹⁹² Cities, and their policymakers and taxpayers, need to become “smarter in how they give their money away and stricter in terms of financial audits and holding recipients accountable to their promises.”¹⁹³ These resources help municipalities take “more of an investment mind-set to ensure they are not providing a huge windfall to the developer at the public’s expense.”¹⁹⁴ New transparency and accountability-based measures in Wisconsin should also take into account income, race, poverty, unemployment, and other similar metrics when analyzing the locations and expenditures of TIF and its increment spending to better catalyze economic *and* equitable returns on investment.

a. Expand Eligible Infrastructure Spending—And Perhaps Require It

Merriam-Webster defines infrastructure as “the basic equipment and structures . . . that are needed for a country, region, or organization to function properly.”¹⁹⁵ In addition to providing cash grants to private developers,¹⁹⁶ Wisconsin’s current TIF laws restrict

191. See Jared F. Knight, Comment, *Is Tax Increment Financing Racist? Chicago’s Racially Disparate TIF Spending*, 101 IOWA L. REV. 1681 (2016).

192. Sarah Jo Peterson, *Tax Increment Financing: Tweaking TIF for the 21st Century*, URB. LAND MAG. (June 9, 2014), <http://urbanland.uli.org/economy-markets-trends/tax-increment-financing-tweaking-tif-21st-century/> [https://perma.cc/NK3X-WRHX].

193. *Id.* (quoting Rachel Weber, Chicago TIF Reform Task Force member).

194. *Id.* (quoting Rachel Weber, Chicago TIF Reform Task Force member).

195. *Infrastructure*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/infrastructure> [https://perma.cc/TC4L-HHLZ] (lasted visited Feb. 25, 2017).

196. One significant topic that deserves further analysis and serious discussion is the way that TIF allocates cash grants to private real estate developers. WIS. STAT. § 66.1105(2)(f)2.d. states that cash grants are expressly prohibited “unless the grant recipient has signed a development agreement with the city. . . .” Yet, cash grants are perhaps the most common component of virtually every modern TIF deal. Through TIF, municipalities provide millions of dollars in cash grants to private developers every year. Because such grants are such a primary source of TIF funds, it is peculiarly concerning that the authorizing language to provide cash grants is buried in an exception to general prohibitions on allocating TIF dollars. In addition, the statute provides zero guidance to the substance, length, or conditions to be contained in a

spending of tax increment to traditional “hard infrastructure” (traditional public infrastructure such as roads, sewers, demolition grading, lighting, etc.).¹⁹⁷ Unpermitted spending of tax increment includes the financing of administrative buildings, police and fire buildings, libraries, community/recreational buildings, and school buildings.¹⁹⁸ Currently, tax increment also cannot be spent on social services, direct education, parks, public transportation, or affordable housing.¹⁹⁹ State laws should be reformed to expand the types of eligible infrastructure—or at least remove the rigid restrictions on unpermitted spending—on which tax increment can be spent to allow communities to utilize TIF to pay for not just “hard infrastructure,” but also finance and invest in “equitable infrastructure.”²⁰⁰ In order to function properly, following the dictionary definition, policymakers should expand Wisconsin’s definition of eligible infrastructure to include projects, programs, and services that are equity-focused—not just on physical things like sewers or streetlights.

To support the proper function of a community in need of support, equitable infrastructure includes things like senior and affordable housing, job training and apprenticeship programs, public transportation and transit-oriented development, childcare and early childhood education, parks, libraries, and schools.²⁰¹ Especially in low-income and minority neighborhoods, these forms of equitable infrastructure are often not adequate when left to pure market forces or left to imbalanced funding formulas from the state or federal government.²⁰² As a result, Wisconsin should seriously rethink its

development agreement in order to satisfy this prohibited exception. The only requirement is that the agreement is to be signed. Reexamining this provision would provide increased transparency for taxpayers on how their public dollars are being spent.

197. See *supra* note 31 and accompanying text.

198. See *supra* note 31 and accompanying text.

199. See *supra* note 31 and accompanying text.

200. “Equitable infrastructure” is a term developed by the Author to contrast with the Author’s definition of “hard infrastructure.” It is based on the theories and concepts of equitable development and CED.

201. This is not an exhaustive list, nor does it provide all the details of financing such expenditures.

202. The Author is especially critical of Wisconsin’s (and other states’) funding formula for public education. See *How Do We Fund our Schools?*, PBS (Sept. 5, 2008), <http://www.pbs.org/wnet/wherewestand/reports/finance/how-do-we-fund-our-schools/?p=197> [<https://perma.cc/7H7V-ERZ8>] (“[F]unds [for local public schools] usually come from property taxes, which are set by the school board, local officials or citizens. It’s this system that causes the most dramatic differences between states, and even within districts. Depending on the property wealth of a community, its schools might boast gleaming buildings and equipment, or they might be dilapidated – struggling with the burden of outdated equipment and unpaid bills.”); Dylan Scott, *Property Tax Revenue Limits Squeeze School Budgets*, GOVERNING (Feb. 6, 2013),

definition of eligible infrastructure on which TIF's tax increment may be spent.

Public education is arguably the most important form of "equitable infrastructure" because it creates human capital. In particular, Wisconsin should re-prioritize the role quality public education plays in CED and accordingly allow municipalities to spend tax increment to support local school districts. In Georgia, school districts join a Tax Allocation District (TAD, their version of a TID) *at their discretion*—and therefore are not automatically limited in receiving only the baseline tax within a district until it expires or closes unless they electively join—and when school districts do join a TAD, they negotiate financing options, "such as payments in lieu of taxes or a lump sum out of the bond issuance,"²⁰³ assumingly to lessen their delay of receiving future increases to tax increments under a traditional TIF deal. Wisconsin should consider providing similar abilities for its public school districts: increment to finance school construction, an "opt-in" process for schools to be part of TIDs, as well as lump sum payments or payments in lieu of taxes. Public education should not be encumbered by TIF or its increment spending restrictions; instead it should be prioritized.

In one recent example from Wisconsin's capital city, the Mayor of Madison has been at odds with the Madison Metropolitan School District over the district's request to access increment funds before a TID closes.²⁰⁴ At issue is keeping a downtown TID open to finance a parking garage or closing it to allow all jurisdictions to access the

<http://www.governing.com/blogs/view/gov-revenue-limits-put-squeeze-on-wisconsin-schools.html> [<https://perma.cc/TQ7E-L2QG>] ("As [Wisconsin's] state coffers dried up after the recession, Walker cut \$800 billion in state aid in his FY 2011 budget. Then, worried that school districts would offset those losses with property tax increases . . . the governor also reduced the revenue cap by 5.5 percent, the largest cut in their history. The result was \$1.6 billion lost to Wisconsin schools.") (citing Matthew DeFour, *Cash-strapped Wisconsin School Districts Brace for Walker's Second Budget Proposal*, Wis. St. J. (Jan. 27, 2013), http://host.madison.com/news/local/education/local_schools/cash-strapped-wisconsin-school-districts-brace-for-walker-s-second/article_3c360eee-6731-11e2-87ed-001a4bcf887a.html?oCampaign=email [<https://perma.cc/8PHA-69CK>]).

203. See Peterson, *supra* note 192 (quoting Amanda Rhein, ULI Public/Private Partnership Council member).

204. See Chris Rickert, *Madison Schools Ask for Their Money; Madison Mayor Insulted*, Wis. St. J. (Apr. 14, 2016), http://host.madison.com/wsj/news/local/columnists/chris-rickert/chris-rickert-madison-schools-ask-for-their-money-madison-mayor/article_55ad5194-d22d-54e6-b251-a04ab89e3425.html [<https://perma.cc/SF6B-N3NB>]; see also Letter from Board of Education, Madison Metro. Sch. Dist., to Mayor Soglin and Members of the Madison Common Council (Apr. 7, 2016), <https://madison.legistar.com/View.ashx?M=F&ID=4385271&GUID=7A9BAC75-7D6F-4993-A11E-3FD6B5B129E5> [<https://perma.cc/X35J-AFYM>] [hereinafter Letter].

windfall of property taxes, including an estimated \$12 million to the school district.²⁰⁵ The dispute has even prompted headlines like “Kids or Parking Lots”²⁰⁶ and political pressures may force the city to come up with a creative solution, including providing a loan to the school district backed by their future tax increment.²⁰⁷ These “solutions” should not be such a headache. Wisconsin should formulate formal policies that allow overlaying tax jurisdictions, especially school districts—which, again, in many ways are the foundation of equitable infrastructure—to access certain increment funds before TIDs close.

In addition to expanding definitions of eligible infrastructure to include equity-focused projects, programs, and services, policymakers should also analyze infrastructure in terms of its larger cultural impact. Ryan Gravel, creator of the Atlanta BeltLine,²⁰⁸ in discussing the concept of “infra-culture,” says:

I try to make the case that infrastructure is not only a tool for moving people, water, or information around. It’s the foundation for our economy, for our social and cultural life. It matters what kind of infrastructure we build. It affects how we live our lives. Instead of addressing culture—or even our local economy—directly, too much of our dialogue about city planning today revolves around large, abstract concepts. People have a hard time translating how they affect their day-to-day lives When . . . efforts embrace a broad, inclusive vision for what this infrastructure might mean for

205. Letter, *supra* note 204.

206. Dave Cieslewicz, *Kids or Parking Lots?*, ISTHMUS (Apr. 18, 2016), <http://isthmus.com/opinion/citizen-dave/kids-or-parking-lots/> [<https://perma.cc/6CCH-NSQA>].

207. See Rickert, *supra* note 204. For an example of a successful TID generating a huge windfall for a school district upon termination, see Barry Adams, *Verona Voters Face Epic Choice With Huge School Referendum*, WIS. ST. J. (Mar. 26, 2017), http://host.madison.com/wsj/news/local/education/local_schools/verona-voters-face-epic-choice-with-huge-school-referendum/article_f5ce118d-630d-5ecc-be18-f906a7e313ff.html [<https://perma.cc/2UF5-KQAU>] (noting that as part of a \$162.8 million school referendum, “\$140 million of the construction costs could be absorbed by a tsunami of new money that flowed into the district this year after Epic Systems Corp. was fully entered on the city’s tax rolls” upon the recent closing of the TID aimed to initially lure the company to Verona).

208. Since its approval in 2006, the BeltLine project has revitalized twenty-two miles of railroads and connected forty of Atlanta’s disparate neighborhoods. Richard Florida, *Building Infrastructure for More Inclusive Communities*, ATLANTIC: CITYLAB (Mar. 23, 2016), <http://www.citylab.com/design/2016/03/ryan-gravel-atlanta-beltline-sustainable-communities/474891/> [<https://perma.cc/AX3G-3DD3>].

their lives, they are tapping into the real opportunity for infrastructure.²⁰⁹

Gravel also considers lessons from “catalyst infrastructure projects” like the Atlanta BeltLine or New York City’s High Line as “seeing and building infrastructure that celebrates civic identity and addresses the specific conditions and needs that are found in each place.”²¹⁰ Accordingly, the Wisconsin State Legislature would be well-served by considering ways for TIF and its increment spending to bolster the unique civic identity in individual neighborhoods and communities, as well as finance our own catalyst infrastructure projects here in Wisconsin. Policymakers would also benefit from embracing notions and considerations of how infrastructure shapes, and is shaped by, our social and cultural lives. Therefore, expanding definitions to include cultural infrastructure would add to TIF’s potential to catalyze economic and equitable development.

To add teeth to this reform, one way to require municipalities to spend tax increment on these equity investments is to cap increment spending and direct spending a portion of increment on these projects, services, or programs. Current state law provides no cap on the amount or percentage of a project’s tax increment that can be spent on the project itself or on traditional hard infrastructure costs.²¹¹ Without such limits, municipalities can spend up to the entire projected increment before it is even generated, banking on the project generating all of the anticipated tax increment.²¹² For example, one possibility is a cap requirement that a defined percentage of the anticipated tax increment could not be spent directly on the development itself and must instead be spent on “equitable infrastructure.”

One specific proposal to implement this reform is to establish a fifty percent statewide cap on increment spending—perhaps exclusively on mixed-use projects with no blight requirements. This cap could mimic a formal policy used by the City of Madison.²¹³ Under this so-

209. *Id.* (this article is structured as a conversation with Ryan Gravel on his book, *WHERE WE WANT TO LIVE: RECLAIMING INFRASTRUCTURE FOR A NEW GENERATION OF CITIES* (2016)).

210. *Id.*

211. *See* WIS. STAT. § 66.1105 (2015–16).

212. *See* Shaw, *supra* note 21. This article details how the City of Oshkosh, faced a problem of taking on \$8.4 million in debt to pay for demolitions, utility work, road, and other projects to support a TIF develop that had since stalled and reported that city community development director had said that city residents could be responsible for paying the tab. *Id.*

213. *See* Gromacki, *supra* note 1. Madison recently increased the threshold from fifty to fifty-five percent. City of Madison TIF Policy Comm., *TIF Goals, Objectives, and Process*, (Feb. 25, 2014), <http://www.cityofmadison.com/dpced/economicdevelopment/documents/TIF%20Goals>

called “50% Gateway,” projects receiving TIF are limited to using, at-most, half of the new property tax increment a project generates over the life of a TID on the project itself.²¹⁴ Projects that seek to use tax increment above this 50% Gateway must receive an approved exemption to this policy.²¹⁵ This cap ensures sufficient revenue in the case of a downturn, reserves funds for city infrastructure enhancements,²¹⁶ and requires developers requesting more than 50% of the tax increment to demonstrate why their project is “extra TIF-worthy.” However, instead of placing tax increment in a general “rainy day fund,” a revised proposal could instruct that a portion of the capped increment be spent on things that advance equitable CED, not just hard infrastructure like roads or sidewalks. Critics of a cap on increment funding may argue that a cap deters worthy TIF projects and therefore reduces the overall financial return for municipalities. In some ways, the City of Madison has proven otherwise.²¹⁷ Now, policymakers should consider a statewide uniform policy implementing a cap, along

%20Objectives%20and%20Process%20-%20ADOPTED.pdf [https://perma.cc/HKV2-Y3DJ]. Requests for TIF assistance where more than fifty-five percent of the Net Present Value (NPV) of the increment generated by that project require additional approvals. The city’s policy also directs policymakers to consider the TIF loan amount percentage of NPV increment because, “[g]enerally speaking, higher percentages increase the risk to the city and reduce the amount of increment available for public improvements, future loans, and cash out at district closure.” *Id.*; see also CITY OF MADISON TIF POLICY COMM., TIF LOAN UNDERWRITING POLICY 2 (Feb. 25, 2014), <http://www.cityofmadison.com/dpced/economicdevelopment/documents/TIF%20Underwriting%20Policy%20-%20ADOPTED.pdf> [https://perma.cc/FM5S-3JQM] (referring to this cap as the “55% Gateway”).

214. See *supra* note 213 and accompanying text; see also Dean Mosiman & Jeff Glaze, *Madison City Council Adopts Sweeping Changes to TIF Policy*, WIS. ST. J. (Feb. 24, 2014), http://host.madison.com/wsj/news/local/govt-and-politics/madison-city-council-adopts-sweeping-changes-to-tif-policy/article_4d7e6f7d-53bc-5549-9dd4-a41934ae5955.html [https://perma.cc/HC34-77JJ].

215. See TIF LOAN UNDERWRITING POLICY, *supra* note 213. Having this exemption to receive tax increment above the 50% Gateway is a good thing. It allows policymakers to give special consideration for “extra TIF-worthy” projects that meet certain standards or targets. These particular standards or targets—such as blight remediation, job creation, etc.—could be developed by municipalities or by the state.

216. TIF Policy Review Ad Hoc Comm. Presentation, Presentation by Joe Gromacki and Dan Rolfs, Madison, Wis. (July 9, 2013); Gromacki, *supra* note 1.

217. Gromacki, *supra* note 1. Between 1999 (the year Madison instituted the fifty percent cap) and 2013, Madison approved \$30 million in TIF, which generated a new value of \$324 million in project value. In 2012 alone, the city leveraged \$103 million of new value from five projects using \$8.5 million in TIF. TIF Policy Review Ad Hoc Comm. Presentation, *supra* note 216. This data shows that caps can work, and work well. However, it is also arguable that Madison has lost development projects to area suburbs that do not use such caps. A state-wide cap could level the playing field between neighboring municipalities. It also has the unfortunate possibility of pushing development to other states, such as Illinois, which would be an even worse outcome. Therefore, further analysis on the impacts of caps, both between municipalities and between states, is needed.

with requiring (or at least permitting) a portion of tax increment be spent on equitable infrastructure. These changes set up TIF as catalyst for economic *and* equitable development.

2. FUTURE COORDINATION, OBLIGATIONS, AND MANAGEMENT OF TIF

“TIF is not an entitlement, it’s a gap filler.”²¹⁸ The history and purpose of TIF is to provide local governments with financial tools to attract and finance development in areas that may otherwise lack private investments. Similarly, the benefits of TIF—namely its tax increment—so too should be allocated under a similar scheme: prioritizing equitable investments in areas that lack opportunity, not just increasing property values in already affluent areas. By taking an interdisciplinary approach to TIF that includes not just pure economic analysis and hard infrastructure returns, but a methodology that integrates an equity-based analysis of poverty and income, Wisconsin can better utilize TIF to attract and finance worthy private developments and in areas most deserving of community investment. With the right safeguards and policies, “TIF encourages government and the private sector to form a partnership based on each other’s strengths.”²¹⁹ Accordingly, the future of TIF in Wisconsin should be a partnership rooted in coordination, transparency, accountability, and equity.

Additional proposals that deserve future analysis and consideration include:

- Engage more local community members in the TIF design and approval processes. Private developers currently dominate these steps; not enough local or community members are engaged in providing their input or influence in the decision-making process.²²⁰
- Increase coordination with resources like Low Income Housing Tax Credits (LIHTC)²²¹ and New Markets Tax

218. See Peterson, *supra* note 192 (quoting Stephen B. Friedman, a consultant with decades of TIF experience in Illinois and Wisconsin and a member of Urban Land Institute’s Public/Private Partnership Council).

219. See *id.*

220. Perhaps highlighting the issues of TIF connected with school funding—especially related to the delay of increment over the life of a TID—would help increase community engagement from a more diverse public coalition.

221. Rochelle E. Lento, *Federal Sources of Financing*, in *THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT* 215–58 (Tim Iglesias & Rochelle E. Lento eds., A.B.A. 2005).

Credits (NMTC).²²² TIF, when coupled with a comprehensive approach to economic development, can be used for more than just infrastructure and traditional redevelopment activities; it can leverage other financing tools.²²³

- Promote alternative, creative programs and services that may fit within spending tax increment on “equitable infrastructure” including microfinancing,²²⁴ an Affordable Housing Trust Fund,²²⁵ Community Development Block Grants,²²⁶ early childhood programs,²²⁷ low-income bus pass programs,²²⁸ and Community Land Trusts (CLT).²²⁹
- Incorporate Community Benefits Agreements (CBA)²³⁰ into TIF agreements. CBAs are a novel tool for ensuring

222. Hubert F. Stevens, *New Markets Tax Credits*, in BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR ADVOCATES, LAWYERS, AND POLICYMAKERS, 161–76 (A.B.A. 2009).

223. Peterson, *supra* note 192.

224. See Lewis D. Solomon, *Microenterprise: Human Reconstruction in America's Inner Cities*, 15 HARV. J.L. & PUB. POL'Y 191, 192 (1995); see also Louise A. Howells, *The Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFFORDABLE HOUS. & COMM. DEV. L. 161, 161 (2000).

225. Nat'l Low Income Hous. Coal., *National Housing Trust Fund*, <http://nlihc.org/issues/nhtf> [<https://perma.cc/6GFQ-HUG9>] (last visited Feb. 25, 2017).

226. Wis. Dep't of Admin., *Community Development Block Grant – Public Facilities (CDBG-PF) Program: Overview*, <http://www.doa.state.wi.us/Divisions/Housing/Bureau-of-Community-Development/CDBG-PF-Program-Overview> [<https://perma.cc/Z82N-R5CV>] (last visited Feb. 25, 2017).

227. Dep't of Planning & Cmty. & Econ. Dev., Cmty. Dev. Div., *Child Care Program: Early Childcare and Education Committee*, <http://www.cityofmadison.com/commserve/CommunityECCEB.html> [<https://perma.cc/82H9-CX5L>] (last visited Feb. 25, 2017).

228. Metro Transit, *Low Income Pass*, CITY OF MADISON, <https://www.cityofmadison.com/metro/fares/lowincomepass.cfm> [<https://perma.cc/FLP6-V4SF>] (last visited Feb. 25, 2017).

229. NAT'L CMTY. LAND TRUST NETWORK, <http://cltnetwork.org/> [<https://perma.cc/R243-JZX3>] (last visited Feb. 25, 2017); MADISON AREA CMTY. LAND TRUST, <http://affordablehome.org/> [<https://perma.cc/Q23F-KHKY>] (last visited Feb. 25, 2017); see also Michelle Chen, *Can Neighborhoods Be Revitalized Without Gentrifying Them?*, NATION (Apr. 11, 2016), <http://www.thenation.com/article/trusting-baltimore-communities/> [<https://perma.cc/886U-TRHD>].

230. See Julian Gross, *Community Benefits Agreements*, in BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY DEVELOPMENT FOR ADVOCATES, LAWYERS AND POLICYMAKERS 189–204 (A.B.A. 2009); Patricia E. Salkin & Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice*

accountability for community benefits tied to public subsidies. These agreements could also include clawback provisions requiring developers to pay back all or part of their TIF if they fail to meet certain agreed-upon metrics, including jobs, wage, or other responsibilities.²³¹ CBAs in TIF agreements, like many of these additional proposals, do, however, raise exaction concerns and potential legal barriers to examine further.²³²

- Consider loosening certain rules—similar to New York City’s model²³³—such as density, height, and parking for developers who include affordable and senior housing (or other equitable infrastructure features) in TIF projects. “The idea is, in effect, to accommodate the rising demand of affluent families for an urban lifestyle, but also harness that demand on behalf of making . . . cit[ies] affordable for lower-income families too.”²³⁴ This should also be through negotiations with optional incentives to avoid prohibited exaction issues by local governments.
- Selectively encourage or require pay-as-you-go financing (PAYGO) or developer financing. Under PAYGO, instead of a municipality fronting the money for project costs and having the increment repay the municipality, the property owner receives annual payments back from the municipality as the increment is paid. Under developer financing, the developer provides the funds up-front and receives financial payments from the municipality as the project meets certain benchmarks (i.e. when the tax increment is generated and collected). These alternatives have the ability to decrease the overall potential loss to taxpayers by shifting significant financial risk away from public sources and on to private ones.²³⁵ Requiring a

and Other Considerations for Developers, Municipalities and Community Organizations, 26 UCLA J. ENVTL. L. & POL’Y 291 (2008).

231. *Tax-Increment Financing*, GOOD JOBS FIRST <http://www.goodjobsfirst.org/accountable-development/tax-increment-financing> [https://perma.cc/LYG7-LGZD] (last visited Feb. 25, 2017).

232. See Jane C. Needleman, *Exactions: Exploring Exactly When Nolan and Dolan Should be Triggered*, 28 CARDOZO L. REV. 1563 (2006).

233. Krugman, *supra* note 180.

234. *Id.*

235. See Jesse Ishikawa, *Developer-Funded Tax Incremental Financing: Promoting Development Without Breaking the Bank*, 79 WIS. LAW. no. 5, May 2016, at

personal guarantee (or corporate guarantee, when appropriate) is another way to reduce financial risks to taxpayers.

- Conduct regular, state-wide audits of TIF by the Wisconsin Department of Revenue—especially audits of mixed-use TIDs. This data can provide valuable information for policymakers and citizens related to the types of projects approved, amounts of funds dispersed, and measurable returns or losses on investments. These reports should also measure blight before and after TIDs close—and adopting the definition(s) of blight suggested in this Comment would make this analysis more objective and transparent.

In addition to adopting the specific policy reforms advocated in this Comment—and perhaps especially if they are *not* enacted—policymakers should also consider the larger values and implications of using TIF as a generic, tax-payer supported public financial investment tool to lure private development or businesses in the name of the ever-popular and political buzzword “job creation.” Greg LeRoy, author of *The Great American Scam: Corporate Tax Dodging and the Myth of Job Creation*, says it is “ridiculous” for cities to think “tax breaks are the primary reason businesses relocate or expand in certain areas.”²³⁶ As LeRoy notes:

There are so many other factors at play—transportation costs, good employment available, housing costs and quality of life for executives—that the tax breaks like TIFs aren’t very high up on their priority list. But these corporations are asking for them—and getting them—because everyone is giving them out. TIFs have become the standard handout, and the businesses have learned how to play one city off the other. Businesses would be stupid . . . not asking for them every time.²³⁷

LeRoy also articulates that, when used to “leverage investment in mature areas lacking private investment,” TIF “serves smart growth by acting as ‘urban Rogaine.’”²³⁸ Moreover, LeRoy outlines the revenue

16. “[I]f the project doesn’t generate the tax increment needed to pay off the obligation, the party at risk is the developer, not the municipality.” *Id.* at 19.

236. McGraw, *supra* note 166 (quoting Greg LeRoy).

237. *Id.*

238. LeRoy, *supra* note 161, at 10.

tensions within TIF as part of a “broader intergovernmental problem: the ‘fiscalization of land use.’”²³⁹

For three reasons, local governments in many states face chronic budget squeezes that can distort their economic development priorities. First, since the 1970s, there has been a long-term decline in federal aid to cities. Second, when states face budget deficits, one common way they resolve them is to reduce revenue-sharing with local governments. Third, some states have enacted “tax revolt” ballot initiatives or legislation . . . that cap the rate at which property tax assessments may rise (and thereby depress property tax revenues).

Forced to find other sources of revenue, cities have a perverse incentive to adopt economic development and land use strategies that stray from traditional measures of development (such as rising living standards or declining dependency). The perverse incentive prompts them to maximize revenue . . . and minimize spending. . . . When localities make such distorted decisions, TIF is led astray; Instead of being used where it is needed most, to leverage investment in disinvested areas, it becomes most attractive to use in areas where it can sequester the most sales and/or property tax for the locality.²⁴⁰

LeRoy is on to something. Policymakers should not wholly cede to the demands or exclusive interests of private developers, especially when competition between cities often results in a “race-to-the-bottom” to see which municipality can leverage more TIF at the expense of taxpayers or neighborhoods actually lacking opportunity or investment. Although originally developed to help revive blighted or depressed areas, “TIFs now appear in affluent neighborhoods, subsidizing high-end housing developments, big-box retailers, and shopping malls. And since most cities are using TIFs, businesses . . . can play them off against each other to boost the handouts they receive simply to operate profit-making enterprises.”²⁴¹ Legislative reforms to Wisconsin’s TIF laws should strive to deter or prevent these problems.

Instead of a sole focus on tax incentives—like TIF—to attract or retain businesses, policymakers should also view opportunities to

239. *Id.* at 5.

240. *Id.* at 5–6.

241. McGraw, *supra* note 166. See also, LeRoy, *supra* note 161, at 7 (“Subsidizing economic development in the suburbs is like paying teenagers to think about sex.”) (citations omitted).

holistically improve communities as a more persuasive “tool” to lure or retain businesses and private investments. Transportation, lifestyle, parks, libraries, public spaces, housing costs, and quality of education are factors just as—if not more—important to businesses and investors as pure bottom line taxes. At least they should be (and *are* according to LeRoy). Prioritizing these equitable investments can attract and finance private development and community reinvestment—goals shared with TIF’s original purpose. Policymakers should view these public investments in private projects, including TIF, as a public-private partnership and as financial tools that have the potential—when implemented appropriately—to produce both economic *and* equitable benefits.

CONCLUSION: TIF-FOR-TAX 2.0: TIME FOR REFORM

Wisconsin’s TIF laws are overdue for serious reforms to realign the tool with its original purpose of addressing urban blight and also utilize its potential to maximize equitable CED. First, Wisconsin can uphold TIF’s original purpose to address urban blight by establishing specific conditions within each TID category and more precisely define blight to incorporate data-driven metrics, including non-traditional measures like unemployment or poverty. Second, Wisconsin can better maximize TIF’s potential as a catalyst to attract and finance equitable development by allowing (or requiring) municipalities to strategically spend portions of tax increment on equitable infrastructure—programs and investments that maximize TIF’s impact on revitalizing targeted neighborhoods—not just in already affluent areas or exclusively to support the bottom line of developers. Absent meaningful reform, TIF’s strategic and influential muscle to address urban blight and catalyze equitable community development will continue to diminish. While marshaling the coalition necessary to undertake these reforms presents its own unique political challenges, raising discussions and debates over these reforms provides an opportunity for all stakeholders to reexamine and analyze the past, present, and future of TIF in Wisconsin.