The 1979 Minnesota Tax-Increment Financing Act

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NOTES

THE 1979 MINNESOTA TAX-INCREMENT FINANCING ACT

Recent state and federal budget cuts have forced municipalities to find other ways to finance urban development projects. Tax-increment financing has proven to be an important alternative. This Note traces the development of tax-increment financing in Minnesota and analyzes recent changes in Minnesota tax-increment financing law.

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I. INTRODUCTION

In light of decreasing federal and state assistance municipalities have been forced to find alternative methods to finance urban development
projects. Through the establishment of tax-increment districts a municipality can sell bonds to finance the acquisition and site preparation of a designated area of land. The land then is sold to private developers who construct buildings according to the municipality's overall plan. The municipality retires the debt created by the initial acquisition and site preparation by retaining the increase in property tax revenues generated from the developed property.

This Note surveys the use of tax-increment financing as a redevelopment tool in Minnesota and analyses the 1979 Minnesota Tax-Increment Financing Act (1979 Act). In addition the 1979 Act is compared to previous Minnesota tax-increment laws. Finally the effectiveness of the changes in the Minnesota tax-increment law is examined.

II. A HISTORY OF URBAN RENEWAL

The federal government first responded to the need for federal participation in the maintenance and development of American cities during the Great Depression. Initially, the federal government developed home-mortgage programs. In 1934 these programs were followed by federal involvement in the management of slum clearance and the development of low-cost housing. Federal intervention was met with strong resistance from private real estate interests. In 1935 the Sixth Circuit Court of Appeals held that direct condemnation of property by the federal government was an unconstitutional extension of the right of eminent domain. The federal government was therefore forced to implement redevelopment projects through actions on the part of state or

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3. Id. at 274. In July, 1932, under the Hoover administration, Congress established a maximum of 12 federal home loan banks. See Federal Home Loan Bank Act, ch. 322, § 3, 47 Stat. 725, 726 (1932). The following year the Roosevelt administration formed the Home Owners' Loan Corporation, which refinanced individual home mortgages for long terms with low interest rates. See Home Owners' Loan Act of 1933, ch. 64, 48 Stat. 128.
5. See C. GLAAB & A. BROWN, supra note 2, at 275.
6. In United States v. Certain Lands in City of Louisville, 78 F.2d 684 (6th Cir.), appeal dismissed, 297 U.S. 726 (1935), the federal government attempted to condemn four city blocks within the City of Louisville for slum clearance and the construction of low-cost housing. Although the court found no constitutional provision expressly authorizing the federal government to exercise the power of eminent domain, it did find that the power belongs to the government as an attribute of its sovereignty. The right of the government to exercise the power of eminent domain is limited to situations in which the property is to be taken for a public use. See id. at 686. The court defined public use as being "property needed for use by the public through its officers and agents in performing their governmental duties." Id. at 687. The court determined that the federal government has no general welfare power within the states and that "[t]he taking of one citizen's property for the purpose of improving it and selling or leasing it to another, or for the
local authorities.\textsuperscript{7} As a result, by 1944 nine states had laws permitting condemnation of blighted areas for redevelopment by various nonprofit organizations.\textsuperscript{8}

World War II produced an acute housing shortage that emphasized the need for a national program to provide decent housing for all citizens.\textsuperscript{9} After a four-year struggle, Congress approved the National Housing Act of 1949.\textsuperscript{10} The resulting program was administered through local public authorities using federal and local funds to purchase and clear slum properties.\textsuperscript{11} These properties were then sold to private developers at prices below market value.\textsuperscript{12} Local governments were to recover their contributions to the slum clearance and site preparation through increased taxes generated by the redeveloped properties.\textsuperscript{13} The program also provided federal subsidies to private developers to build low-cost public housing.\textsuperscript{14} This aspect of the program, however, produced few results because city residents, although eager to have slums removed, resisted the attempts to replace them with public housing.\textsuperscript{15}

In 1954 the National Housing Act of 1949 was revised and made more flexible.\textsuperscript{16} Renewal grants, which previously had been restricted to housing, could now be used for industrial and commercial redevelopment.\textsuperscript{17} This change made the development of slum areas more attractive to private developers. The prevention of blight became the next focus of the urban renewal laws. The Workable Program for Community Improvement required each urban renewal project to develop a land-use plan,
zoning measures, provisions for the relocation of displaced families, building code adaptation and enforcement, and a citizen participation mechanism.  

In 1966, as a response to the growing concern about the federal government's centralized control over urban renewal projects, Congress enacted the Model Cities legislation. Federal grants were given to specifically targeted neighborhoods to improve the quality of urban life. Model Cities for the first time combined physical reconstruction and economic and social development programs with an emphasis placed on local involvement. Agencies such as Volunteers in Service to America (VISTA), Neighborhood Youth Corps, and Head Start were initiated to encourage citizen participation in the targeted area.

The Democratic administrations of Presidents Kennedy and Johnson sought support from the urban poor. The Republicans did not, and in 1968 the Nixon administration began to cut systematically urban renewal programs. The Housing and Community Development Act of 1974 shifted control of the disbursement of urban renewal funds to local governments through the use of block grants. Community Development Block Grants (CDBG), like preceding federal renewal programs, have presented new problems in their attempt to solve old ones. Some cities use CDBG funds for capital improvements. Other areas use the grants for short term, high visibility programs, ignoring the long term needs of their cities. In addition, CDBG funds are distributed on a yearly basis in varying amounts, making it difficult to plan a long-range project or to operate on-going programs.

Some of these problems have been corrected by the development of

21. See C. Glaab & A. Brown, supra note 2, at 286; M. Schussheim, supra note 11, at 202.
22. See M. Schussheim, supra note 11, at 123, 134.
23. See C. Glaab & A. Brown, supra note 2, at 287; M. Schussheim, supra note 11, at 135, 168.
25. See 1 Minnesota League of Cities, supra note 8, at 4.
26. See id.
27. See id.
strict program guidelines. The funding level of CDBGs has not increased significantly, however, and every year more uses and users compete for the funds. The continuing decline in federal funds has forced local governments to find alternative financing tools for long-term redevelopment. Tax-increment financing is one of the most popular alternatives.

III. A HISTORY OF TAX-INCREMENT FINANCING

The concept of Tax-Increment Financing (TIF) existed in the federal urban renewal programs of 1940. Local governments were to recapture their contribution to renewal projects from the increased property taxes on the redeveloped land. In 1952 California became the first state to enact legislation authorizing the use of TIF. TIF, however, was not widely used by states until federal redevelopment funds were curtailed in the late 1960's. At least twenty-three states now have statutes allowing the use of TIF as a redevelopment finance tool.

Certain characteristics are common to TIF projects. Generally, the authority desiring to use the tool prepares a plan for the proposed TIF district. The plan may detail the kinds and combinations of commercial, industrial, and residential development that will take place; the an-

30. See Advisory Comm’n on Intergovernmental Relations, Community Development: The Workings of a Federal-Local Block Grant 46 (1977); 1 Minnesota League of Cities, supra note 8, at 4.
31. See notes 11-13 supra and accompanying text.
32. Id. See generally M. Anderson, supra note 18, at 161-72.
33. See Davidson, supra note 18, at 423 n.133. Although the concept of TIF existed in Minnesota’s Municipal Housing and Redevelopment Act of 1947, the application of the tool was not viable until 1969. See notes 40-43 infra and accompanying text.
34. See 1 Minnesota League of Cities, supra note 8, at 5-6.
ticipated costs of acquisition and preparation of the district; the amount of bonding necessary to finance the costs; and the duration of the project as determined by the length of time necessary to capture enough tax revenue from the project to repay the bonds. Once the plan has been approved by the local municipality, the present or base value of the property in the district is assessed and frozen. Throughout the duration of the TIF district, the property taxes collected on this frozen base value are paid to all the affected taxing districts just as they were before the TIF district was approved. Tax-exempt municipal bonds may then be sold to finance land acquisition, public improvements, site preparation, resident relocation, and the sale of land to private developers at below-market prices.

As the land is developed, the assessed value of the property increases. The tax increment, which is the difference between the property tax collected from the frozen base value and the tax from the increased assessed value, is retained by the authority to pay the principal and the interest on the bond obligation.

IV. A History of Tax-Increment Financing in Minnesota

The concept of TIF was first set forth in the Minnesota Municipal Housing and Redevelopment Act of 1947. It was only after the 1969 amendments to this legislation, however, that the concept was pressed into widespread use as an urban redevelopment tool. The 1969 amendments detailed procedures for financing renewal projects through the sale of government bonds that would be repaid through captured tax increments.

Prior to the 1979 Act, the legislature had authorized the use of TIF in five separate acts, which include the Municipal Housing and Redevelopment Act, the Municipal Industrial Development Act, the Municipal Development Districts Act, the Minnesota Rural Development Fi-
nance Authority Act,\textsuperscript{45} the Port Authorities Act,\textsuperscript{46} and in several special laws\textsuperscript{47} governing local areas. Each act contained a different set of standards and procedures for the use of TIF. The 1979 Act established a uniform system. Although their TIF provisions have been superseded by the 1979 Act, these laws still provide the public purpose findings that are necessary to establish a TIF district.

A recent survey\textsuperscript{48} has identified 109\textsuperscript{49} Minnesota cities that have planned or initiated a total of 193 TIF projects.\textsuperscript{50} Out of the 109 cities, 105 have actually used or are planning to use TIF.\textsuperscript{51} Three-quarters of all the TIF projects are organized by local housing and redevelopment authorities.\textsuperscript{52} The remainder are development or industrial development districts sponsored by a city, local port authority, or local development commission.\textsuperscript{53} Ninety-nine of the 193 TIF projects are located in sixty-seven small cities.\textsuperscript{54} During 1980 thirty-six projects were initiated or in the planning process.\textsuperscript{55} The major use of TIF has been to redevelop or revitalize downtown or central business districts,\textsuperscript{56} but TIF is also widely used for residential development.\textsuperscript{57} These statistics reflect the tremendous impact that TIF is having on local redevelopment in Minnesota.

V. CONSTITUTIONAL ISSUES RAISED BY THE USE OF TAX-INCREMENT FINANCING

The use of TIF as a redevelopment tool raises the constitutional issues of public purpose, equal protection and due process for taxpayers, taxation without representation, and improper delegation of power. With the exception of Kentucky,\textsuperscript{58} the courts have rejected these constitutional challenges.\textsuperscript{59} It has been the policy of courts to give great deference to

\textsuperscript{45} See Act of June 7, 1971, ch. 920, § 5, 1971 Minn. Laws 1893, 1897 (current version at Minn. Stat. § 362A.05 (1980)).
\textsuperscript{46} See Act of Mar. 27, 1974, ch. 269, § 2, 1974 Minn. Laws 413, 414 (current version at Minn. Stat. § 458.192(11) (1980)).
\textsuperscript{49} Id. at 2.
\textsuperscript{50} Id. at 3.
\textsuperscript{51} Id. at 2.
\textsuperscript{52} See id. (123 out of 193).
\textsuperscript{53} Id.
\textsuperscript{54} Id. at 5.
\textsuperscript{55} Id. at 3.
\textsuperscript{56} Id.
\textsuperscript{57} Id.
\textsuperscript{58} See note 91 infra and accompanying text.
\textsuperscript{59} See notes 76-93 infra and accompanying text.
the decisions of legislative bodies, reviewing these decisions only when they appear arbitrary or unreasonable.60

Under the public-purpose doctrine61 government expenditure of public funds may be made only for a public purpose.62 The general principles of the doctrine, as stated in Vtisina v. Freeman,63 require any project financed by public funds to benefit the community as a whole, to relate directly to a governmental function, and to have a public purpose as its primary objective.64 This is well-settled Minnesota law.65 It is also well settled that "public purpose" is an elusive and changing concept that has no precise definition and must be determined on a case-by-case basis.66 The final decision of what is a public purpose rests with the courts. The courts, however, defer to a legislative finding that a project serves a public purpose67 and will overrule such a legislative determination only if it is manifestly arbitrary and capricious.68

The public-purpose doctrine may become an issue when general obligation or revenue69 bonds are sold to finance land acquisition and site preparation for a TIF district; however, the United States Supreme Court in Berman v. Parker70 made it clear that it is within a legislature's power to protect the public safety, health, morality, peace and quiet, and law and order of a community by redeveloping blighted areas and areas

60. See generally J. NOWAK, R. ROTUNDA & J. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 404-10 (1978); L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 8-7 (1978).

61. MINN. CONST. art. X, § 1 provides that "[t]axes shall . . . be levied and collected for public purposes." Id.

62. See R.E. Short Co. v. City of Minneapolis, 269 N.W.2d 331, 336 (Minn. 1978).

63. 252 Minn. 177, 184, 89 N.W.2d 635, 643 (1958).

64. See id.


67. See R.E. Short Co. v. City of Minneapolis, 269 N.W.2d 331, 337 (Minn. 1978).


69. In Port Auth. v. Fisher, 275 Minn. 158, 145 N.W.2d 560 (1966), the court stated:

Contrary to the declaration in our previous opinion, the Authority suggests that revenue bonds payable solely from its rents and income are not secured by the taxing power of the City of St. Paul and thus are not a debt of the city and should not be regarded as public funds. We believe the better and more realistic view is to so regard the proceeds because the risks and potential liability created and arising in the event of a default by industry or payment to bondholders could adversely affect the city's name and credit.

Id. at 159 n.1, 145 N.W.2d at 563 n.1.


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where blighting influences exist. TIF is a tool to fund this type of redevelopment. The Minnesota legislation authorizing the use of TIF requires a finding of a public purpose. Since courts give great deference to a legislative finding that a project serves a public purpose, it is unlikely that any public purpose challenge to the expenditure of public funds for land acquisition and site preparation for a TIF district would be sustained.

There have been public-purpose challenges to the construction of buildings after the initial TIF land acquisition and site preparation. In these situations, the issue is whether the primary objective of the expenditure is to benefit the public or private interests. In Port Authority v. Fisher, the Minnesota Supreme Court held that it is constitutionally permissible under the public-purpose doctrine for a municipality, through the issuance of revenue bonds, to finance the construction of a building, which is to be leased on a long-term basis to a private corporation, so long as the municipality will be able to complete the redevelopment of what would otherwise be considered marginal land and recoup

71. See id. at 32-33.
73. 275 Minn. 157, 145 N.W.2d 560 (1966).
74. Marginal lands are defined as having any one or more of the following conditions:
   (1) An economic dislocation, deterioration, or disuse resulting from faulty planning.
   (2) The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.
   (3) The laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions.
   (4) The existence of inadequate streets, open spaces, and inadequate utilities.
   (5) The existence of lots or other areas which are subject to being submerged by water.
   (6) By a prevalence of depreciated values, impaired investments, and social and economic maladjustment to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered.
   (7) In some parts of marginal lands, a growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety and welfare.
   (8) In other parts of marginal lands, a loss of population and reduction of proper utilization of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.
   (9) Property of an assessed valuation of insufficient amount to permit the establishment of a local improvement district for the construction and installation of streets, walks, sewers, water and other utilities.
   (10) Lands within an industrial area which are not devoted to industrial uses but which are necessary to industrial development within the industrial area.
   (11) Lands acquired by the state of Minnesota by forfeiture for non-payment of taxes.

the tax money expended for acquisition and reclamation. In *R.E. Short Co. v. City of Minneapolis*, the Minnesota Supreme Court held that construction of a parking ramp by a municipality, to be operated by a private corporation under a long-term management agreement with the city, was a proper inducement to private developers and was necessary to the success of the entire TIF district. These decisions indicate that challenging a benefit conferred on a private developer by the expenditure of public funds will not be upheld so long as it remains incidental to the primary objective of benefiting the community as a whole.

Several other constitutional issues arise from the use of TIF, although they have not been litigated in Minnesota. An equal protection challenge has been made based on the argument that taxpayers living outside of the TIF district are denied equal treatment because, although private developers and project properties pay property taxes that are comparable to those of taxpayers outside of the district, a smaller amount of the developers' taxes reach the various taxing jurisdictions. This occurs because property taxes collected in excess of those generated by the frozen base value go to the TIF authority to retire the debt service and not to the taxing jurisdictions. Decisions in Iowa, Utah, and Wisconsin reflect this argument. The courts concluded that all resident and nonresident taxpayers are taxed at the same rate and that the allocation of the collected funds is at the discretion of the government. The Utah court went on to say that for equal protection purposes the important question was not how the taxing authority allocated its tax revenues but rather how fair was the assessed valuation of the TIF district in the base year when it is frozen. Since it is assumed that "but for" the use of TIF no development would occur and thus no additional property taxes would be generated, nonresident taxpayers continue to pay the same proportion of city taxes as they would if the TIF district had not been initiated. Because of the rapid increase in property values caused by inflation, this argument may no longer be valid. Nonresident taxpayers are required to make up the taxing jurisdictions' inflationary loss in taxes caused by the TIF authority's retention of the tax increment. Normally, property tax revenues increase as a result of inflationary increases in property values.

75. 275 Minn. 157, 173, 145 N.W.2d 560, 572 (1966).
76. 269 N.W.2d 331 (Minn. 1978).
77. See id. at 340.
78. See Richards v. City of Muscatine, 237 N.W.2d 48 (Iowa 1975).
80. See Sigma Tau Gamma Fraternity House Corp. v. City of Menomonie, 93 Wis. 2d 392, 288 N.W.2d 85 (1980).
81. See Richards v. City of Muscatine, 237 N.W.2d 48, 60 (Iowa 1975); Tribe v. Salt Lake City Corp., 540 P.2d 499, 504 (Utah 1975); Sigma Tau Gamma Fraternity House Corp. v. City of Menomonie, 93 Wis. 2d 392, 403-14, 288 N.W.2d 85, 92-95 (1980).
82. See Tribe v. Salt Lake City Corp., 540 P.2d 499, 506 (Utah 1975) (Crockett, J., concurring); Davidson, supra note 18, at 434.
In a TIF district this inflationary increase is included as part of the tax increment retained by the authority. The 1979 Act permits but does not require an authority to return the excess funds to the affected taxing jurisdictions.

A due process issue arises from the authority's retention of tax increments. Nonresident taxpayers argue they are being deprived of substantial economic benefits without just compensation. The Iowa court found this argument valid only when nonresident taxpayers are deprived of their due process rights forever. TIF districts exist only for a limited number of years. Upon the completion of a TIF district the increased property taxes generated through the development are paid to all taxing jurisdictions to benefit the entire community, thus the nonresidents will share equally in the increased tax revenue.

Closely related to this due process issue is the question of taxation without representation. The argument is that nonresident taxpayers face increased property taxes or reductions in services because of the loss of the inflationary increase in property tax revenues and the possible removal of property-tax revenues from the tax rolls without an opportunity to affect the decision directly or through their elected representatives. In Minnesota, TIF legislation requires public notice and public hearings before approval of a district, but this does not provide the taxpayer with any decision-making authority. Since courts are reluctant to upset legislative action without clear evidence of abuse of discretion, the nonresident taxpayer has no recourse. There has been at least one unsuccessful attempt to require voter approval of TIF districts in Minnesota. There has also been an unsuccessful attempt to require approval by the county of any TIF district within its boundaries. This would have provided nonresident taxpayers with an opportunity to influence the decisions through their elected county board members.

A final constitutional issue arising from the use of TIF is whether the delegation of power by a municipality to a redeveloping authority over the tax funds of other jurisdictions is improper. Based on this characteristic of TIF statutes, the Kentucky Supreme Court declared that since no approval by the municipal governing authority was necessary for the es-

84. See id. § 273.75(2).
85. By reducing the amount of property that would otherwise be taxable to meet the general expenses of various taxing jurisdictions, TIF development arguably reduces the ability of taxing districts other than the TIF authority to raise revenue and incur indebtedness. See Richards v. City of Muscatine, 237 N.W.2d 48, 57 (Iowa 1975) (due process argument rejected).
86. See id. at 57-59.
88. See note 60 supra.
89. See Minneapolis Tribune, Oct. 9, 1981, at 1B, col. 1.
tablishment of a TIF district, the state's TIF legislation was an improper delegation of power.\textsuperscript{91} California\textsuperscript{92} and Utah\textsuperscript{93} have sustained TIF statutes by assuming that the state legislature directly delegated the taxing power to the redeveloping authority through the TIF legislation. Under the 1979 Act, municipal approval is required for all TIF districts in Minnesota,\textsuperscript{94} thus avoiding the problem of improper delegation.

VI. ANALYSIS OF THE 1979 MINNESOTA TAX-INCREMENT FINANCING ACT

The Minnesota Tax-Increment Financing Act (the 1979 Act) was adopted by the state legislature in 1979\textsuperscript{95} to provide "a uniform set of standards and procedures to be followed"\textsuperscript{96} when using TIF. Prior to the enactment of this law, five statutory sections and several special laws,\textsuperscript{97} each with varying purposes, requirements, and procedures, authorized the use of TIF. The substantive provisions of these laws were not changed by the 1979 Act. Rather, the 1979 Act consolidated the substantive portions of these earlier laws and replaced the various TIF procedures with a uniform procedure. The following discussion will examine some of the changes between the old TIF procedures and the 1979 Act, the reasons for these changes, and the adequacy of the changes. Part of the analysis will be an examination of the Hennepin County Board's proposed changes\textsuperscript{98} for the 1979 Act.

A. Section 273.72: Definitions

The 1979 Act authorizes three kinds of TIF districts: (1) redevelopment; (2) housing; and (3) economic development. The requirements and length of duration vary with the type of district.

\textsuperscript{91} The Kentucky decision was based on two theories. First, the Local Development Authority Act, which authorizes the establishment of a development plan and the use of TIF pursuant to the Tax Increment Act without the approval of the municipal governing body, was an unconstitutional delegation of legislative power. See Miller v. Covington Dev. Auth., 539 S.W.2d 1, 3 (Ky. 1976). The second theory used by the court may be unique to Kentucky law. Section 184 of the Kentucky Constitution, which concerns educational financing, was construed to mean "that money collected for purposes of education in the common school system cannot be spent for any other purpose, public or not." Id. at 5. Thus, the Kentucky Tax Increment Act permitted an illegal diversion of school funds. See id.

\textsuperscript{92} See In Re Bunker Hill Urban Renewal Project 1B, 61 Cal. 2d 21, 71-75, 389 P.2d 538, 558-61, 37 Cal. Rptr. 74, 106-09 (1964).

\textsuperscript{93} See Tribe v. Salt Lake City Corp., 540 P.2d 499, 502-03 (Utah 1975).

\textsuperscript{94} See MINN. STAT. § 273.74(3) (1980).


\textsuperscript{96} MINN. STAT. § 273.72 (1980).

\textsuperscript{97} See notes 42-47 supra.

\textsuperscript{98} Hennepin County Bill (1981).
1. Redevelopment District

“Redevelopment district” means a type of tax increment financing district consisting of a project, or portions of a project, within which the authority finds by resolution that one of the following conditions, reasonably distributed throughout the district, exists:

(1) The land is predominantly occupied by buildings, streets, utilities or other improvements and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance; or

(2) The land is predominantly occupied by buildings, streets, utilities or other improvements and 20 percent of the buildings are structurally substandard and an additional 30 percent of the buildings are found to require substantial renovation or clearance in order to remove such existing conditions as: inadequate street layout, incompatible uses or land use relationships, overcrowding of buildings on the land, excessive dwelling unit density, obsolete buildings not suitable for improvement or conversion, or other identified hazards to the health, safety and general well being of the community; or

(3) The land is not predominantly occupied by buildings, streets, utilities or other improvements, but at least 80 percent of the total acreage of such land has a fair market value upon inclusion in the redevelopment district which, when added to the estimated cost of preparing the land for use, including utilities, if any, exceeds its anticipated fair market value after completion of said presentation; or

(4) The property consists of underutilized air rights existing over a public street, highway or right-of-way. 99

To establish a redevelopment district the controlling governmental unit must adopt a resolution with a finding of blight or blighting influences. 100 Because blight is difficult to define and ascertain, the legislature set forth four situations 101 in the 1979 Act that will satisfy the blight requirements. Three of these situations will be discussed in detail below.

The first situation that constitutes blight requires “more than 50 percent of the buildings . . . be structurally substandard to a degree requiring substantial renovation or clearance.” 102 Substantial renovation, since it is not defined in the 1979 Act, is open to interpretation. One way to define “substantial renovation” may be through the “50 percent cost test,” which authorizes the issuance of multifamily mortgage revenue bonds for rehabilitation estimated to cost at least fifty percent of the appraised value of the original building and site. 103 Other interpretations

100. Id.
101. Id.
102. Id. § 273.73, subd. 10(a)(1).
103. See J. Holmes, The 1979 Minnesota Tax Increment Financing Act 6 n.22 (1980) (on file at William Mitchell Law Review office). The 50% cost test permits the authorization of housing bonds for rehabilitation estimated to cost at least 50% of the appraised
of substantial renovation are possible, however, which suggests that the first condition defined in the 1979 Act does little to clarify the problem of ascertaining blight.\textsuperscript{104}

The second situation that constitutes blight under the statute requires "inadequate street layout, incompatible uses or land use relationships, overcrowding of buildings on the land, excessive dwelling unit density,\textsuperscript{105} obsolete buildings not suitable for improvement or conversion, or other identified hazards to the health, safety, and general well being of the community."\textsuperscript{106} Use of TIF to eliminate or control blighting influences follows the 1960's urban renewal theory that prevention of physical deterioration is just as important as removal of blight.\textsuperscript{107}

In all cases local redevelopment officials must support their conclusion that "but for" the use of TIF, no substantial improvement in the designated area would take place.\textsuperscript{108} One method to evaluate the condition of an area and thus satisfy the "but for" test\textsuperscript{109} is to compare present property taxes with past evaluations. A decrease in property tax revenue for an area supports the need for redevelopment. An increase is less conclusive. Property values are periodically reassessed and adjustments are made for many changes, including inflation. If inflation is the sole cause for an increase in property values, then an area's property tax revenues may have increased while the condition of the area has remained static or has even deteriorated.

Courts have generally upheld the findings of local government units.\textsuperscript{110} Therefore, scrutiny of any TIF proposal by the municipality approving the plan is essential to ensure that a finding of blighting influences will justify the expenditure of public funds\textsuperscript{111} and the taking of private property.

Blighted raw land is the third situation\textsuperscript{112} in which the establishment of a redevelopment district is appropriate. Raw land that is costly to prepare for development because of problems with terrain is considered
blighted. For example, the costs of preparing swamp land or previously mined land for use may be prohibitive for a private developer. Through the use of TIF the blighted land can be made economically competitive with other areas, thus encouraging private development.

The interpretation of this third situation was the subject of a lawsuit in Eden Prairie. The city declared a redevelopment TIF district to fund the construction of bridges, underpasses, and the widening and connecting of existing roadways. The interchange would provide access to the newly developed Eden Prairie Shopping Center and to 3,000 acres of undeveloped land. The plaintiff argued that the cost of building highways should not be permitted as part of the expense of preparing blighted raw land for development. During the trial, the defendants conceded that the project should be changed from a "redevelopment district" to an "economic development district" under Minnesota Statutes.

113. See id.
114. Cooley v. City of Eden Prairie, No. 773661 (Minn. 4th Dist. Ct. Aug. 10, 1981) (settled by Stipulation of Dismissal Jan. 4, 1982). Judgment was entered for the plaintiff against the City of Eden Prairie and the Housing and Redevelopment Authority of the City of Eden Prairie for $1.00 together with costs and disbursements, but not attorney's fees. The case was partially tried, but the defendant's withdrew the project in controversy thereby rendering an injunction unnecessary.
115. The tax increment financing district will consist of a redevelopment project within MSA 273.73 sub. 10 because the land generally is not predominantly occupied by buildings, streets, utilities, or other improvements, but at least 80 percent of the total acreage of such land has a fair market value upon inclusion in the redevelopment district which, when added to the estimate cost or preparing the land for use, including utilities, if any, exceeds its anticipated fair market value after completion of said preparation.

Separate Answer of Defendant City of Eden Prairie to Plaintiff's Amended Complaint, Exhibit A to Exhibits A & B at 1125 (Eden Prairie (Development) Redevelopment Plan and Tax Increment Financing Plan).

The proposed projects to be undertaken by the redevelopment authority were as follows:

1. Valley View Road - Mitchell Road to Menards and Schooner Blvd. to T.H. 5 $1,030,000
2. Schooner Blvd./I-494 underpass and connection from W. 78th Street via Valley View Road to I-494 7,400,000
3. Widen T.H. 169/I-494 Bridge and T.H. 169 from W. 78th Street to Valley View Road 2,500,000
4. Schooner Blvd., T.H. 169 to T.H. 5 770,000
5. Baker/Mitchell Road Connection 420,000
6. Widen Valley View Road/I-494 Bridge and ramps to I-494 2,500,000
7. Valley View Road west of Washington Avenue 500,000

Id. at 1120-21.
116. See Amended Complaint for Plaintiff at XVIII.
section 273.73, subdivision 12 and sought to dismiss the complaint.\footnote{117} An economic development district does not require a finding of blight, and limits the repayment period of tax-increment bonds to ten years instead of the twenty-five years allowed for bonds financing a redevelopment district.\footnote{118}

In an effort to prevent future problems of this nature, the Hennepin County Board has a proposal to amend Minnesota Statutes section 273.73, subdivision (10)(a)(3) to read: "The land is not predominantly occupied by buildings, streets, utilities or other improvements, and redevelopment is not feasible because of terrain or soil deficiencies."\footnote{119} The additional requirement that terrain or soil deficiencies be the basis of blight funding for raw land should eliminate the possibility of building a highway as part of land preparation costs.

2. Housing District

"Housing district" means a type of tax increment financing district which consists of a project, or a portion of a project, intended for occupancy, in part, by persons or families of low and moderate income, as defined in Chapter 462A, Title II of the National Housing Act of 1934, the National Housing Act of 1959, the United States Housing Act of 1937, as amended, Title V of the Housing Act of 1949, as amended, any other similar present or future federal, state, or municipal legislation, or the regulations promulgated under any of those acts.\footnote{120}

Under the 1979 Act, tax-increment-housing districts require the development of some low or moderate income housing when other higher priced housing is built.\footnote{121} Since 1968, forty-two TIF housing districts have been authorized.\footnote{122} The majority of designated low or moderate income units within these districts have been built for senior citizens.\footnote{123} Senior citizen housing provides municipalities with an inoffensive way of building low-income housing in areas where high-priced or market-priced housing is being developed. Few projects have tried to mix non-senior citizen low or moderate income housing with market-priced units.\footnote{124}

When used in urban areas, TIF projects, like any urban renewal project, tend to displace low-income people.\footnote{125} There are at least two ways to use TIF without causing displacement problems. The first is spot re-
TAX-INCREMENT FINANCING

Minnesota Statutes section 462.445, subdivision 1(7) specifically authorizes the use of TIF by housing and redevelopment authorities. A single parcel of land can be designated a TIF housing district. Bonds are sold for the acquisition and site preparation costs. The land is then developed by a private developer or a public agency and the increase in property-tax revenues is used to retire the debt. Another way to combine TIF and spot renewal is to finance the redevelopment privately or through public funds designated from community development block grants or other public sources and use TIF bond proceeds to subsidize the rents in the newly renovated or developed units. Still another way to combine TIF and spot renewal is for a city to provide TIF to a private developer and receive in return a percentage of the housing units to use for low-income renters. The tax increments should cover the city's capital investment and the rents could be used by the city to cover the maintenance of the low-income rental units and the costs of


H2.2-106 Redevelopment of Small Sites/MHRA (81-85)

Description: The purpose of this program is to acquire and prepare for new development small sites located throughout the City through the use of tax increment financing. No specific sites are proposed at this time. When proposed, sites will be evaluated and tax increment districts created on a site-by-site basis. Emphasis will be given to vacant land and to sites containing vacant, underused or blighting structures. Residential displacement will be avoided.

Although specific sites are not proposed, this program is included in the CIP to assure that a share of the City's capacity to create tax increment districts is set aside for this type of district. Two general types of sites will be redeveloped. The first are sites within neighborhoods which will generally be developed at townhouse densities. The second are sites adjacent to commercial centers or within strip commercial areas which will most likely be developed at higher densities.

Emphasis will be given to the construction of alternative housing for older neighborhood residents who desire maintenance free alternatives to their current detached homes. Such construction will be free detached housing for family occupancy.

A related activity is the reuse of school sites for housing.

Mayor's Recommendation: The Mayor recommends program and encourages the identification of potential sites. The use of this program is a substitution for the acquisition of larger sites through the New Housing and Large Family Housing programs is also recommended where financially feasible.

Id. at 42-43.

127. See Memorandum from Michael Brinda, Assistant Director of Planning for the Housing and Redevelopment Authority in and for the City of Minneapolis to Jay Jensen, Special Assistant to the Executive Director (Mar. 13, 1981) (on file at William Mitchell Law Review office).
administering the program. The complexity of the 1979 Act makes
the efficiency of using TIF for spot renewal questionable. If a TIF dis-
trict must be established for each spot the costs of developing a plan and
conforming to the requirements of the 1979 Act may outweigh the bene-
fits of the redevelopment.

The second way to use TIF without causing displacement problems is
to use it as a means of lowering the interest rates on long-term mortgages. A TIF district could be established and the bond proceeds could be used to help property owners refinance their buildings at below-market interest rates. The mortgage money would allow property owners to bring their property up to code. The increase in property taxes from the improved property would cover the cost of the bonds sold to subsidize the interest rates.

Both of these methods would prevent people from being displaced. In addition, the improvement of one home or apartment house in an area would encourage surrounding property owners to improve their units. This in turn would increase local property-tax revenues.

3. Economic Development District

"Economic development district" means a type of tax increment financing district which consists of any project, or portions of a project, not meeting the requirements found in the definition of redevelopment district or housing district, but which the authority finds to be in the public interest because:

(a) It will discourage commerce, industry or manufacturing from moving their operations to another state; or

(b) It will result in increased employment in the municipality; or

(c) It will result in preservation and enhancement of the tax base of the municipality.

Economic development districts are similar in concept to the industrial development that was encouraged in the Midwest during the 1960's. The public purpose requirement is satisfied through an increased tax base and increased employment. There is no blight requirement. As compared to a redevelopment or housing district, the three types of find-


129. One method to avoid this problem would be the establishment of scattered-site redevelopment projects. Noncontiguous parcels scattered throughout an area would be identified and grouped into one TIF district. Under the pre-1979 TIF laws, the City of Robbinsdale developed a "Scattered-Site Residential Redevelopment Project" throughout the city. See 1 Minnesota League of Cities, supra note 8, at 7; Technical Assistance and Research Service, League of Minnesota Cities, Tax Increment Financing Guide for City Planners, Community Development Directors, and Project Administrators 65 (1979) [hereinafter cited as Tax Increment Financing Guide] (on file at William Mitchell Law Review office).

130. MINN. STAT. § 273.73(12) (1980).

131. See J. Holmes, supra note 103, at 8 n.26.
ings specified above in section 273.73, subdivision 12 of the 1979 Act as necessary for approval of an economic development district are easily established.132 For example, increased employment may include the construction workers employed for the duration of the project. There is no requirement that the completed project provide an increase in jobs over the long term.133

Although the requirements of an economic development district are less strict than those of a redevelopment or housing district, economic development districts are limited to shorter duration than the other two districts.134 Also, any authority proposing an economic development district must comply with the requirements in the authority’s enabling legislation. Thus, an authority whose enabling legislation is the Minnesota Municipal Housing and Redevelopment Act must make a finding of blight before there can be an authorized TIF economic development district. By combining the requirements of an authority’s enabling legislation with the requirements of the 1979 Act some control over the use of TIF in an economic development district is provided.

B. Section 273.74: Establishing and Modifying Tax-Increment Financing Plans—Annual Accounts

1. Planning Process

The 1979 Act sets forth specific procedures for establishing and modifying a TIF plan.135 A TIF plan must detail the objectives of the authority and the development program, including property acquisitions. A TIF plan shall also estimate cost of the district, including administration expenses; amount of bonded indebtedness to be incurred; sources of revenue to finance or otherwise pay public costs; the most recent assessed value of taxable real property within the district; the estimated captured assessed value of the district at completion; and the duration of the district’s existence.136

These requirements are an attempt to force public disclosure and careful fiscal planning.137 The plan must also state the authority’s estimate of “the impact of tax increment financing on the assessed values of all taxing jurisdictions in which the district is located in whole or in part.”138

A major criticism of TIF rests on the assumption that it places hidden costs on property taxpayers outside of the TIF district. The planning provision in the 1979 Act requires a detailed analysis of these hidden

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133. See MINN. STAT. § 273.73(12)(b) (1980).
134. See id. § 273.75(1).
135. See id. § 273.74.
136. See id. § 273.74(1).
137. See J. Holmes, supra note 103, at 8 n.28.
costs and a recognition of the negative impact of TIF districts.\textsuperscript{139} The Hennepin County bill would require additional disclosures. For example, the TIF plan would include "both the number of acres included within the district and the number of acres included in all previous tax increment financing districts."\textsuperscript{140} In TIF districts in which property tax revenues are retained by the authority the increase in taxes caused by inflated property values are also retained. Without a TIF district these inflationary increases would go to all taxing jurisdictions and thus are a hidden cost to the nonresident taxpayer when a TIF district exists. By making public the amount of land that is included in TIF districts these inflationary increases would be more readily ascertainable and thus subject to public scrutiny.

Unlike prior TIF laws, the 1979 Act requires an authority, as part of the planning process, to consult with the county and school boards that will be affected by the TIF district.\textsuperscript{141} The 1979 Act gives the county board of commissioners and the school board only the right to comment on the proposed plan, however, and not the power to approve or reject the plan. Furthermore, the law provides no recourse once the plan has been approved. In reaction to this, Hennepin County has proposed in their bill that the county board of commissioners have the right to approve any TIF plan.\textsuperscript{142}

2. Municipal Approval (The "But For" Test)

The 1979 Act requires municipal approval of any TIF district plan.\textsuperscript{143} This change in previous law is an important protection for a municipality in the situation in which an authority other than the municipality is proposing the project. An additional safeguard provided in the 1979 Act is the requirement that a public hearing be held before municipal approval can be given.\textsuperscript{144}

Before approving a TIF plan, the municipality must make several findings. The first is a determination that the proposed TIF district meets the requirements of one of the three types of districts authorized under the 1979 Act.\textsuperscript{145} This provides the public purpose foundation necessary for the expenditure of public funds.\textsuperscript{146}

The second and most controversial finding is based on a "but for" concept. "But for" public intervention, private development in an area

\textsuperscript{139} See J. Holmes, supra note 103, at 8 n.30.
\textsuperscript{140} Hennepin County Bill § 3 (1981).
\textsuperscript{141} See MINN. STAT. § 273.74(5) (Supp. 1981).
\textsuperscript{142} Hennepin County Bill § 4 (1981).
\textsuperscript{143} See MINN. STAT. § 273.74(3) (1980).
\textsuperscript{144} Id.
\textsuperscript{145} See notes 99-134 supra and accompanying text.
\textsuperscript{146} See J. Holmes, supra note 103, at 9 n.34; notes 61-77 supra and accompanying text.
would not occur in the "reasonably foreseeable future." The "but for" argument is the basic premise justifying the use of TIF. If the development would not occur without TIF, then the use of TIF has no detrimental effect on the local taxing jurisdictions since property taxes would remain stable or decrease. TIF districts would simply capture tax dollars that the new development has generated. If, however, the development would have taken place without the use of public funds, then the "but for" requirement is not met and the taxing jurisdictions would be denied taxes that otherwise would have been theirs. Because the "but for" finding is made by the controlling municipality, its validity is contingent on a responsible decision by local officials. There is a fine line between what proponents of TIF say is the reasonably foreseeable future and what opponents call an improper interference with the free market.

A criticism of the "but for" justification is that many of the projects being financed by TIF are not truly "but for" developments. The local municipality approves a packaged proposal for a specific site. If the type of developments within the package were examined individually, they might not all meet the "but for" requirement. For example, market-rate housing will continue to be built with or without public subsidy, whereas low- or moderate-income housing must in most instances be publicly assisted. If market-rate housing will be built regardless, should it be included in a TIF project? An argument can be made that it is necessary to provide a mixed tax base for municipalities and to make the projects attractive to private developers.

It can also be argued that "but for" the use of TIF many private development projects would not be able to acquire the land necessary for the development. The cost of the property may be prohibitive due to inflated values caused by speculation; property owners could prevent the development by refusing to sell to the private developer. This argument also has been criticized. The approval of a TIF district allows the local authority to use its eminent domain powers to acquire the land, but several factors must be considered. Many property owners have gone to court over the valuation placed on their property under eminent domain. These cases have resulted in additional expenses to the municipality or authority in the form of court costs and attorneys' fees. As a result of

147. MINN. STAT. § 273.74(3)(b) (1980).
148. See J. Holmes, supra note 103, at 10 n.35.
149. Lefcoe argues that

[the case against tax increment financing derives strength from the fact that redevelopment projects do nothing to increase the demand for retail stores, apartments, offices, and the like. Very few people, for instance, will buy more shoes because there are more shoe stores downtown. The agency has increased the supply of new buildings at a particular site. But some of this construction would probably have come into existence elsewhere had there been a market to support it.

Lefcoe, supra note 105, at 259 (emphasis in original).
cases involving the housing and redevelopment authority, prices determined by the courts have averaged twenty-one percent more than the offers made by the authority.\textsuperscript{150} In addition, people displaced by projects using public funds are entitled to relocation benefits.\textsuperscript{151} So, although it may take longer for a private developer to acquire property for a project, the savings allegedly gained by TIF are not substantial when the city is forced to use its eminent domain powers.

The third finding a municipality must make before approving a TIF plan is that the "plan conforms to the general plan for the development or redevelopment of the municipality as a whole."\textsuperscript{152} Because most municipalities operate under a comprehensive plan, this finding assures the municipality of a joint planning effort.

The fourth municipal finding requires the TIF plan to use as much private development as possible.\textsuperscript{153} This is in contrast to earlier urban renewal projects in which the majority of funding was public and which were subject to much criticism.\textsuperscript{154}

The last finding is an election on the part of the municipality regarding the method of computation to be used for the fiscal disparities contribution, which applies only to Twin Cities metropolitan municipalities that are covered by Minnesota Statutes section 473F.\textsuperscript{155}

In an attempt to control further the use of TIF, the Hennepin County bill proposes two additional requirements. The first limits the total captured assessed value of all TIF districts to a designated percentage of the total current assessed value of all taxable real property in the municipality.\textsuperscript{156} The second requirement limits the total acreage of any TIF district to two percent of the municipality's total acreage.\textsuperscript{157} By imposing these limits, taxing jurisdictions other than the municipality are assured

\textsuperscript{150}. See 3 Minnesota League of Cities, \textit{supra} note 8, at 79.

\textsuperscript{151}. See \textit{Minn. Stat.} §§ 117.50-.56 (1980).

\textsuperscript{152}. \textit{Id.} § 273.74(3)(c).

\textsuperscript{153}. \textit{Id.} § 273.74(3)(d).

\textsuperscript{154}. See \textit{notes} 2-30 \textit{supra} and accompanying text.

\textsuperscript{155}. See \textit{Minn. Stat.} §§ 473F.01-.13 (1980 & Supp. 1981); notes 218-24 \textit{infra} and accompanying text.

\textsuperscript{156}. Hennepin County Bill § 4 (1981):

\begin{enumerate}
\item That the estimated captured assessed value of the district at completion, as contained in the financing plan required in subdivision 1 of this section, when added to the current captured assessed value of all other tax increment financing districts in the municipality, shall not exceed the applicable percentage of the total current assessed value of taxable real property in the municipality:
\begin{enumerate}
\item Six (6) percent if the total current assessed value of taxable real property exceeds $200,000,000;
\item Eight (8) percent if the total current assessed value of taxable real property is more than $25,000,000; but not more than $200,000,000;
\item Twelve (12) percent if the total current assessed value of taxable real property is more than $8,000,000 but not more than $25,000,000; or
\item Fourteen (14) percent if the total current assessed value is not more than $8,000,000.
\end{enumerate}
\end{enumerate}

\textsuperscript{157}. \textit{See id.}
of some increase in their tax base through inflation. By limiting the total captured assessed value and the total acreage of TIF districts the risk that local property taxes would be increased to cover the bond costs of districts that fail to produce an adequate increment is also lessened. An alternative way to control the risk of increased property taxes would require the use of revenue bonds that are financed solely through the TIF project rather than general obligation bonds that are backed by the full faith and credit of the issuing authority. The limitations on the acreage of TIF districts proposed in the Hennepin County bill would not prevent a municipality from using TIF to redevelop the whole city; the bill would, however, require that the development take place in stages. A similar type of staging restriction already exists in the 1979 Act for individual TIF districts.

A municipality has sixty days to approve or disapprove a TIF plan submitted by an authority other than the municipality. If the municipality fails to act within the sixty days, the plan is deemed to have been approved. Technically, this means that nonaction by the municipality can result in approval of the plan without any of the findings previously discussed. The purpose of this part of the 1979 Act is to force some action by the municipality. TIF plans are complex and often the timing of the project is critical to the project's success. If a TIF plan is approved by the nonaction of the municipality, the "but for" finding has not been satisfied and the validity of the project is brought into question. This is further complicated by a savings clause which states: "[o]nce approved, the determination of the authority to undertake the project through the use of tax increment financing and the resolution of the governing body shall be conclusive of the findings therein and of the public need for such financing." This savings clause attempts to establish an irrebuttable presumption of validity for any TIF plan that has received municipal approval.

By preventing future litigation, the clause provides protection for bond purchasers. Knowledge that a publicly financed project is legally sound is important for the success of the bond issue. A savings clause like this, however, limits the rights of potentially aggrieved parties to bring a legal challenge based on the public purpose of the TIF project. It is unlikely, however, that a legal challenge to the public purpose of using TIF would be saved from judicial review by the conclusive presumption. In a recent Minnesota Supreme Court case, Buettner v. City of St. Cloud, 277 N.W.2d 199 (Minn. 1979), the court stated that "the trial court cannot abrogate its duty to uphold constitutional safeguards and defer to the judgment of the taxing authority." "Id" at 203. See also notes 61-77 supra and accompanying text.

158. See notes 236-47 infra and accompanying text.
160. See MINN. STAT. § 273.74(3) (1980).
161. See id.
162. Id. (emphasis added).
163. It is unlikely, however, that a legal challenge to the public purpose of using TIF would be saved from judicial review by the conclusive presumption. In a recent Minnesota Supreme Court case, Buettner v. City of St. Cloud, 277 N.W.2d 199 (Minn. 1979), the court stated that "the trial court cannot abrogate its duty to uphold constitutional safeguards and defer to the judgment of the taxing authority." Id. at 203. See also notes 61-77 supra and accompanying text.
action. If the primary purpose of the savings clause is to protect bondholders, then it would be more appropriate to tie the clause to the bond sale instead of municipal approval. This would give a potentially aggrieved party more time to challenge the validity of a project.

In addition to the municipal approval required by the 1979 Act, the Hennepin County bill recommends that the county boards of any county in which any portion of a proposed district is located have the power to approve the TIF plans. Disapproval could only be given under certain conditions that parallel the findings required by the municipality in the 1979 Act. If review by the county board would merely duplicate the findings of the municipality, this additional delay appears unnecessary.

3. Modification Procedure

An important part of the 1979 Act is the establishment of a procedure to modify a TIF plan. Prior to the 1979 Act, a TIF plan could be modified to provide for a reduction or enlargement of the geographic area, an increase in the bond indebtedness, a change in the amount of increments to be retained by the authority, or an increase in the total estimated tax-increment expenditures without notice, public hearings, or approval by the municipality. Under the 1979 Act, approval of any of these modifications must be done by the same process of approval required by the original TIF plan. The 1979 Act also limits the time for

164. The authority or municipality issuing the TIF bonds may move the court for an order requiring a party who is bringing an action challenging the validity of a TIF district to file a surety bond. The surety bond provides protection for the public entity in the event of loss or damage caused by a delay in the issuance of the TIF bonds. MINN. STAT. § 562.02 (Supp. 1981). The use of a surety bond makes the need for a conclusive presumption clause unnecessary and places an unreasonable restriction on parties seeking to challenge the validity of a TIF district.


166. Id. Subdivision 3(c) provides:

(c) Upon approval by the municipality pursuant to clause (b) of this subdivision, the tax increment financing plan shall be submitted to the county boards of commissioners of any county in which any portion of the proposed district is located. The county boards shall approve or disapprove the plan within 30 days of submission by the authority, or the plan shall be deemed approved. The board shall disapprove the plan only when:

(i) The requirements of clause (a) of this subdivision are not met; or

(ii) Alternative methods of financing the project are available; or

(iii) The proposed development or redevelopment is reasonably expected to occur in the foreseeable future without the use of tax increment financing; or

(iv) The district and the financing plan are not scheduled for the shortest time possible; or

(v) The bonding limits of Chapter 475 shall be exceeded by the plan and there has been no referendum pursuant to Sec. 273.77. The board shall state its findings when disapproving the plan.

167. See MINN. STAT. § 273.74(4) (1980).

168. See id.
any enlargement of the district to five years from the date of certification of the original assessed value.\textsuperscript{169} This restriction on the enlargement of TIF districts is designed to encourage careful fiscal planning when the plan is being developed and to prohibit expansion into new areas for the purpose of capturing additional tax increments.\textsuperscript{170} Before the 1979 Act, only the Development District Act\textsuperscript{171} had similar restrictions.

4. Annual Report

The 1979 Act requires an annual report on the status of each TIF district to be filed by the responsible authorities with the municipality, the county board, the school board, and the state planning agency.\textsuperscript{172} This requirement provides public accountability through disclosure. It is also a means of compiling data on the use of TIF in the state. There is, however, no procedure for enforcing this requirement and only a few reports have been filed since the passage of the 1979 Act. The Hennepin County bill attempts to solve the enforcement problem by adding the following: "[n]otwithstanding any other statute, no tax increment shall be paid pursuant to Section 173.76, Subdivision 3 for any year until the authority has complied with this subdivision."\textsuperscript{173}

C. Section 273.75: Limitations

1. Duration of Tax-Increment Financing Districts

Before the 1979 Act, TIF districts were unlimited in duration.\textsuperscript{174} To prevent authorities from retaining tax increments for excessive periods of time the 1979 Act provides:

\[
\text{[N]o tax increment shall in any event be paid to the authority from a redevelopment district after 25 years from date of receipt by the authority of the first tax increment, after 25 years from the date of the receipt for a housing district and after eight years from the date of receipt, or ten years from approval of the tax increment financing plan, whichever is less, for an economic development district.} \textsuperscript{175}
\]

These durational limits are arbitrary. They were chosen because they represented the shortest period of time necessary for the completion of existing TIF districts.\textsuperscript{176} Economic development districts have a shorter term than redevelopment and housing districts. The assumption is that economic development projects will have lower acquisition and relocation...

\textsuperscript{169. See id.}
\textsuperscript{170. See J. Holmes, supra note 103, at 11 n.42.}
\textsuperscript{171. See MINN. STAT. § 472A (1980).}
\textsuperscript{172. See id. § 273.74(5).}
\textsuperscript{173. Hennepin County Bill § 6 (1981).}
\textsuperscript{174. See J. Holmes, supra note 103, at 13 n.48.}
\textsuperscript{175. MINN. STAT. § 273.75(1) (1980).}
\textsuperscript{176. See J. Holmes, supra note 103, at 13 n.48.}
tion expenses because they are aimed at raw or under-utilized land. These limits assure all property taxpayers and all taxing jurisdictions that they will receive the benefits of the development within a reasonable period of time. The limit on the time the tax increment can be retained creates a greater risk for bond investors. The risk becomes even greater when the project is financed with revenue bonds. If the project fails to produce a large enough increment over the limited time period, the bondholders would have no recourse outside of the project. The sponsoring authority also takes a greater risk. Without careful predevelopment planning, this can result in the authority selecting a poor developer, tenant, or project because they have no choice in terms of time. Economic development districts are most susceptible to this problem because of the shorter durational limits. The shorter economic development limit also encourages authorities to choose capital-intensive development that may produce a greater increment although less density would satisfy the needs of the area. As one commentator has said, "[s]mall is not beautiful, less is not more, and form does not follow function when a project is designed with a view toward yielding the highest possible property tax revenue that project occupants can afford." With the requirement of careful predevelopment planning and the limits on the area that can be developed at any one time, the 1979 Act has attempted to balance the risk to the bondholders and the sponsoring authorities with protection for the taxing jurisdictions and the property-tax payers.

177. See id.

178. Two points should be noted. First the limitation relates to the time over which tax increment will be paid, not life of the underlying project or term of the bonds. Secondly, the durational limitation is keyed to receipt of the first increment, which may be up to 2 1/2 years after certification. This, however, can introduce an element of uncertainty into a project which should be considered. In the case of an economic development district, for example, tax increment can be collected for the lesser of 10 years from the approval of the plan or 8 years from receipt of the first increment. Assume that 8 years of full increment from a new development is required in order to amortize the public costs. If the request for certification is forwarded on or before October 10, 1980 and if the commissioner of revenue has not finally certified 1980 values, the original assessed value will be as of January 2, 1979. Since the request was submitted by October 10th, tax increment on any inflationary value realized between January, 1979 and January, 1980 will be paid in 1981. This will start the 8 year period running and 8 full tax increment years will not be obtained. There are two possible ways of dealing with this problem:

1. Through very careful timing of certification and construction. For example, if the certification request had been made after final commissioner certification of 1980 value, the base year would have been 1980, and the 1979 to 1980 inflation would not have been recognized.
2. Through an agreement with the county auditor pursuant to Section 273.76, Subd. 2 to retain only a portion of the captured assessed value, and to make the allocation based on years rather than percentages.

Id. (emphasis in original).

179. See Lefcoe, supra note 105, at 256.
2. Excessive Tax Increments

The 1979 Act also prevents a sponsoring authority from capturing and retaining the tax increment derived purely from the inflation of property values when no redevelopment is planned or being carried out. If within three years from the date of certification of the original assessed value of the district, no bonds have been issued, no property has been acquired, or no public improvements have been constructed, then no tax increment will be paid to the authority. The 1979 Act ensures that a substantial portion of any tax increment will be used to improve the property value of the area. Before this change, tax increments could be used to fund administrative expenses when no redevelopment was taking place. This abuse is further controlled, but not eliminated, by a five-percent limit on the use of tax increments to fund administrative expenses. In earlier tax increment laws there was no control over the expenditure of excess tax increments. Excess tax increments occur when the captured assessed value is greater than the costs authorized by the TIF plan. The 1979 Act requires the authority to use the excess tax increment to “(a) prepay any outstanding bonds, (b) discharge the pledge of tax increment therefore, [or] (c) pay into an escrow account dedicated to the payment of such bond.” If the excess is not used for any of the above, then it is returned to the county auditor who distributes the excess to the municipality, county, and school districts where the TIF district is located. Prior to 1979, authorities could plan new activities to spend the excess funds. Now the authority must meet the requirements of the modification procedure to plan any additional activities in a TIF dis-

181. See id.
183. Minn. Stat. § 273.75(3) (1980). Administrative expenses are defined as expenditures of an authority other than amounts paid for the purchase of land or amounts paid to contractors or others providing materials and services, including architectural and engineering services, directly connected with the physical development of the real property in the district, relocation benefits paid to or services provided for persons residing or businesses located in the district, or amounts used to pay interest on, fund a reserve for, or sell at a discount, bonds issued pursuant to section 273.77. Minn. Stat. § 273.73(13) (1980). This definition seems to restrict only in-house administrative expenses by an authority. A potential for abuse still exists in the areas of consultant fees and contracts for services. See J. Holmes, supra note 103, at 8 n.27. Expenses for bond counsel, fiscal consultants, and planning or economic development consultants may or may not presently be included under administrative expenses.
184. See Minn. Stat. § 273.75(2) (1980).
185. Id.
186. See id.
187. See J. Holmes, supra note 103, at 14 n.50.
188. See Minn. Stat. § 273.74(4) (1980); note 167 supra and accompanying text.
strict or use the excess tax increment in the manner set out under the 1979 Act.

3. Limitation on the Use of Tax Increments

Tax increments must be spent according to the TIF plan for the district. They also must be spent according to the uses defined in the various statutes authorizing the use of TIF. One problem still remains under this limitation on the use of tax increments. It is possible under the definition of a "housing project" and under the definition of a "housing development project" to use TIF to build fire stations, city halls, park buildings, or other facilities for community, health, recreational, or welfare purposes. These types of buildings would be tax exempt and thus would generate no property tax. If the property had previously been taxable, its conversion to tax-exempt property would deny the taxing jurisdictions the right to receive any tax from the parcel. This would defeat the "but for" principle because taxing jurisdictions would suffer a loss of property-tax revenues. An exception to this would be the mere replacement by the authority of a tax-exempt facility that had been removed to accommodate the development.

4. Phasing Requirement

As an added protection for bondholders, property-tax payers, the sponsoring authority, or the municipality, the 1979 Act requires phasing of a project if no agreements for the development or redevelopment of the property exist:

No more than 25 percent, by acreage, of the property to be acquired within a redevelopment district, or ten percent, by acreage, of the property to be acquired within a housing or economic development district,

189. See Minn. Stat. § 273.75(4) (1980).
190. The purposes and uses for tax increments are as follows:
The revenues shall be used solely for the following purposes: (a) to pay the principal of and interest on bonds issued to finance a project; (b) by a rural development financing authority for the purposes stated in section 362A.01, subdivision 2, by a port authority or municipality exercising the powers of a port authority to finance or otherwise pay the cost of redevelopment pursuant to chapter 458, by a housing and redevelopment authority to finance or otherwise pay public redevelopment costs pursuant to chapter 462, by a municipality to finance or otherwise pay the capital and administration costs of a development district pursuant to chapter 472A, by a municipality or redevelopment agency to finance or otherwise pay premiums for insurance guaranteeing the payment of net rentals when due under the project lease or to accumulate and maintain a reserve securing the payment when due of the principal of and interest on the bonds pursuant to chapter 474. These revenues shall not be used to circumvent existing levy limit law.

Id.

191. See id. § 462.421(12).
192. See id. § 462.421(25).
as set forth in the tax increment financing plan, shall at any time be owned by an authority as a result of acquisition with the proceeds of bonds issued pursuant to section 273.77 without the authority having prior to acquisition in excess of the percentages concluded an agreement for the development or redevelopment of the property acquired and which provides recourse for the authority should the development or redevelopment not be completed.\textsuperscript{194}

In the past, authorities have acquired large areas of TIF districts and held the property for several years before any development took place.\textsuperscript{195} Once the property is owned by a public agency it becomes tax exempt. Bonds generally are sold to finance the acquisition and clearance of the property. Since no taxes are being collected from the property, there is no increment available to make bond payments. This frequently overlooked problem was created when the authority held large parcels of land. Because the property became tax exempt, the school districts, counties, and other taxing jurisdictions received no property tax.\textsuperscript{196} The phasing requirement was included in the 1979 Act to protect all parties. Despite its prophylactic purpose, the phasing requirement has been criticized on two counts. First, by phasing the acquisition the authority may be forced to pay inflated prices for parcels purchased during later stages of the development. This generally can be controlled through the use of purchase options. Second, the phasing requirement is tied to the acquisition of property not to the sale of bonds that finance the acquisition. Once general obligation bonds\textsuperscript{197} are sold, the obligation to pay interest is incurred whether or not the proceeds are used to acquire property and begin development. If no development is forthcoming, no tax increment will be generated to cover the bond costs. To prevent the possibility of an increase in property taxes to cover these costs, the problem should be anticipated and plans should be made to cover the bond costs through investment of the bond proceeds or through a staggered sale of the bonds to correspond with the phasing of the project. If revenue bonds\textsuperscript{198} are used, the problem does not arise as they can only be paid by funds generated by the project. To prevent high interest rates or the potential of a default on the repayment of the revenue bonds, however, careful planning is still a necessity.

\textsuperscript{194} Minn. Stat. § 273.75(5) (1980).
\textsuperscript{196} See Minn. Stat. § 273.76(1) (1980).
\textsuperscript{197} See notes 236-39 infra and accompanying text.
\textsuperscript{198} See notes 241-44 infra and accompanying text.
5. "Knock-Down" Provision

The "knock-down" provision of the 1979 Act is considered "the most significant restriction added to the tax increment law by those who felt the tool had been abused under prior law." The provision eliminates from the original assessed value any parcel in a TIF district where no demolition, rehabilitation, renovation, or other site preparation has taken place within five years from the date of certification. This prevents an authority from capturing the inflationary increment on property that is not being physically improved. The provision also limits the use of TIF for improvement of public utility service when the surrounding property is not physically improved, although it does not prevent the use of tax increments to finance other types of public improvements. As a result of the requirements imposed by the knock-down provision, smaller TIF districts containing only those parcels that will actually be improved will be planned.

Although the knock-down provision controls a prior abuse of TIF, it has also provided a new and potentially more dangerous loophole. Once a parcel is removed from the original assessed value of a TIF district under the knock-down provision, an authority can acquire it and remove the buildings. If this is done before adding the parcel back into the original assessed value of the district, the authority will create an inflated increment by having removed the assessed value attributable to the buildings from the base value. Any modification of a TIF district should be carefully monitored to prevent this abuse.

D. Section 273.76: Computation of Tax Increment

To compute the tax increment generated by improvements on property in a TIF district, an original assessed value or base value must be established. Certification of the original assessed value by the auditor of the county where the district is situated is done after municipal approval of the TIF plans. The original assessed value is adjusted each year to reflect any increase or decrease resulting from a change in the tax-exempt status of property within the district, reduction or enlarge-
ment of the district, or inclusion of the assessed valuation for prior planned private improvements.207 When tax-exempt property becomes taxable, the amount to be added to the original assessed value of the district

shall be equal to the assessed value of the real property as most recently assessed pursuant to section 273.18208 or, if that assessment was made more than one year prior to the date of title transfer rendering the property taxable, the value which shall be assessed by the assessor at the time of such transfer.209

This section of the 1979 Act prevents tax-exempt properties, which lose their tax-exempt status, from being added into the original assessed value at a taxable value of zero. Prior to 1979, the amount added to the original assessed value was the taxable value at the time of initial certification of the TIF district.210 For tax-exempt properties the taxable value at the time of the initial certification was zero. Now the taxable value is the most recently assessed value of the property pursuant to Minnesota Statutes section 273.18.211 If the provision ended at this point, it would have succeeded in correcting a major problem of the old TIF laws but the legislature added one further requirement. If the assessment of the tax-exempt property pursuant to section 273.18 is made more than one year prior to the date of title transfer rendering the property taxable, the value included in the original assessed value is the assessed amount at the time the title is transferred.212 This gives a more accurate property valuation where schools, churches, and similar types of property are converted to taxable uses. At the same time it unfortunately creates the potential for great abuse when the property has been tax exempt by virtue of its ownership by the developing authority. In the latter situation, an authority can acquire property, thereby making it tax exempt, and remove its value from the original assessed value. The authority usually acquires property to clear the buildings and prepare the site for sale to private developers. If the transfer to the private developer takes place more than one year after the last assessment, the property will be reassessed at the time of the transfer.213 Thus, the amount added back into

208. In every sixth year after the year 1926, the county auditor shall enter, in a separate place in the real estate assessment books, the description of each tract of real property exempt by law from taxation, with the name of the owner, if known, and the assessor shall value and assess the same in the same manner that other real property is valued and assessed, and shall designate in each case the purpose for which the property is used.

Id. § 273.18.

209. Id. § 273.76(1).


211. See note 208 supra and accompanying text.

212. See Minn. Stat. § 273.76(1) (1980); note 209 supra and accompanying text.

the base value, if the buildings on the parcel have been removed, will be reassessed property value of a vacant parcel of land. The taxing jurisdictions lose the property-tax value of the cleared buildings for the length of the TIF project, ten to twenty-five years, and the authority receives an inflated increment by having removed the value of the cleared buildings from the frozen base value of the TIF district. The result may not be substantial if the cleared buildings were of little value and the land has increased in value because of the redevelopment.

At present, real property subject to taxation is reappraised at least once every four years.214 If the original assessed value of a TIF district is certified using an assessed value determined three or four years earlier, the taxing jurisdictions will not only be denied the increase in property taxes caused by new development, but they will also lose the increase that occurred during the previous years. To prevent this problem and the potential abuse created by authority-owned tax-exempt property, another method of establishing the original assessed value of a TIF district should be considered. If the 1979 Act required all property (taxable and tax exempt) in a TIF district to be reassessed at the time the original assessed value of the district property is certified, then the taxing jurisdictions would receive taxes reflecting the most recent property values. When tax-exempt property becomes taxable, the original assessed value would be increased by an amount assessed at the time of district certification. This prevents property rendered taxable by the development from being added to the base at zero value. This method also protects taxing jurisdictions from losing the taxable value of buildings when land is cleared by an authority and sold to a private developer more than a year after the parcel's last assessment.

The 1979 Act requires that an authority state in its TIF plan the portion of the captured assessed value it intends to retain.215 If an authority chooses to retain only a portion of the increment, the remainder will be distributed among the affected taxing jurisdictions.216 The option of returning part of the increment to the affected taxing districts existed in only one of the six prior laws.217 Its inclusion in the 1979 Act should encourage careful financial planning for TIF districts.

Under the 1979 Act, the governing body can choose one of two methods for computing a TIF district's contribution to the fiscal disparities pool.218 The fiscal disparities law,219 applicable only in the metropolitan area,220 requires every affected municipality to make a contribution of

214. See id § 273.01.
215. See id § 273.76(2)(b).
216. See id § 273.76, subd. 2(a)(2).
217. See id § 472A.07(3) (Development District Act).
218. See id § 273.76(3).
220. See note 155 supra and accompanying text.
forty percent of its net growth in commercial and industrial assessed valuation to the regional pool.221 Under the first method the governing body can permit the TIF authority to retain 100% of the increment.222 The contribution that the TIF district would make to the regional pool is collected from the commercial and industrial properties outside the district. The second method requires the TIF district to contribute its share to the fiscal disparities pool thereby reducing the district’s increment.223 In either case, the total contribution from the municipality is the same. Prior to the 1979 Act there was no consistency between the TIF laws and the fiscal disparity law. Housing and redevelopment authority projects were exempt from the fiscal disparities contribution whereas development districts were heavily burdened.224

The 1979 Act authorizes, but does not require, the county assessor to increase the base value of a TIF district by the assessed valuation of improvements within the district for which a building permit was issued during the eighteen months preceding approval of a TIF plan.225 Previous TIF laws were criticized for permitting the expansion of districts to include prior planned improvements.226 The inclusion of prior planned improvements in a district is a violation of the “but for” justification227 for TIF since prior planned improvements were initiated without reliance on TIF redevelopment. It denies taxing jurisdictions taxes generated from activity unrelated to the TIF district. Inclusion or exclusion of these improvements in the base value is still within the discretion of the county auditor.228 Hennepin County’s proposal would remove all discretion by requiring an increase in the base value of a TIF district equal to assessed valuation of improvements of more than $10,000 for which a building permit was issued.229

A potential risk with the use of TIF is the possibility, even likelihood, that the legislature will change the percentage of fair market value which is the equivalent to assessed value, against which mill rates are applied, and thus cause an increase or decrease in the assessed valuation.230 A decrease in the percentage of fair market value could adversely affect a

221. See MINN. STAT. § 473A.08(2)(a) (1980).
222. See id. § 273.76(3)(a).
223. See id. § 273.76(3)(b).
224. See J. Holmes, supra note 103, at 22-24 n.78.
225. See MINN. STAT. § 273.76(4) (1980).
227. See notes 147-50 supra and accompanying text.
228. See MINN. STAT. § 273.76(4) (1980).
230. Changes in the percentage of fair market value of real property have occurred frequently as illustrated by the following recent statistics: “[P]rior to 1978 assessed value of urban homesteads equaled 25% of market value. In 1978 this was changed to 22% and in 1979 it was again changed, this time to 18% for 1979 and 17% for 1980.” J. Holmes, supra note 103, at 28-29 n.82.
TIF district. Less captured assessed value would result in less money to meet the bond obligations. To reduce the impact of this kind of change, the 1979 Act mandates that any increase or decrease be applied proportionately to the original assessed value and the captured assessed value. This clause also assures taxing jurisdictions that they will share proportionately in any increase in the assessed valuation.

A 1980 amendment to the 1979 Act allows a sponsoring authority to enter into a recordable written assessment agreement with a private developer to establish a minimum market value for a specified period of time for the land and the completed improvements. The minimum market value is a reasonable estimate based on the plans and specifications of a developer. The written assessment agreement serves two purposes. First, it assures the sponsoring authority that the land and the proposed improvements will, upon their completion, be assessed at a certain level. Prior to the amendment, assessors could estimate a reasonable market value based on the plans and specifications, but they had no legal method to guarantee a level of valuation. Second, the agreement assures the authority of an adequate increment to meet the bond obligations created to finance the public costs of a TIF district. The result is a shift of the risk from the sponsoring authority to the private developer. Although the assessment agreement provides a legal remedy for an authority if a developer's project fails to produce an adequate increment, it does not completely remove the risk unless the developer has insurance to cover all contingencies.

E. Section 273.77: Tax-Increment Bonding

The 1979 Act authorizes the issuance of three types of bonds to finance TIF districts. A municipality may issue general obligation bonds to finance expenditures by the municipality or an authority within the jurisdiction of the municipality in a TIF district. If the tax increment generated from the district is inadequate to repay the bonds, the bondholders can look to the full faith and credit of the issuing municipality.

234. The statute is ambiguous on this point. The written assessment agreement establishes the minimum market value upon completion of the improvements. The agreement, however, is also intended to protect the authority if a developer fails to complete a project. To avoid any ambiguity the agreement should specify a date on which the minimum market value will attach whether or not the project is completed. See J. Holmes, supra note 103, at 30 n.88.
235. See id. at 29 n.83.
236. See Minn. Stat. § 273.77(a)-(c) (1980).
237. See id. § 273.77(a).
for their payment.238

General obligation bonds also may be issued by the sponsoring author-
ity when the municipality and the authority are not the same entity.239
These bonds are backed by the tax increment and the funds and prop-
erties of the issuing authority. They are not, however, a debt of any munic-
ipality and in no case shall a municipality be liable for their repayment.240

The third type of bonds that may be sold to finance a TIF district are
revenue bonds.241 These are issued by the sponsoring authority and are
payable solely from the revenue derived from the TIF district. “The
bonds may be further secured by a pledge and mortgage of all or any
portion of the district in aid of which the bonds are issued and such cove-
nants as the authority shall deem by such resolution to be necessary and
proper to secure payment of the bonds.”242 The authority issuing the
revenue bonds is not subject to any liability nor does the authority have
the power to obligate itself to pay the bonds.243 This prevents the munic-
ipality from paying any default out of a moral obligation.244

Until the passage of the 1979 Act, most TIF districts were funded with
general obligation bonds. Because general obligation bonds pay lower
interest than revenue bonds they are more attractive to the issuing au-
thority. Moreover, since general obligation bonds are secured by the
funds and property of the issuer they are also attractive to the bond pur-
chaser. To encourage the use of revenue bonds and reduce the risk to
taxpayers outside the TIF district, the 1979 Act contains no interest limi-
tation, permits private negotiated sales, and does not limit discount.245
It remains to be seen whether the use of revenue bonds for expenditures
in TIF districts will increase. These bonds are not “included for the pur-
poses of computing the net debt of any municipality.”246 Historically,
bonds that are repayable from dedicated revenue sources other than the
general tax revenue of a municipality have not been included in the mu-
nicipal debt limitation.247 Thus, when revenue bonds are used to finance
a TIF district, they would be exempt from the municipal debt limitation.

General obligation tax-increment bonds are payable from two sources,
the tax increment and the general revenue of the issuing authority. These
bonds are therefore treated by the 1979 Act as revenue or assess-

238. See id. § 475.67(3).
239. See id. § 273.77(b).
240. See id.
241. See id. § 273.77(c).
242. Id.
243. See id.
244. See J. Holmes, supra note 103, at 33 n.101.
245. See id. at 33 n.99.
246. MINN. STAT. § 273.77 (1980).
247. See J. Holmes, supra note 103, at 31 n.91.
ment bonds, and are exempt from the municipal debt limitation. They are also excluded from the statutory referendum requirements so long as the municipality makes a finding that a minimum of twenty percent of the principal and interest will be paid from the tax increment.

The exclusion of tax-increment bonds from municipal debt limitations and from referendum requirements allows a municipality a chance to overextend itself. The Hennepin County bill proposes to require approval by voters of the municipality at a referendum before tax-increment bonds are issued.

VII. CONCLUSION

With the uncertainty over the continued availability of federal and state funds, TIF has become a valuable redevelopment tool for municipalities. TIF allows local control of development projects without requiring large outlays of capital and, since the projects are developed locally, there is less red tape in the process. Despite the advantages, the use of TIF is not trouble free and all consequences of its use should be examined in developing a project.

The 1979 Act is significant because it establishes a uniform set of standards and procedures for all TIF districts in Minnesota, regardless of the type of sponsoring authority. As a result of the 1979 Act, everyone involved in the development of a TIF district, from the residents of the municipality to the planners, developers, and city council members, has a clearer understanding of the favorable and unfavorable consequences of using this financing method. Through public hearings, annual reports, and plan modification procedures the 1979 Act requires greater public disclosure than the old TIF laws. The 1979 Act also fosters better predevelopment planning by requiring a comprehensive plan for each TIF district. Past problems such as enlarging districts to include new development, allowing vacant land to sit for long periods of time because of incomplete planning with the developer, and declaring TIF districts, collecting an inflationary tax increment and then spending this money for administrative expenses when no development is occurring, are tightly controlled through the use of staging requirements, rollover, and knockdown provisions. The 1979 Act also shifts more of the risk from the mu-

248. See id.
249. See id. at 31 n.94.
250. See Hennepin County Bill § 8 (1981); notes 89-90 supra and accompanying text.

The requirement of a reverse referendum has also been proposed. Once the governing body of the municipality approves a TIF district, the voters would have 30 days in which to submit a petition signed by voters equal in number to ten percent of the votes cast in the last general election. The petition would request a referendum to approve the use of TIF for a project. Until such approval by a majority of the voters is received in a general or special election, the TIF district shall not be certified. S.F. 635, § 5(3)(a), 73d Minn. Legis., 1981 Sess.
municipality to the private developer. For example, if a developer fails to complete a project, they can still be held liable for the tax increments based on an assessment agreement.

Despite the improvements of the 1979 Act, problems still exist with the use of TIF. There are several hidden costs to taxpayers outside the TIF district. The first is caused by the retention of the inflationary property tax increment by the TIF district. TIF is justified on the premise that "but for" the use of TIF, no redevelopment and no resultant increase in property-tax revenues would occur. In times of high real estate inflation the taxable value of most properties increases producing additional property tax revenue. Under the 1979 Act this inflationary increment is retained by the TIF district instead of being returned to the taxing jurisdictions. It can create enough extra security in the financing of a TIF district to encourage the approval of an otherwise borderline project. Until now the loss of the inflationary increment caused little concern, but, with the severe cutbacks in state and federal funding of basic services, this lost inflationary revenue becomes significant. An example is the school aid formula. In the past, state funds subsidized schools that were receiving lower amounts of property tax revenues. Now, the state school budget has been cut so that all schools will receive less state aid or taxpayers will be required to pay more to subsidize the poorer schools. In either case, the residents outside a TIF district are forced to subsidize the cost of redeveloping the district.

A second hidden cost results from the loss of property-tax revenues from property that becomes tax exempt through public ownership. The original assessed value of a TIF district is readjusted periodically to remove the value of tax-exempt properties. This means the taxing jurisdictions are receiving less property-tax revenue than they did prior to the TIF district's creation. The taxing jurisdictions never recover this lost revenue, and they do not benefit from the increase in property-tax revenues generated by any new development until the completion of the TIF district.

The final hidden cost arises from the application of the fiscal disparities law to the seven-county metropolitan TIF districts. The district authority can choose to retain 100% of the tax increment and thus force commercial and industrial properties outside the TIF district to contribute the difference.

Other economic changes may cause problems for municipalities using TIF. The 1979 Act allows long bonding periods that encumber tax revenues for up to twenty-five years. A municipality that is locked into these long bonding periods may find itself unable to respond to other equally important uses for these tax revenues. Also, fluctuations in the economy are difficult to predict and a municipality may be caught in a situation in which escalating costs and interest rates make the anticipated development impossible. Another significant concern is the possible change in
the classification of real property and the local mill rate. Such a change may cause a variance in the amount of property tax revenue generated. Also, property tax referendums like Proposition 13 in California could threaten the use of TIF and jeopardize present as well as future TIF districts.

Another problem caused by the use of TIF is the kind of development it encourages. Because TIF is viewed as an economic development tool, the projects using TIF are judged by their economic feasibility. Concern over eliminating blight or replacing low- to moderate-income housing or small businesses often seems to be secondary to the municipality's desire to increase the tax base of the city and assure the success of the TIF district. There is no incentive to build low- to moderate-income housing or to replace small businesses because they will not produce as large a tax increment as other types of development. Sometimes, areas are planned with inappropriately large densities to ensure that development costs are covered. This calls into question the basic "but for" premise of TIF. The determination becomes an issue of degree. In all instances, given a long enough period of time, it is likely that some form of development will occur in an area. The question is at what point the municipality is justified in spending public funds to initiate this development.

There are other issues involving the use of TIF that should not be overlooked but which are beyond the scope of this Note. One example is the ability of an authority to use tax increments to fund and maintain a reserve to secure the payment of principal and interest on industrial revenue bonds. Another example is the rapid increase in the use of tax-exempt revenue bonds to finance private investments. Since the interest received from municipal bonds is tax exempt to the investor, the federal treasury and thus the individual taxpayer ends up subsidizing private development.

Finally, it should be noted that there are alternatives to the use of TIF. A municipality can also use, or could use, in conjunction with TIF, special assessments, general obligation bonds issued after a public referendum, tax abatements, or tax deferrals.