



HF 4281 / SF 4086

Tax Increment Financing (TIF)

Clarifications Summary

OVERVIEW

This bill addresses various ambiguities in current TIF law in order to improve oversight and the ability of TIF authorities to understand and comply with the TIF Act. In doing so, it removes, amends, or adds various provisions to best achieve those goals. It covers three areas of TIF law:

- 1) administrative expenses,
- 2) pooling (the expenditure of increment for activities deemed "outside" of a TIF district), and
- 3) violations.

SECTION 1

Section 1 amends the definition of administrative expenses. Under current law, administrative expenses are defined as all expenses other than a list of development expenses. The generality of the current definition has given rise to many questions over the years about whether specific items are administrative expenses. The proposal seeks to offer more guidance in the definition while retaining an appropriate level of flexibility. It expands the definition to identify a non-exhaustive list of items that are included as administrative expenses, while continuing to identify items that are not administrative expenses. The lists clarify the treatment of a few specific items, e.g., amounts used to provide for the usual and customary maintenance and operation of properties purchased with tax increment are defined as administrative expenses.

SECTION 2

Section 2 adds a definition for a "pay-as-you-go contract and note," which currently is a term used in many places but defined nowhere. The treatment of "PAYG notes" is addressed in the pooling changes and this provides a definition to assist those clarifications.

SECTION 3

Section 3 amends the administrative expense limit in the TIF Act. First, it adds some clarifying language that addresses how the limit should be calculated when some of the total increment received subsequently has been returned to the county. Second, it provides a partial exemption from the administrative expense limit when lease proceeds, (which are defined as tax increment when a property is purchased with tax increment), are used for the customary maintenance and operation of properties purchased with TIF. This ensures that authorities can maintain and operate properties without hitting a limit designed for broader administrative expenses.

SECTION 4

Section 4 corrects a grammatical flaw in current law and clarifies that expenditures for administrative expenses are authorized uses of tax increment under the general rule for how tax increment may be used.

SECTION 5

Section 5 amends the overall pooling limit, which generally limits the percentage of received tax increment that may be spent on activities deemed to be outside the district to 20 or 25 percent, although an extra ten percent may be used for affordable housing if such a choice (known as the “2(d) election”) is expressed in the TIF plan. The proposal makes one minor technical change and then adds a new paragraph to clarify how the pooling limit should be calculated when some received tax increments have been returned to the county.

SECTION 6

Section 6 amends the Five-Year Rule. The Five-Year Rule generally requires that new expenditures or obligations incurred after the first five years must fit within pooling limits, even if the activities tied to the expenditures/obligations are located in the district. The proposal includes technical changes to delete an obsolete reference and make other clarifying changes. It also deletes a reference to pooling that is permitted under the 2(d) election for affordable housing because its use here creates confusion and its original purpose in being referenced here is better addressed by the changes to the Six-Year Rule.

SECTION 7

Section 7 includes a number of changes to the Six-Year Rule. First, under current law, in addition to the cumulative (i.e., over the life of the district) pooling limit, the Six-Year Rule includes an annual pooling limit that starts in year six. The proposal removes this annual restriction because it has been difficult for authorities to understand, difficult to monitor and oversee, and is of questionable value beyond the overall pooling limit. Second, under current law, the Six-Year Rule generally requires a district to be decertified when sufficient increment is collected to pay in-district obligations. The proposal clarifies how this provision should work. It replaces ambiguous language about “setting aside” increment with a calculation that provides more certainty. It also addresses how pay-as-you-go contracts and notes should be treated. These types of obligations generally are satisfied only through pledged increments from specific parcels as the taxes on those parcels are paid every six months. This has created confusion around whether a district should be decertified when other, non-pledged increment is of a quantity that would satisfy the pay-as-you-go (and all other applicable obligations). The proposal adds a new requirement that allows the district to defer decertification but to remove those parcels that’s increments are not pledged to satisfying an outstanding obligation. The proposal includes a grandfather provision for any existing bonds for pooling expenditures so that they are not impacted by the changes. The proposal also clarifies the timing and process for decertifying districts under this provision. Lastly, there is an added provision intended to prevent the changes to the Six-Year Rule from impeding an authority's ability to use the extra pooling for affordable housing provision under the 2(d) election.

- SECTION 8** **Section 8 corrects a technical, mathematical flaw in the language** that allows pooling to address deficits caused by prior tax reforms. (The definition of a deficit is meant to be one amount minus the sum of two other amounts, but it currently is written as the first amount, minus the second amount, plus the third amount.)
- SECTION 9** **Sections 9 to 11 make technical amendments to provisions in the violations section** of the TIF Act.
- Section 9 deletes an obsolete sentence in the provision** addressing the improper receipt of increment that refers to duration limits. It seems to have been based on an assumption that is not consistent with how current-day processes have evolved.
- SECTION 10** **Section 10 streamlines language** that is an artifact of old changes.
- SECTION 11** **Section 11 amends a provision addressing expenditures in violation of various restrictions** to properly cover all such violations. The current language refers to the section of the TIF Act that contains most limitations. The proposal expands the reference to the full TIF Act, as there are limits in other sections