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2



3

OVERVIEW

- Changes enacted in Laws 2023, chapter 64, articles 8 and 9
- OSA-proposed changes covered three areas:
 - Administrative expense definition rewritten; limit partially loosened
 - Violation statute (technical) clarifications
 - Pooling laws significantly changed (annual limit removed, others recrafted)
- Other changes & special laws



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4

MISCELLANEOUS GENERAL LAW CHANGES

- Definition of Pay-As-You-Go Contract and Note (2023 Laws, ch. 64, art. 9, sec. 2)
- Minn. Stat. § 469.174, subd. 30 defines “pay-as-you-go contract and note” as a written note or contractual obligation that:
 - Evidences an authority’s commitment to reimburse a developer, property owner, or note holder for costs of activities (including any interest),
 - Makes reimbursements from tax increment revenues identified in the note as they are received as taxes are paid, and
 - Where the risk of insufficiency is borne by the developer, owner, or note holder



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5

MISCELLANEOUS GENERAL LAW CHANGES

- Reporting requirement change (2023 Laws, ch. 64, art. 9, sec. 3)
 - Only the year – not month and year – of first receipt of increment is required
- Small Cities provisions (2023 Laws, ch. 64, art. 8, sec. 1)
 - Reduces the distance a small city must be from a city of 10,000 or more from 10 miles to 5 miles
 - Note: Based on straight line distance, not miles driven



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6

SPECIAL LAWS

- Hopkins
- Bloomington
- Saint Paul
- Savage
- Duluth
- Ramsey
- Chatfield
- Fridley
- Plymouth
- Shakopee
- West Saint Paul
- Woodbury



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7

ADMINISTRATIVE EXPENSES

- Three changes:
 - Clarified definition of administrative expenses (2023 Laws, ch. 64, art. 9, sec. 1)
 - Clarified calculation of administrative expense limit (2023 Laws, ch. 64, art. 9, sec. 4)
 - Exception to the administrative expense limit (2023 Laws, ch. 64, art. 9, sec. 4)



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8

ADMINISTRATIVE EXPENSES

- Definition of admin expenses:
 - Prior law defined them as “all expenditures of an authority other than [a list]”
 - New law identifies non-exhaustive lists of both things that are and are not admin expenses
 - New law clarifies authority admin expenses (not county administrative costs)



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9

ADMINISTRATIVE EXPENSES

- Admin expenses include:
 - Services of bond counsel, fiscal consultants, and economic dev. consultants
 - Allocated expenses and staff time for administering a project
 - Preparing the TIF plan
 - Negotiating agreements
 - Accounting for segregated funds
 - Annual reporting
 - Monitoring compliance
 - Publication costs for annual disclosures and notices
 - Usual and customary maintenance and operating costs of properties purchased with TIF (incl. necessary reserves for repairs and insurance costs)
 - Costs to prepare a development action response plan (soils districts & hazardous subdistricts)
 - Amounts to pay bonds, interfund loans, or other obligations to the extent those obligations were used for the above



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10

ADMINISTRATIVE EXPENSES

- Admin expenses do NOT include:
 - Amounts to purchase land or buildings "or buildings" was added
 - Amounts paid to contractors or others providing materials and services directly connected with the physical development of the property (including architectural and engineering services and materials and services for demolition, soil correction, and the construction or installation of public improvements) Examples added
 - Relocation benefits
 - Property taxes or payments in lieu of taxes New
 - Amounts to pay principal or interest on, fund a reserve for, or sell at a discount TIF bonds or other obligations for the above costs Clarified



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11

ADMINISTRATIVE EXPENSES

- Admin expense limit:
 - Separate limits in statute for older/newer districts
 - Districts with a CRD before 8/1/2001: limit is 10% of total estimated expenditures authorized in TIF plan or total tax increment expenditures for the project, whichever is less
 - Districts with a CRD on/after 8/1/2001: limit is 10% of total estimated expenditures authorized in TIF plan or total tax increments, whichever is less
 - Total tax increments here include only the distributions of tax increments collected by the county auditor and TIF credit reimbursements; other tax increment sources not part of this calculation
 - However, limit applies to uses of all tax increment revenues



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12

ADMINISTRATIVE EXPENSES

- Admin expense limit:
 - Ten percent clarification, where limit is the lesser of:
 - 10% of total expenditures authorized in TIF plan, or
 - 10% of (not 100% of) total project expenditures (older districts) or total (clause 1) tax increments (newer districts)
 - Calculate limit, where total project expenditures or total tax increments are net of amounts returned to the county auditor as:
 - Excess increment
 - Distributions of increments after decertification (see Six-Year Rule)
 - Remedies for improperly received increment

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Preemptive clarification, have not seen confusion

13

ADMINISTRATIVE EXPENSES

- Admin expense limit example:
 - Newer district (limit = lesser or 10% of plan auth costs or 10% of total increments)
 - Total estimated expenditures authorized in TIF plan = \$250,000
 - Total tax increments received = \$210,000
 - Returned \$15,000 to remedy increment received for not decertifying in a timely manner
 - Total tax increments received net of returned increments = \$195,000
 - Limit is \$19,500 (10% of \$195,000 is lesser than 10% of \$250,000)
 - \$24,000 of admin expenditures = \$4,500 violation

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14

ADMINISTRATIVE EXPENSES

- Admin expense limit exception:
 - The usual and customary maintenance and operating costs (incl. necessary reserves for repairs and insurance costs) of properties purchased with TIF are administrative expenses
 - Lease proceeds from the property are generally the appropriate source for such costs (but these lease proceeds are tax increments)
 - The use of lease/sale proceed increments for these costs are NOT subject to the limit

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15

ADMINISTRATIVE EXPENSES

- Admin expense limit example:
 - Newer district
 - Total estimated expenditures authorized in TIF plan = \$250,000
 - Total tax increments received = \$210,000 (\$42,000 of lease proceeds are not part of this measure)
 - Total tax increments received net of returned increments = \$195,000
 - Limit is \$19,500 (10% of \$195,000 is lesser than 10% of \$250,000)
 - \$24,000 of admin expenditures but \$10,000 of this is lease proceeds used for maintenance of property so only \$14,000 is subject to limit
 - No violation (\$14,000 < \$19,500)



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16

ADMINISTRATIVE EXPENSES

- SUGGESTION / IMPLICATION:
 - Track, document, and report all administrative expenses
 - Keep separate track the use of lease proceeds for maintenance/operating costs
 - Monitor admin expenses and limits (violations are evaluated upon/after decertification so may be over the limit initially as long as within limits by the end)
 - Remedy any violations of the limit by returning/paying an amount equal to the violation to the county auditor (often seen if increment is less than projected)
 - Use comments on reporting forms to explain remedies/issues

Reporting forms may soon distinguish this



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17

VIOLATION STATUTES

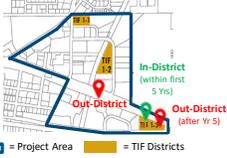
- Three largely technical clarifications (2023 Laws, ch. 64, art. 9, sec. 10-12):
 - Deletes an obsolete sentence in provision for remedying improper receipt of increment
(It referenced duration limits in a manner inconsistent with actual practice/conventions.)
 - Simplifies language regarding holds on increment distributions for failing to report
(Extra language was a leftover relic from a prior change.)
 - Corrects/expands a reference in provision for remedying improper expenditures of increment
(It had cited only the main limitations section but other sections contain limits. Cites the full TIF Act.)



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18

POOLING



“Pooling” is the expenditure of increment outside the district but within the project area

Overall Pooling Limit = 25% (Redev Dists), 20% (Others) but can be increased by 10% for housing purposes

Five-Year Rule defines costs obligated after the first five as being “out-district” (must fit within pooling limit)

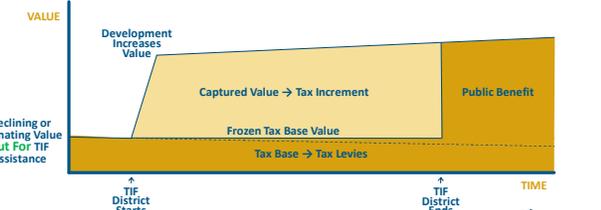
Six-Year Rule requires annual use of in-district share for in-district obligations, and requires decertification when in-district costs and obligations are paid

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19

EARLY DECERTIFICATION



Declining or Stagnating Value But For TIF Assistance

Development Increases Value

Captured Value → Tax Increment

Frozen Tax Base Value

Public Benefit

Tax Base → Tax Levies

TIF District Starts

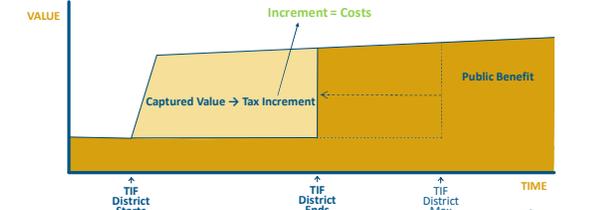
TIF District Ends

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20

EARLY DECERTIFICATION



Increment = Costs

Captured Value → Tax Increment

Public Benefit

TIF District Starts

TIF District Ends Early

TIF District Max Duration

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21

POOLING

- Pooling law changes:
 - Overall pooling limit (2023 Laws, ch. 64, art. 9, sec. 6)
 - Five-Year Rule (2023 Laws, ch. 64, art. 9, sec. 7)
 - Six-Year Rule (2023 Laws, ch. 64, art. 9, sec. 8)
 - Pooling for deficits (2023 Laws, ch. 64, art. 9, sec. 9)



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POOLING

- Pooling for Deficits:
 - Deficit calculation clarified: $\$10 - (\$2 + \$3) = \5 NOT $\$10 - \$2 + \$3 = \11

deficit or expenditure is authorized by the tax increment financing plan for the district from which the transfer is made. A deficit in the district for purposes of this subdivision means the lesser of the following two amounts:

(1) ~~(i)~~ the amount due during the calendar year to pay preexisting obligations of the district; minus the sum of

~~(ii)~~ the total increments collected or to be collected from properties located within the district that are available for the calendar year including amounts collected in prior years that are currently available; plus

~~(iii)~~ total increments from properties located in other districts in the municipality including amounts collected in prior years that are available to be used to meet the district's obligations under this section, excluding this subdivision, or other provisions of law; or

(2) the reduction in increments collected from properties located in the district for the calendar year as a result of the changes in classification rates in Laws 1997, chapter 231, article 1; Laws 1998, chapter 389, article 2; and Laws 1999, chapter 243, and Laws 2001, First Special Session chapter 5, or the elimination of the general education tax levy

23

OVERALL POOLING LIMIT

- Two technical language clarifications (not meant to be changes)
 - Clarifies that revenues used to pay county admin costs (like those used to pay county road costs) are not part of the limit calculation
 - Minor wording clarification
 - the pooling percentage for purposes of the preceding sentence is 20 percent. The revenues derived from tax increments paid by properties in the district that are expended on costs under section 469.176, subdivision 4b, paragraph (b) may be deducted first before calculating the percentages that must be expended within and without the district.
 - (b) In the case of a housing district, a housing project, as defined in section 469.174, subdivision 11, is an activity in the district.
 - (c) All administrative expenses are considered to be expenditures for activities outside of the district, except that if the only expenses for activities outside of the district under this subdivision are for the purposes described in paragraph (d), administrative expenses will be considered as expenditures for activities in the district.



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OVERALL POOLING LIMIT

- New paragraph (f) clarifies how limit is calculated
- Example: (redevelopment district: at least 75% in, no more than 25% out)
 - Collect \$1,000,000 over life of district
 - Plan authorized \$975,000 of TIF expenditures
 - Return excess increment of \$25,000
 - Pool \$250,000 on out-district activities
 - Spend \$675,000 on in-district activities
 - Return \$50,000 of unneeded increment



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OVERALL POOLING LIMIT

- Prior law ambiguities
- Example:
 - Collect \$1,000,000
 - Plan authorized \$975,000
 - Return excess increment of \$25,000
 - Pool \$250,000
 - Spend \$675,000 in-district
 - Return \$50,000

Is the limit based on this total even if it exceeds the plan amount?

Is the return of excess increment considered in-district or pooling?

Note: This could be no problem or a \$75K violation. Compliance and oversight are challenging.

Is this OK because it did not exceed 25%?

Or is this a violation because less than 75% was spent in-district?

What about other returns of increment for expenditure violations, improper receipt, or new requirements?

Is the return of unneeded increment considered in-district or pooling?



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26

OVERALL POOLING LIMIT

- Overall limit will be determined after excluding:
 - Returns of excess increment
 - Returns of any increment received after decertification because tax calculations were not stopped in time
 - Payments/returns for any tax increment received in violation (e.g., increments received for years after decertification should have occurred)
- In other words: it is based on properly received and authorized increment



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OVERALL POOLING LIMIT

- Any returns of unneeded or surplus increment are considered to be expenditures for activities in the district
- Payments to remedy expenditure violations are not considered in-district uses



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28

OVERALL POOLING LIMIT

- Example:
 - Collect \$1,000,000
 - Plan authorized \$975,000
 - Return excess increment of \$25,000
 - Pool \$250,000
 - Spend \$675,000 in-district
 - Return \$50,000

The limit is based on the net amount after excess is subtracted

Subtracted first, not part of limit calculation

Limit = \$243,750 (25% of \$975K); violation of \$6,250

\$731,250 must be spent in-district so same \$6,250 violation

Considered in-district, so total in-district is \$675K+\$50K=\$725K

Note: The clarifications could be viewed as more "lenient" or "tougher" than assumed, but the goal was greater clarity.



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29

OVERALL POOLING LIMIT

- SUGGESTIONS:
 - Review your TIF districts with these clarifications in mind to determine if pooling issues are present or forthcoming.
 - Remedy any violations and adjust future expenditure plans accordingly.
 - Annually track each district to understand options and stay in compliance.
 - Look for updated Statement of Position or contact us with questions.



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30

FIVE-YEAR RULE

- Five-Year Rule defines “in-” or “out-” district activities (by their timing)
- Prior law:
 - “Revenues derived from tax increments paid by properties in the district are considered to have been expended on an activity within the district under subdivision 2 only if one of the following occurs...” (then a list of various expenditures/actions needing to occur before or within 5 years)

Is it clear that in-district activities only remain in-district activities if the timing is met? Or might one think an out-district activity becomes an in-district activity if the timing is met?



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FIVE-YEAR RULE

- New law:
 - “Revenues derived from tax increments paid by properties in the district ~~that are considered to have been~~ expended on an activity within the district ~~under~~ will instead be considered to have been expended on an activity outside the district for purposes of subdivision 2 ~~only if one of the following occurs unless...~~” (then a list of various expenditures/actions needing to occur before or within 5 years)

Only in-district activities switch to out-district due to timing, not vice versa

Not viewed as a change. Might clarify that early interfund loans for administrative expenses are out-district obligations.



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FIVE-YEAR RULE

- NOTE:
 - Pay attention to what is happening within the five years when identifying in-district vs out-district obligations:
 - Issuance
 - Activities
 - Expenditures



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FIVE-YEAR RULE

- Other changes:
 - Technical language edits for consistency
 - Removes obsolete reference to biotech zones
 - Removes reference to "2(d)" pooling for housing that makes it "in-district"

If 2(d) permits more pooling for housing, why is that also defined as in-district?

Was meant to prevent the Six-Year Rule's early decertification provision from limiting 2(d) pooling for housing

New clarifications address this in the Six-Year Rule



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34

FIVE-YEAR RULE

- SUGGESTIONS:
 - Review your TIF districts to ensure you understand which obligations and expenditures are "in-district" vs "out-district." (In-district obligations will be set as of the Five-Year Rule date.)
 - Annually track in- and out-district expenditures to stay in compliance.
 - Look for updated Statement of Position or contact us with questions.



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35

SIX-YEAR RULE

- Major changes!
 - Eliminates the extra annual pooling limit that began in year six
 - Clarifies the early decertification requirement
 - Clarifies treatment of pay-as-you-go (PAYG) obligations
 - Adds a requirement to remove parcels
 - Grandfathers pre-existing bonds for pooling expenditures
 - Clarifies calculations
 - Addresses decertification procedures and timing
 - Addresses availability of increment for 2(d) housing



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36

THE SIX-YEAR RULE DETAILS

The Six-Year Rule

This video gives an overview of the Six-Year Rule in the Tax Increment Financing (TIF) Act.

Watch on [YouTube](#)

How to Monitor the Six-Year Rule

This instructional video gives an overview of how to track compliance with the Six-Year Rule.

Watch on [YouTube](#)

The Six-Year Rule Tracking Tool

This is a public web-based tool to assist in monitoring compliance with the Six-Year Rule. The tool provides the most current information on the Six-Year Rule and allows users to track compliance for their district. It also provides information on the Six-Year Rule and allows users to track compliance for their district. It also provides information on the Six-Year Rule and allows users to track compliance for their district.

Click here to download the tool.

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37

SIX-YEAR RULE

- Removes the extra annual limitation on pooling
- Prior law:
 - Par. (a) – “In each year beginning with the sixth year [...] if the applicable in-district percent of [tax increment] revenues [...] exceeds the amount of expenditures [for in-district costs under the Five-Year Rule], an amount equal to the difference [...] must be used and only used to pay or defease [in-district obligations under the Five-Year Rule]”
- An annual limit on use of the in-district percentage of increment each year

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38

SIX-YEAR RULE

- Example: (redevelopment district, in-district percentage = 75%)
 - Plan anticipates \$2M of increment, pooling of \$500K
 - Prior to year 14, received \$1M and spent \$900K in-district, pooled \$100K
 - Therefore, no balance of increments entering year 14
 - Receive \$80,000 in year 14
 - Under prior law, could you spend \$40,000 on a pooling expenditure in year 14?
 - No.
 - 75% of each year restricted for in-district (\$80,000 x 75% = \$60,000)
 - 25% could be pooled (\$80,000 x 25% = \$20,000)

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SIX-YEAR RULE

- Six-Year Rule annual restriction seemed to have low awareness
- Violations could often have been avoided by informed timing choices
- Difficult to monitor and oversee (don't often enter year with no balances and the composition of balances can often be unclear)
- Questionable value of the extra restriction
- Eliminated under new law ☺



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40

SIX-YEAR RULE

- Clarifies the early decertification requirement
- Prior law had numerous ambiguities
 - “The district must be decertified and the pledge of tax increment discharged when the outstanding bonds have been defeased and when sufficient money has been set aside to pay, based on the increment to be collected through the end of the calendar year, the following amounts...”

What if there is money to defease a bond but the defeasement hasn't formally occurred?

When is available money "set aside"?

What if you have sufficient money but it isn't obligated in a PAYG note?

When and how is the decertification implemented?



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41

SIX-YEAR RULE

- PAYG Example:**
 - PAYG Note pays developer 90% of Lot C increment until \$450,000 is paid
 - Lot C: \$20K/yr of increment (90% = \$18K/yr = \$450,000 in 25 yrs)
 - Interfund loan for authority costs paid off in Year 10 with increment from lots A&B and their sale proceeds
 - Thru Year 10: \$180K paid on PAYG, \$270K left
 - Lots A&B: \$32K/yr of tax increment (\$24K/yr of in-district increment) will just accumulate (not obligated on PAYG)
 - Thru Year 17: balance of in-district increment (\$168K) exceeds outstanding PAYG balance (\$144K) ... So, decertify?
 - Decertification in year 17 leaves developer \$144k short, while unused increment gets returned
 - Decertification in year 25 means developer is paid and \$384K of unusable in-district increment is accumulated/returned



Authority acquires lots, installs utilities, sells lot C to developer for \$1, and agrees to PAYG note in exchange for developer performing demolition and developing lot C. Lots A&B later sold for other private development.



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SIX-YEAR RULE

- New organization (9 paragraphs):
 - (a) Early decertification requirement now based on revenue calculation
 - (b) Special PAYG & parcel removal provisions
 - (c) Grandfather provision for pooling bonds
 - (d) Defines “applicable in-district percentage”
 - (e) Defines “qualifying pay-as-you-go contract and note”
 - (f) Clarifies determination of cumulative revenues
 - (g) Timing and procedures for required decertifications
 - (h) Clarifies Six-Year Rule does not apply to housing districts
 - (i) Assures that requirements should not limit 2(d) pooling



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SIX-YEAR RULE

- (a) Early decertification requirement:
 - Beginning in year 6 following certification (or year after any Five-Year Rule extension)
 - Must decertify when:
 - The applicable in-district percentage x the cumulative revenues derived from tax increments paid by properties in the district that have been collected through the end of the calendar year
 - equals or exceeds
 - an amount sufficient to pay the following...

No more defeasement or set aside issues; now a revenue benchmark



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SIX-YEAR RULE

- (a) Early decertification requirement:
 - Beginning in year 6 following certification (or year after any Five-Year Rule extension)
 - Must decertify when:
 - The applicable in-district percentage x the cumulative revenues derived from tax increments paid by properties in the district that have been collected through the end of the calendar year
 - equals or exceeds
 - an amount sufficient to pay the following...

75% (redevelopment districts) or 80% (all others)
65% or 70% if 2(d) pooling



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SIX-YEAR RULE

- (a) Early decertification requirement:
 - Beginning in year 6 following certification (or year after any Five-Year Rule extension)
 - Must decertify when:
 - The applicable in-district percentage x the cumulative revenues derived from tax increments paid by properties in the district that have been collected through the end of the calendar year
 - equals or exceeds
 - an amount sufficient to pay the following...

Defined phrase referring to "clause (1)" increments of the definition of increment (see 469.174, subd. 25) = increments distributed by county (includes TIF credits but not interest, sales and lease proceeds, etc.)



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SIX-YEAR RULE

- (a) Early decertification requirement:
 - Must decertify when:
 - Cumulative in-district revenues \geq an amount sufficient to pay the following:
 - (1) any costs and obligations described in subdivision 3, paragraphs (a) and (b), excluding those under a qualifying pay-as-you-go contract and note;
 - (2) any accrued interest on the costs and obligations in clause (1), payable in accordance with the terms thereof; and
 - (3) any administrative expenses falling within the exception in subdivision 2, paragraph (c)

In-district activities per the Five-Year Rule

Excludes in-district PAYG notes (Thus the "when" becomes year 6 if you only have a PAYG note, but paragraph (b) defers the timing and addresses PAYG treatment)

If all pooling is for 2(d) housing, admin expenses are treated as in-district



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SIX-YEAR RULE

- SUGGESTION / IMPLICATION:
 - In year 6*, you will know all in-district obligations
 - And you can calculate the revenue benchmark upon which the district must decertify (ignoring any deferral for a PAYG or special 2(d) provisions)
 - Divide the total in-district obligations by the in-district percentage:
 - Example:
 - Redevelopment district, no election for 2(d) pooling (in-district % = 75%)
 - \$345,000 of in-district obligations (excluding PAYGs)
 - Decertify when: $\$345K / 0.75 = \$460K$ of increment received

*Or the year following an extension of the Five-Year period



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SIX-YEAR RULE

- (b) PAYG provisions:
 - The decertification requirement of par. (a) is deferred until:
 - The end of the remaining term of the last outstanding in-district PAYG note, and
 - Cumulative in-district revenues are sufficient to pay other in-district obligations,
 - But not beyond the maximum statutory duration limit for the district's type



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SIX-YEAR RULE

- (b) PAYG provisions:
 - Beginning when par. (a) would otherwise have required decertification, the authority annually must:
 - Remove parcels that will no longer be pledged/subject to a qualifying PAYG note or other in-district obligation after the end of the year, or
 - Use in-district revenues from those parcels to prepay remaining obligations



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SIX-YEAR RULE

- Examples: (District certified: 6/30/18 | Five-year rule date: 6/30/23 | 6th Year: 2024)
 - Ex. #1 – PAYG (terminates 2/1/32), No other obligations
 - Par. (a) says decertify by end of 2024
 - Par. (b) defers decertification to end of 2032
 - Remove* parcels not subject to PAYG by end of 2024

Parcel removal is only required for districts with a request for certification after May 25, 2023, but it may be wise to remove parcels for older districts

*Or keep and use increment to prepay in-district obligations



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SIX-YEAR RULE

- Examples: (District certified: 6/30/18 | Five-year rule date: 6/30/23 | 6th Year: 2024)
 - Ex. #2 – \$50K Bond (matures 11/1/29), No other obligations, Cumulative in-district % of increments ≥ \$50,000 in 2027
 - Par. (a) says decertify by end of 2027
 - Par. (b) does not apply

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SIX-YEAR RULE

- Examples: (District certified: 6/30/18 | Five-year rule date: 6/30/23 | 6th Year: 2024)
 - Ex. #3 – PAYG (terminates 2/1/32), \$50K Bond (matures 11/1/29), cumulative in-district % of increments ≥ \$50,000 in 2025
 - Par. (a) says decertify by end of 2025
 - Par. (b) defers decertification to end of 2032
 - Remove* parcels not pledged/subject to either the bond or the PAYG by end of 2025
 - Remove* parcels pledged to bond but not subject to PAYG by end of 2029

*Or keep and use increment to prepay in-district obligations 

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SIX-YEAR RULE

- Examples: (District certified: 6/30/18 | Five-year rule date: 6/30/23 | 6th Year: 2024)
 - Ex. #4 – PAYG (terminates 2/1/28), \$100K Bond (matures 9/15/30), cumulative in-district % of increments ≥ \$100,000 in 2026
 - Par. (a) says decertify by end of 2026
 - Par. (b) defers decertification to the time when the in-district share of increments is sufficient to terminate the PAYG and pay all in-district obligations
 - Remove* parcels not pledged/subject to either the bond or the PAYG by end of 2026, and those not pledged on the bond in 2028

*Or keep and use increment to prepay in-district obligations 

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SIX-YEAR RULE

- (b) PAYG provisions:
 - Remove parcels by modification of the TIF plan
 - Notify the county auditor of the removed parcels by the end of the same calendar year
 - Modifications for this purpose do not require the notice, discussion, public hearing, and findings required for approval of the original plan



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SIX-YEAR RULE

- SUGGESTION / IMPLICATION:
 - In year 6*, check for parcel removal requirements and if necessary do the following by the end of the year:
 - Adopt TIF plan modifications as necessary
 - Notify the county auditor
 - Submit a TIF Plan Collection Form for Modified Districts to the OSA (via SAFES)
 - Continue to check annually as circumstances require

*Or the year following an extension of the Five-Year period



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56

SIX-YEAR RULE

NOTE:

If, at any point in the process, the in-district percentage of cumulative increment revenues exceeds what is needed to pay the in-district obligations, consider returning those unneeded/unusable increments as soon as possible.

They are restricted and their use would likely be a violation. Plus, the authority will get its share of redistributions (which will be unrestricted).

Original bill drafts included a requirement to this effect that may be considered in the future.



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SIX-YEAR RULE

- (c) Grandfather provision for pooling bonds:
 - If increment was pledged prior to August 1, 2023, to a pooled bond other than a PAYG note or interfund loan
 - And proceeds of the bond are used solely or in part to pay authorized costs for activities outside the district
 - Decertification under par. (a) or parcel removal under par. (b) shall not apply prior to bond being fully paid or defeased

TIF "bonds" includes PAYGs and interfund loans, but here the focus is on traditional bonds



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58

SIX-YEAR RULE

- SUGGESTION / IMPLICATION:
 - Review your districts to see if this provision applies to any of your districts
 - If you believe you have a bond that fits this grandfather, we would appreciate communication via a comment on the annual reporting form, so we can track it appropriately



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SIX-YEAR RULE

- (d) "Applicable in-district percentage" means the % restricted for expenditures within the district under:
 - Subd. 2(a) – the overall pooling limit – 75% for redevelopment districts, 80% for other districts
 - Subd. 2(d) – the election to pool an extra 10% for affordable housing
 - 80% - districts other than redevelopment districts (with no election)
 - 75% - redevelopment districts (with no election)
 - 70% - districts other than redevelopment districts with a 2(d) election
 - 65% - redevelopment districts with a 2(d) election



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SIX-YEAR RULE

- (e) "qualifying pay-as-you-go contract and note" refers to an **in-district** PAYG note under the Five-Year Rule



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SIX-YEAR RULE

- (f) Clarification of cumulative revenues:
 - Reference to "through the end of the calendar year" includes any final settlement distributions made in the following January
 - Increment for 1st half taxes due May 15 are typically distributed late May-July
 - Increment for 2nd half taxes due Oct. 15 are typically distributed late Nov/early Dec
 - Remaining increment for receipts thru end of Dec (if any) are distributed by Jan 25



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SIX-YEAR RULE

- (f) Clarification of cumulative revenues:
 - Cumulative revenues determined after excluding:
 - Returns of excess increment
 - Payments/returns for any tax increment received in violation (e.g., increments received for years after decertification should have occurred)



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SIX-YEAR RULE

- (g) Timing and procedures for required decertifications:
 - When no PAYG deferral
 - As soon as practical and no later than the January 25 final settlement date:
 - Decertify district by resolution, effective for end of year required under par. (a)
 - Communicate decertification to the county auditor
 - When deferred because of a PAYG
 - By December 31 of the year the PAYG terminates:
 - Decertify district by resolution, effective for end of that year
 - Communicate decertification to the county auditor



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SIX-YEAR RULE

- (g) Timing and procedures for required decertifications:
 - If unable to prevent increment calculations for the year following the effective decertification year, the county auditor may redistribute increments without first distributing them to the authority
 - If increments are distributed for a year following the effective decertification year, the authority must return the amount to the county auditor for redistribution



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SIX-YEAR RULE

- SUGGESTION / IMPLICATION:
 - Each year (perhaps in the Fall), identify whether a decertification is required
 - Prepare and pass a decertification resolution, and complete a Confirmation of Decertified TIF District Form, prior to the end of the year



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SIX-YEAR RULE

- (h) The Six-Year Rule does not apply to housing districts

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SIX-YEAR RULE

- (i) Pooling for 2(d) housing:
 - If the authority has made the 2(d) election in the TIF plan:
 - The requirement to decertify under par. (a) or remove parcels under par. (b) shall not apply prior to such time that:
 - The accumulated revenues derived from tax increments paid by properties in the district that are eligible to be expended for housing purposes described under subdivision 2, paragraph (d), equals or exceeds **10% to 35%/30% (redev/others)**
 - The lesser of:
 - the amount the authority is permitted to expend for housing purposes described under subdivision 2, paragraph (d), or **Difficult to precisely identify**
 - The amount authorized for such purposes in the TIF plan. **Often overestimated vs actual**

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68

SIX-YEAR RULE

- (i) Pooling for 2(d) housing:
 - Increment collected after the district would have decertified under par. (a) or from parcels which otherwise would be subject to removal under par. (b), absent the exception of this paragraph, shall be used solely for housing purposes described in subdivision 2, paragraph (d)

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SIX-YEAR RULE

- (i) Pooling for 2(d) housing:
 - Determining the amount the authority is permitted to expend for housing purposes under subd. 2(d)
 - Authority might be tempted to analyze new projections in year 6 based on actual activity
 - Those projections may change over time as increment increases/decreases, pooling and admin expenses fluctuate, and the timing of the required decertification (reaching the revenue benchmark) may change
 - Makes for a more difficult assessment



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70

SIX-YEAR RULE

- (i) Pooling for 2(d) housing:
 - Recommendation for determining the amount the authority is permitted to expend for housing purposes under subd. 2(d):
 - Identify the revenue benchmark at which point decertification will be required (by dividing the in-district obligation amounts by the applicable in-district percentage)
 - Multiply the revenue benchmark by the maximum pooling percentage to identify the total authorized pooling amount
 - Subtract from the authorized pooling amount any pooling for other purposes (including admin unless all pooling is for the permitted affordable housing and admin is considered in-district)



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71

SIX-YEAR RULE

- (i) Pooling for 2(d) housing – Example:
 - TIF Plan:
 - Redevelopment district (25% pooling)
 - TIF plan elects 2(d) pooling (+10% pooling)
 - TIF plan estimates:
 - \$1M tax increment revenues
 - \$550K for public improvements (55% in-district)
 - \$100K for admin expenses (10% in-district*)
 - \$350K for affordable housing (35% pooling)
 - 2 parcels in district
 - Certified 6/30/18, Year 6: 2024, RDD: 2044
 - Reality by year 6:
 - PAYG on parcel #1 for \$424K (terminates in 2040)
 - New estimated projections thru 2040:
 - \$800K tax increment revenues
 - \$424K for public improvements (53% in-district)
 - \$80K for admin expenses (10% in-district*)
 - \$16K return to county auditor (2% in-district)
 - \$280K for affordable housing (35% pooling)
 - Parcel #2 needs removal, but when?

*If only pooling is for 2(d), admin is considered in-district



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72

SIX-YEAR RULE

■ (i) Pooling for 2(d) housing – Example:

- TIF Plan:
 - Redevelopment district (25% pooling)
 - TIF plan elects 2(d) pooling (+10% pooling)
- TIF plan estimates:
 - \$1M tax increment revenues
 - \$550K for public improvements (55% in-district)
 - \$100K for admin expenses (10% in-district*)
 - \$350K for affordable housing (35% pooling)
- 2 parcels in district
- Certified 6/30/17, Year 6: 2023, RDD: 2043
- Reality by year 6:
 - PAYG on parcel #1 for \$424K (terminates in 2040)
 - New estimated projections thru 2040:
 - \$800K tax increment revenues
 - \$424K for public improvements (53% in-district)
 - \$80K for admin expenses (20% in-district*)
 - \$16K return to county auditor (2% in-district)
 - \$280K for affordable housing (35% pooling)

Par. (a) says decert in 2024, because no other obligation but...

Par. (b) says:
 1) defer decert to 2040 PAYG termination (or earlier), and
 2) remove Parcel #2, but...

Par. (j) says delay decertification and parcel removal until accumulated revenues eligible for 2(d) pooling equals lesser of:
 1) Amount permitted for 2(d), or
 2) \$350K in TIF plan
 After 2023, Parcel #2 increment can only be used for 2(d) housing



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73

SIX-YEAR RULE

■ (i) Pooling for 2(d) housing – Example:

- TIF Plan:
 - Redevelopment district (25% pooling)
 - TIF plan elects 2(d) pooling (+10% pooling)
- TIF plan estimates:
 - \$1M tax increment revenues
 - \$550K for public improvements (55% in-district)
 - \$100K for admin expenses (10% in-district*)
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- 2 parcels in district
- Certified 6/30/17, Year 6: 2023, RDD: 2043
- Reality by year 6:
 - PAYG on parcel #1 for \$424K (terminates in 2040)
 - New estimated projections thru 2040:
 - \$800K tax increment revenues
 - \$424K for public improvements (53% in-district)
 - \$80K for admin expenses (20% in-district*)
 - \$16K return to county auditor (2% in-district)
 - \$280K for affordable housing (35% pooling)
- Amount permitted for 2(d):
 - Per new projections: \$280,000 (but subject to change)
 - Per benchmark:
 - $\$424,000 / 0.55 = \$770,909$ (revenue benchmark for decert)
 - $\$770,909 \times 0.35 = \$269,818$ (authorized pooling)
 - \$269,818 is likely more reliable than \$280,000
- Lesser of "amount permitted" and TIF plan est.:
 - $\$269,818 < \text{TIF plan estimate of } \$350,000$
- Parcel #2 could be removed at year 6 but could be kept in district until poolable dollars = \$269,818
- Parcel #2 increments must be used only for 2(d) purposes



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74

SIX-YEAR RULE

■ SUGGESTION / IMPLICATION:

- Annually assess the need for a parcel removal (or decertification) by rechecking whether sufficient increment has been received for pooling permitted for housing purposes
- Comment on forms, or check in with the OSA, when calculations might be close or unclear, providing a reasonable assessment why removal or delayed decertification is judged to be appropriate



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75