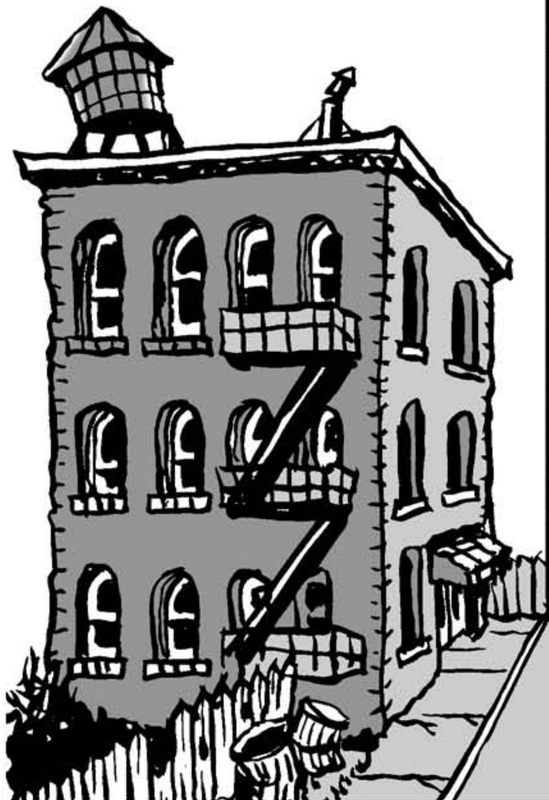
Straying from Good Intentions:

How States are Weakening Enterprise Zone and Tax Increment Financing Programs

A Report by
Good Jobs First
August 2003



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Good Jobs First

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with

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Executive Summary

This report examines legislative changes to two geographically targeted economic development programs: tax increment financing (TIF) and enterprise zones. It asks the question: Have the laws governing these programs been weakened to permit the use of these programs in non-blighted or affluent areas? In virtually every state that has weakened its TIF or enterprise zone program, the answer is "Yes."

Sixteen states have weakened their TIF laws. They include Alaska, Georgia, Idaho, Illinois, Indiana, Iowa, Minnesota, Mississippi, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Carolina, Utah and Virginia. Eleven states have weakened their enterprise zone laws. They include Arkansas, California, Connecticut, Indiana, Kansas, Louisiana, New York, Ohio, South Carolina, Texas and Wisconsin.

This weakening has occurred through amendments that have loosened the blight or poverty requirements for TIF districts and enterprise zones, expanded their boundaries, or increased their size. Each of these changes diminishes the way a program is targeted to impoverished areas.

Eligibility Criteria - Most areas must meet certain poverty criteria to be designated as an enterprise zone, or certain blight criteria to be designated as a TIF district. When a state relaxes these criteria, it becomes less likely that the programs will effectively address poverty. Weakening has resulted from amendments that have loosened eligibility criteria, added factors unrelated to blight or poverty, or established new types of districts or zones with weaker criteria.

Zone and District Boundaries - Enterprise zones and TIF districts have been expanded to include non-adjacent property. This expansion is often intended to benefit one company. Some states have permitted adjacent land to be added to a zone or district, but have not required that any blight or poverty criteria be met.

Size of Zones and Districts - As enterprise zones and TIF districts become larger, they become less targeted. Businesses located on the fringes of a zone or district are often less accessible to its urban, core, low-income residents.

In some states, public reaction to the proliferation of TIF districts and enterprise zones has resulted in legislation to reinvigorate the anti-poverty intent of the

programs. Seven states have strengthened their TIF laws including California, Colorado, Florida, Illinois, Nebraska, Ohio and Oregon. Three of these states -- Florida, Illinois, and Nebraska -- also passed amendments that weakened their TIF laws, but they later strengthened the blight criteria for the programs. One state, North Carolina, has strengthened its enterprise zone program. Strengthening has occurred through amendments that have tightened blight or poverty criteria or limited their size.

This report only focuses on states with TIF and zone laws that originally required blight or poverty as an eligibility criterion and were subsequently amended. For that reason, it does not examine some states, such as Missouri and Pennsylvania, that have been criticized for TIF rules that support large suburban retail projects.

The weakening of state enterprise zone and TIF laws indicates that the original goals of reducing poverty and blight are being replaced by economic development that benefits wealthier unrelated interests. Programs that were originally intended to provide tax incentives to businesses for locating in impoverished neighborhoods now often end up subsidizing economic development in affluent areas. Whether more states will follow the example of the few that have tried to restore the programs to their original intent remains to be seen.

Chapter 1. Tax Increment Financing and Enterprise Zone Programs

TAX INCREMENT FINANCING

Tax increment financing (TIF) laws permit local governments to designate TIF districts for the redevelopment of areas that meet the blight and other criteria set out in state law. Of the 47 states and the District of Columbia that have TIF laws, 37 included blight in their original legislation as criteria for creating a TIF district. Many states also originally permitted TIF in non-blighted areas such as “conservation areas” which are areas at risk of becoming blighted, or “economic development areas” which are generally defined as areas zoned for commercial or industrial use that could benefit from growth.

How TIF Works

After the local government has designated a TIF district, the property tax revenues (and in some states the sales tax revenues) from the district are divided into two streams. The first stream is pegged to the original property values or "base value" before the redevelopment takes place. That amount of tax revenue continues to go to the city, county, school district and other taxing bodies as before. The second stream consists of all the *increases* resulting from the redevelopment and higher property values – the so-called “tax increment.” That incremental revenue is diverted to subsidize the redevelopment in the TIF district. Often the tax increment revenue is dedicated to pay off bonds that are floated to finance their development projects. This diversion of tax payments continues until the TIF district expires or the TIF bonds are paid off – usually between 7 and 30 years, depending on the state’s rules and the nature of the project.

Thus, TIF diverts large amounts of tax revenue to economic development and away from public services for long periods of time. TIF can pay for new infrastructure such as streets and facilities, or for land acquisition through eminent domain. In some states, TIF is used to offset private development expenses such as site preparation and construction. Some cities have used TIF to clean up contaminated “brownfield” areas.

Public Notice

In many states, the local governing body must hold a public hearing before creating a TIF district. Notice to the public is also required which must include a statement of the proposed boundaries of the district. Often, a proposed TIF project will be considered at the same time as the establishment of a TIF district. Alternatively, a project may be considered after a district has been created. In such cases, the local governing body must separately approve the project or approve a redevelopment plan that lays out the projects to be financed by TIF and the estimated costs. In most states, notice and a public hearing are also required before approving a plan or project.

Frequently, the boundaries of a TIF district will change as a result of proposed plans by the local governing body for a new project. State law establishes the procedure that local governments must follow to make boundary changes, and defines whether non-contiguous land may be included in a district. In some states, public notice and a hearing are also required before the boundary may be modified.

State TIF laws also limit the size and duration of TIF districts. In some cases, they also cap the percentage of a city's property tax base that may be diverted into TIF. These provisions are set in the law and are not subject to notice or a hearing.

Accountability Issues

One of the most controversial aspects of TIF is the question of what constitutes blight. TIF statutes often do not provide local officials with very specific guidance in answering this question. State TIF laws generally define blighted areas based upon a set of conditions which endanger public health or welfare such as overcrowding, dilapidated or deteriorating buildings, or faulty street layout. In some states, the area only needs to meet one of these conditions to be declared blighted. These criteria are often highly subjective and subject to broad interpretation by local officials.

ENTERPRISE ZONES

Enterprise zones provide a variety of corporate income tax credits, property tax abatements, and other tax exemptions and incentives to encourage businesses

to locate in low-income areas of a city or county. Many states began to establish their own enterprise zone programs in the 1980s in anticipation of a federal enterprise zone program that was finally enacted in 1994.[1] Currently 40 states have active zone programs.

How Enterprise Zones Work

State law sets out the criteria an area must meet to be designated an enterprise zone. The original criteria in most states required an area to meet certain unemployment, population loss, and poverty household percentage thresholds.

Legislatures frequently specify the maximum number of zones for the state and may limit the number that can be created each year. Many states have designated whole counties or cities as zones. Three states -- Arkansas, Kansas and South Carolina -- have even extended zone benefits to businesses throughout the state, in effect making the entire state into an enterprise zone. In two of these states, counties have been designated into multiple tiers based upon unemployment and income levels. Businesses receive higher zone incentives in more distressed tiers. For example, in Arkansas a business located in a "high unemployment county" can receive a state income tax credit of $6,000 for each new employee. For businesses located elsewhere, the credit is $3,000 per employee.

Enterprise zones offer businesses a bundle of state and local incentives. The more common subsidies include property tax abatements, state corporate income tax credits for job creation and investment, sales and use tax exemptions, lower utility rates, and tax-free low-interest loans. Many states require companies to meet performance standards to qualify for zone incentives. A company may be required to create new jobs or make a substantial capital investment within a zone. Wage standards and targeted hiring of zone residents and/or disadvantaged workers are also common.

Public Notice

Before a zone may be designated, a local government must submit an application to a state development agency. In some states, there must be a notice and a public hearing, followed by adoption of a local ordinance before the application can be submitted. The state agency then determines if the area meets the criteria laid out in the enterprise zone law.

Accountability Issues

The most significant recurring criticism of enterprise zones is that they do not work. Academic researchers and government agencies such as the General Accounting Office have studied state enterprise zones extensively. Most studies conclude that generally enterprise zones foster little new economic activity. Even when zone employment increases, job gains for zone residents are quite modest. [2]

Another criticism of enterprise zone programs is that they are not targeted enough to help distressed areas attract investment. In some states, zone criteria are so loose that virtually any area in the state can qualify for zone designation. As states have increased the number and/or size of their zones, zones have become less targeted. Many states have designated whole counties or cities as zones, or have extended zone benefits to businesses throughout the state. Such loose targeting further reduces the likelihood that a zone will produce discernible anti-poverty results.

Chapter 2. Tax Increment Financing State Summaries

The states profiled in the report are limited to those that originally included blight as criteria for creating a TIF district, or poverty as criteria for establishing an enterprise zone. Those laws were reviewed to determine whether the legislation had been amended. Telephone interviews with state and local officials were also conducted. The findings are based upon the best available information provided by these sources.

Alaska

Alaska recently loosened TIF to allow it to be used for large mixed-used retail development. Local officials and developers supported the expansion of the program for purposes other than blight.

Alaska enacted its TIF law in 1988. Originally municipalities could only use TIF in blighted areas, defined as areas that had a substantial number of substandard or abandoned buildings, vacant lots, or property tax delinquencies. In 2002, the law was weakened to allow TIF to be used for economic development projects. A provision was added that defined a TIF district as a blighted area or "an area that is capable of being substantially improved based on the property value within the area."[3] This amendment came at the request of local officials and developers who wanted to use TIF to finance infrastructure for large mixed-use developments containing retail facilities, housing, public transit and parks.

California

With one of the oldest TIF laws in the country, California 10 years ago strengthened its blight requirements to restore the program to its original purpose. Additional physical and economic conditions of blight must be shown before TIF can be used.

California approved tax increment financing in 1951 making its TIF program the oldest in the country. California has 408 redevelopment agencies (RDAs) that approve TIF projects in their local areas. During fiscal year 2000-2001, RDAs captured $2.1 billion in TIF revenues.[4]

California's law has always required a showing of blight to qualify an area for TIF. The original definition of blight enabled RDAs to use TIF for broad economic development purposes. The biggest growth occurred between 1981 and 1985 when 197 new RDAs were established. This surge resulted from voter approval in 1978 of Proposition 13 that had the net effect of reducing local property tax revenues. Cash-strapped cities came under tremendous pressure to recapture lost property tax revenues. Many turned to tax increment financing.

Prior to 1993, a broad definition of blight allowed the use of TIF in areas containing buildings conducive to ill health or crime due to: defective design; faulty arrangement; overcrowding; inadequate ventilation, open spaces, and recreation facilities; or deterioration or shifting of uses. To curb the burgeoning growth of RDAs, in 1993 the Legislature strengthened the blight definition to require proof of additional physical and economic conditions. At least one of the following physical conditions must be shown: buildings which are unsafe or unhealthy for persons to live or work in them; factors that substantially hinder the economically viable use of buildings or lots; incompatible adjacent land uses which prevent economic development; or "subdivided lots of irregular form and shape and inadequate size for proper usefulness and development that are in multiple ownership." This last condition limits the impact of the reform since odd lot size and multiple owners in a subdivision are not significant indicators of blight.

The 1993 amendment also requires proof of at least one of the following economic conditions: depreciated property values; abnormally high business vacancies or low lease rates; abandoned buildings or excessive vacant lots; lack of necessary commercial neighborhood facilities; excess bars or other businesses that create safety problems; or a high crime rate.[5] The amendment also ended the use of TIF to build automobile dealerships on undeveloped land.[6] In addition, it extended by 10 years the period allowed for an RDA to implement its TIF plan.

The 1993 amendment has been enforced by the State's Appellate Court, which struck down an effort by an affluent suburban community to use TIF to redevelop an area that was 98 percent residential. The Court found no substantial evidence of the physical and economic conditions needed to establish blight.[7]

California has also expanded its law to require affordable housing and the payment of prevailing wages on TIF projects. An amendment in 1976 required RDAs to set aside 20 percent of their TIF funds to build low and moderate-

income housing.[8] A 2001 amendment requires the payment of prevailing construction wages for most projects financed with TIF and other subsidies.[9]

Colorado

The definition of blight was tightened in response to complaints that TIF was helping big box retailers at the expense of small businesses. Better notice and hearing requirements have also been added.

In 1975, Colorado authorized cities to establish urban renewal authorities (URAs) and to use tax increment financing. The following year, the Legislature allowed cities to create downtown development areas (DDAs) using TIF for projects in their central business districts.[10] Blight is required under both programs.

In 1999, the Legislature tightened the definition of blight for URAs only.[11] Prior to 1999, the definition of blight required proof of one of several conditions including: deteriorated structures; inadequate street layout; faulty lot layout; unsanitary or unsafe conditions; site deterioration; unmarketable title conditions; or danger to life or property. The amendment requires proof of at least four conditions from an expanded list including: unsafe or unhealthy buildings; environmental contamination; and inadequate public improvements.

The amendment also tightens the boundary rules of a blighted area to require they be drawn as narrowly as possible. Additional changes require that project approval be based on evidence presented at a public hearing. Written notice must be given to property owners at least 30 days before the hearing. There is also a 120-day time limit for local governments to complete the review process.

The 1999 amendment was a response to complaints from small retail merchants that local governments were abusing their eminent domain power to attract big box retailers with high-volume sales to increase the local tax base. Since the retailers in dispute were typically located in suburbs rather than downtown, the amendment was not applied to DDAs.

Florida

Tighter blight requirements were added in 2002 to restore Florida's TIF program to its original purpose of reducing blight. A resolution establishing the presence of blight or slums must also be adopted before land can be added to a TIF district.

In 1969, Florida allowed cities and counties to create community redevelopment agencies (CRAs) to address blight using TIF. TIF districts are located in "community reinvestment areas" which originally included slum areas and blighted areas.

Prior to 1981, a blighted area was defined as an area containing a substantial number of deteriorated structures leading to economic distress or danger to life or property, or other factors that impair growth and are a menace to the public health or welfare. A 1981 amendment added alternative criteria by defining a blighted area as one with "faulty or inadequate street layout; inadequate parking facilities; or roadways, bridges, or public transportation facilities incapable of handling the volume of traffic flow."[12]

In 1984, an amendment was passed to allow CRAs to also use TIF to expand the supply of affordable housing.[13] By 2002, however, the use of TIF had grown very significantly. In response, the Legislature amended the law by tightening the definitions of slum areas and blighted areas. A blighted area was redefined as an area with a substantial number of deteriorated structures "in which conditions as indicated by government-maintained statistics or other studies are leading to economic distress or endanger life or property." Proof of two conditions from an expanded list of physical and economic factors must also be shown.

The amendment redefined a slum area from its former definition as an area with a predominance of buildings containing conditions conducive to ill health or crime that were detrimental to the public health or welfare. It restricts the definition to those areas with physical or economic conditions conducive to disease, poverty or crime due to a predominance of deteriorated buildings and which exhibit at least one of the following factors: inadequate ventilation, light or open spaces; overcrowding; or conditions that endanger life or property. [14]

The 2002 amendment also requires that local governments, prior to establishing a CRA, adopt a resolution supported by data and analysis showing that the area is a slum or blighted area. To add land to the boundaries of a redevelopment area, the proposed extension must be supported by a similar resolution. For new CRAs, the duration of their TIF Fund is limited to 40 years and may not be extended an additional 30 years as under prior law.

Georgia

Georgia is one of only a few states that require voter approval before using TIF. The small number of TIF districts approved by voters prompted an amendment to greatly broaden TIF's use to previously developed non-blighted areas.

Unlike most other states, Georgia's TIF law requires local governments to obtain voter approval to use TIF. From 1986 when the law took effect until 2001, approximately 14 cities and counties used TIF. In order to allow more areas to participate, the state amended the law in 2001 to allow TIF to be used in non-blighted areas.

Prior to 2001, TIF use was restricted to urban areas that were blighted due to dilapidated structures, inadequate ventilation, overcrowding, or other conditions endangering life or property. That year, an amendment extended TIF to any area previously developed for commercial, industrial, residential or similar uses "in which the current condition of the area is less than desirable for the redevelopment of the area." It also permits TIF to be used for pedestrian and transit improvements and in areas "adversely affected by airport or transportation related noise." As a result, TIF can now be used for projects anywhere in the state to develop mass transit facilities, telecommunication infrastructure or pedestrian access with voter approval. The amendment also approved the use of TIF to preserve natural or historic areas.[15]

Idaho

Idaho has expanded the use of TIF to non-blighted state border areas that compete with other states to attract businesses. Originally, TIF was only allowed in deteriorated areas of the state.

In 1988, Idaho enacted legislation to allow urban renewal agencies (URAs) to use TIF to improve deteriorated areas. The original law only applied to cities with a population of 100,000 or more.[16] To enable more cities to participate, the law was amended in 1990 to delete this population requirement.[17] A 2000 amendment allowed counties to use TIF as well.[18] Presently, there are approximately 29 areas in the state with URAs that use TIF, including 15 of Idaho's 44 counties.

Until 1994, a URA could only use TIF in a "deteriorated area" which was defined as: a slum area; an area with a substantial number of dilapidated buildings or unsafe conditions; an open area with obsolete platting; or an area in need of

redevelopment due to a natural disaster. In 1994, the use of TIF was expanded to "competitively disadvantaged border community areas,"[19] defined as areas with at least 40 acres situated within 25 miles of another state or international border that the local governing body has determined is disadvantaged in attracting business due to preferable tax treatment in the adjacent state or nation.

Illinois

Concerns about high costs and the use of TIF in non-blighted areas led to several reforms in 1999. While the definition of blight was tightened and public participation was increased, calls for reform persist.

Illinois enacted tax increment financing in 1977. Until the law was broadened in 1985, the program grew slowly and there were only 27 districts using TIF. By the end of 1986, that number exceeded 135. As of May 2002, there were a reported 782 TIF districts in Illinois.[20] Chicago alone has at least 114 TIF districts.[21]

The 1985 amendment gave municipalities the option to apply for state support for development projects to be used along with TIF revenues. To be eligible, a municipality was required to dedicate both the property and local sales taxes collected for the project. State aid was based on the increased state sales tax revenue collected in the TIF district.

A 1986 amendment limited state support to $7 million during fiscal year 1986-87 and to $10 million in fiscal year 1987-88. Thereafter, state payments were subject to appropriation by the Legislature. By 1988, 137 TIF districts in Illinois had become eligible to receive $11.7 million in state support.

Concerns arose that TIF was becoming too costly for the State. In 1988, the Legislature began to reduce state support. By 2007, all state sales tax increment payments will be phased out completely.

Illinois law allows TIF projects in blighted areas and conservation areas. In 1989, however, Illinois passed a special law to create a non-blighted TIF district for Sears, Roebuck & Co. which threatened to move its Chicago headquarters out of state. To help retain Sears, a TIF district was created in Hoffman Estates, a wealthy suburb 29 miles outside of Chicago. The special legislation enabled the suburb to provide Sears with 786 acres of land by issuing $112 million in TIF bonds.[22]

The costliness of TIF has also concerned community organizations, school districts and affordable housing advocates. They complain about TIF's impact on gentrification, the diversion of school tax revenue and higher property tax bills.[23] As a result, the Legislature in 1999 passed several reform measures including a redefinition of blight.

Prior to 1999, to qualify as a "blighted area" the land had to be either "(a) improved land meeting at least five statutory criteria, or (b) vacant land which impairs the growth of taxing districts due to the presence of at least two statutory criteria." In 1993, the Illinois Appellate Court struck down an effort by the City of Shadow Lakes to declare as "vacant" land containing numerous structures in order to fund a TIF project on the property. The Court ruled that in order for vacant land to qualify as "blighted" under the TIF statute, the land may not contain a substantial number of commercial or residential buildings. [24]

In 1999, the eligibility criteria for TIF projects were also narrowed.[25] The amendment requires proof of additional conditions that must be "reasonably distributed" throughout the project area. They include: dilapidation; obsolescence; deterioration; structures below code standards; illegal use of structures; excessive vacancies; lack of ventilation, light or sanitation; inadequate utilities; excessive land coverage and overcrowding of structures; deleterious land use; environmental clean-up; lack of community planning; and decline in assessed value. Blighted areas are still defined as improvement or vacant areas. Improvement projects, however, must include five or more of these conditions; projects in vacant areas must include at least two. Projects in conservation areas must include at least three, and 50 percent or more of the structures must be at least 35 years old.

The 1999 amendment also improved the program's accountability and public participation. Housing impact studies are required in certain districts. Every TIF district must submit an annual report. Earlier public notice of hearings is required. An "Interested Parties Registry" was also created which requires notice be sent to interested parties of any housing impact study or preliminary TIF plan. Following approval of a project, interested parties must receive notice of proposed expansions and budget increases on a project. Each municipality must also establish a Joint Review Board comprised of public members and representatives of the property taxing bodies in the district.

Many consider the 1999 changes as a first step toward reform. Community-based reform organizations and school boards are still dissatisfied with their limited role in the creation of TIF districts, by the large sums being diverted and by the impact on school funding.

Indiana

Although TIF was originally restricted to blighted areas, it can now be used in "economic development areas." More than half of the state's TIF districts are in these areas.

Indiana enacted TIF in 1975. A legal dispute, however, delayed its use until 1985. Originally, TIF was restricted to blighted areas, defined as "an area in which normal development and occupancy are undesirable or impossible" due to age, obsolescence, substandard buildings, deteriorating improvements, or a lack or growth or development.[26] In 1987, the law was amended to allow TIF to be used in "economic development areas."[27] Economic development areas can be designated once a local government finds that the TIF district will attract businesses, create jobs, or build the tax base.

Since the 1987 amendment, the use of TIF has increased rapidly. Between 1989 and 1995, the number of TIF districts grew from 18 to 83.[28] By 1996, more than half of the TIF districts were economic development areas.[29] In 1995, a provision was added that requires the Legislature to review the program every four years.[30]

Iowa

Iowa's TIF law has strayed far from its original goal of reducing blight. Since adding non-blight criteria to the statute, the number of TIF districts has skyrocketed.

Under Iowa's original law enacted in 1957, municipalities could only use tax increment financing in slum or blighted areas. An amendment in 1985 extended the use of TIF to non-blighted economic development areas as well.[31] In 1991, counties were also enabled to use TIF.[32]

Since TIF was extended to non-blighted economic development areas, the number of TIF districts in Iowa has surged. In 1989, nearly all of the state's TIF districts were created based upon the blight requirements in the pre-1985 law. Since 1989, nearly all TIF districts have been created without a showing of blight. In 1989 there were approximately 185 TIF districts in the state. By 1999, there were as many as 2,473 districts.[33]

A 1994 amendment extended the permissible boundaries of a municipal TIF district to two miles outside a city's limits, and allows property within a TIF district to be non-contiguous. The 1994 legislation also excluded most

agricultural property from slum or blighted areas. Certain types of farms, however, were permitted to be included in economic development TIF areas. The amendment also limited the duration of economic development TIF areas to 20 years but imposed no corresponding limit to slum or blighted TIF areas. A provision requiring notice to each affected taxing entity prior to a public hearing on an urban renewal plan was also added.[34]

In 1996, the law was loosened to only require a public hearing on a proposed urban renewal plan, rather than on each TIF project under the plan. The amendment, however, also allowed TIF to be used for the construction of low and moderate income housing in all TIF districts.[35]

Iowa's TIF program has been criticized for straying from its original purpose and being costly to the State. There is no clear evidence that TIF projects would not otherwise have occurred in the absence of TIF subsidies. [36] The state is expected to spend $28 million in 2003 for state aid to school districts to offset school tax revenues lost to TIF projects. [37]

In 2003, a proposal was introduced in the Legislature to eliminate TIF districts in response to the use of TIF for projects such as golf courses, housing developments and car washes. The proposal was not enacted, but the problem persists.[38] One county, for example, recently dropped its plan to purchase an 18-hole golf course near Des Moines after a state tourism program withdrew $3.5 million in funding based upon concerns that income from the project would not meet projections. Despite objections from local residents, the county has proposed the creation of a TIF district to help fund the developer's $50 million investment in the golf course project,[39] which will include a 200-room hotel, a water park, a health spa, and retail stores.

Minnesota

Minnesota has more than 2000 TIF districts in seven categories, only two of which require blight. Since the blight criteria in one category was loosened, its numbers have mushroomed. TIF revenues can be transferred from blighted areas to non-blighted districts to cover individual deficits.

Minnesota enacted its TIF law in 1979. It allows the use of tax increment financing in seven different types of districts. Only two types of districts -- Redevelopment Districts (RDs) and Renovation and Renewal Districts (RRDs) -- require blight. RRDs were added in 1990. That legislation, however, relaxed the blight definition for RDs.

Prior to 1990, a Redevelopment District had to include 70 percent occupied buildings of which (a) 50 percent or more were structurally substandard, or (b) 20 percent were substandard and 30 percent required substantial renovation to remove hazardous conditions. "Structurally substandard" was defined as the existence of defects that justified substantial renovation.

The 1990 amendment deleted (b) above and redefined "structurally substandard" to exclude any building if it complied with or could comply with the building code at little cost. The amendment nonetheless permits a municipality to find a building structurally substandard without performing an interior inspection or an independent appraisal of the repair cost if the municipality otherwise has "reasonable" or "reliable" evidence to support its findings.[40] The blight criteria for RRDs are similar to the pre-1990 definition for RDs except that the 1990 revised definition of "structurally substandard" applies.

Since this relaxation of the blight criteria for RDs, their growth has surged. Between 1991 and 2001, the number of RDs mushroomed from 16 to 519. The growth of RRDs has been slower, increasing to only 19 since 1990.[41]

The TIF law has also been amended several times to allow TIF money from one type of district to be used in another district. Under the original law, districts were prohibited from using TIF money for projects outside district boundaries. In 1982, the Legislature removed this restriction. The 1990 amendment tightened the law back by requiring that 80 percent of a district's TIF revenues be spent within the district. In 2001, however, the law was again relaxed to allow a municipality to transfer its tax increment revenues among TIF districts if the receiving district has a deficit that cannot be eliminated using its own TIF funds.[42] Since blighted RDs and RDDs comprise only 538 of the state's 2,166 TIF Districts, the ability to transfer TIF funds from blighted to non-blighted districts enables TIF revenues to be diverted to more affluent areas, although the impact is presently unknown.

In 1995, legislation was enacted to improve enforcement by requiring TIF districts to file compliance reports with the State Auditor. The Auditor is authorized to audit TIF districts, and upon finding that a district has improperly collected or applied tax increments, he can compel repayment of such money.[43] Since 1996, more than $11 million in improperly used TIF revenues has been returned to cities, towns, counties, and school districts.[44]

Further changes to the law in 2001 are expected to cause a sharp drop in the use of TIF in Minnesota. Prior to 2001, the state reimbursed school districts for the operating budget share of their lost TIF revenues. As the share of taxable

property in Minnesota captured by TIF exceeded eight percent, state costs for this reimbursement reached $110 million a year. Under the 2001 legislation, the state assumed responsibility for the schools' operating costs and stopped this TIF-loss reimbursement. Property "class rates" which determine the taxable percentage of a property's value were also reduced. In addition, the tax rates for commercial and industrial property were lowered. As a result, in 2002 alone, Minnesota cities experienced a 27 percent decline in TIF revenues. [45] Some experts are predicting the decline may reach as high as 40 percent.[46] Many observers in Minnesota expect that the use of TIF may be entering a period of decline.

Mississippi

References to blight have been removed from Mississippi's TIF law. TIF can now be used in "project areas" which may include blighted areas or non-blighted historic preservation areas.

Mississippi has allowed TIF since 1986. Under the original legislation, TIF was intended to help redevelop blighted areas. Blighted areas were defined broadly and included areas where conditions such as dilapidated structures, poor ventilation, defective street layout, or obsolete platting either endangered public health or impaired economic growth. A blighted area could also be an area "in which the construction, renovation, repair or rehabilitation of property for residential, commercial or other uses is in the public interest."[47]

In 1993, references to blight were removed from the TIF statute. Blighted areas were renamed "project areas." The definition of a project area allows TIF to be used in areas meeting the former definition of a blighted area, or in historic preservation areas, which do not require blight.[48]

Nebraska

Nebraska has tightened the blight requirements of its TIF program. It created a second type of TIF program with weaker criteria in an attempt to lure a Micron plant to the state. That program has expired, enabling the improved blight criteria to be applied to all TIF projects.

Nebraska enacted its TIF law in 1979. Originally, TIF could be used in either "blighted" or "substandard" areas. "Blighted areas" were defined as areas that had, among other things, a substantial number of substandard buildings,

defective street layout, obsolete platting, or tax delinquencies that were detrimental to the growth, health, safety or welfare of the community. [49] "Substandard areas" were defined as areas with a predominance of deteriorated buildings or improvements that were detrimental to the community's health, safety or welfare.[50]

In 1984, the Legislature tightened the definition of blighted areas by requiring them to meet one of the following conditions: an unemployment rate at least 120 percent of the state or national rate; residential or commercial units with an average age of 40 years; more than half of the plotted and subdivided property unimproved for at least 40 years; a per capita income below the average income of the city or village; or a stable or decreasing population over the last two decades.[51] Additionally, the Legislature restricted the amount of land that could be included in a TIF district.[52]

TIF criteria were tightened again in 1997. Areas had to be declared both blighted and substandard before creating a TIF district. Previously, a TIF area could meet either standard. The process of creating TIF districts was reformed to allow for more deliberation and analysis. The local City Council must seek the recommendation of the local planning commission when determining whether an area is blighted or substandard. A cost-benefit analysis of a TIF project must be performed, and the Council must find that the project would not occur but for the subsidy. Annual reporting requirements were also added.[53] An amendment in 1999 laid out specific guidelines for the cost-benefit analysis.[54]

In 1995, as part of an unsuccessful attempt to land a Micron computer chip plant in Omaha, the state created a second type of TIF district was with different qualifying criteria.[55] Under the original law, eligibility criteria focused on the presence of conditions that were detrimental to public health, safety, and welfare.[56] The criteria for the new district focused on the presence of conditions that hampered economic growth. To qualify for TIF, a business had to invest at least $50 million and create 500 jobs. The amendment also allowed local governments to include unincorporated land in a TIF district. This program sunset in 1999. The original TIF law as amended remains in effect.

Nevada

After weakening its blight criteria, Nevada added back provisions to help reduce poverty in distressed areas. Affordable housing and employment plans are among the changes.

Nevada has allowed municipalities to use TIF since 1959. The law was originally intended to help redevelop blighted areas. A 1985 amendment, however, allowed TIF districts to include non-blighted areas if "necessary for the effective redevelopment of the area of which they are a part."[57] The amendment also permitted TIF districts to include non-contiguous land.[58]

Starting in 1991, the Legislature passed several measures to tighten the TIF law. Municipalities were required to create employment plans that spelled out how TIF would increase employment amongst disadvantaged individuals.[59] A 1993 amendment required municipalities to set aside a percentage of their TIF funds to create and improve low-income housing.[60] Under a 1999 amendment, 75 percent of a redevelopment area must consist of "improved land" already containing property connected to water, sewer, or road systems.[61]

North Dakota

TIF projects are no longer restricted to blighted areas. A direct public benefit must still be demonstrated. The court has struck down the use of TIF for projects that primarily serve private interests.

TIF has been used in North Dakota since the 1970s. Originally, TIF could only be used in blighted areas to aid cities undertaking urban renewal projects. In 1989, the law was loosened to allow TIF to be used in industrial or commercial areas for economic development projects.[62] Industrial or commercial areas do not have to be blighted to qualify for TIF. The amendment only requires that the area include "unused or underutilized real property that is zoned or used as an industrial or commercial site."[63]

While the 1989 amendment expanded TIF to non-blighted areas, a commercial project must primarily serve a public purpose to qualify for TIF funds. In 1996, the North Dakota Supreme Court invalidated a city's use of eminent domain for a downtown commercial TIF project in the absence of proof that the project primarily benefited the economic welfare of the downtown area and its residents, as opposed to private interests.[64]

Ohio

Only residential TIF projects must be located in blighted areas. Blight is not required for industrial and commercial projects. A second type of TIF district has been created which requires all projects to meet blight criteria.

Cities in Ohio have been able to use TIF since 1976. This privilege was extended to counties in 1990 and to townships in 1997.[65] TIF can be used to redevelop industrial, commercial or residential properties.[66] Until 2001, only residential TIFs had to be located in blighted areas.

In 2001, the Legislature created a new type of TIF district known as an "incentive district," which must meet specific blight or poverty criteria. As a result, industrial and commercial projects participating in the new program are restricted in their choice of location.[67] The program is scheduled to sunset in 2007. Industrial and commercial projects locating in the original types of TIF districts, however, continue to be exempt from the blight requirement.

Ohio also has created reporting requirements for TIF. Local governments have been required to submit annual reports on TIF to the Ohio Department of Development since 1992.[68] The 2001 amendment imposed additional reporting requirements.

Oklahoma

Oklahoma has created a second type of TIF district for use in non-blighted historic preservation areas and in reinvestment areas. Only part of the reinvestment area must be blighted.

Municipalities have been able to use TIF for urban renewal projects since 1983. Under the State's urban renewal law, TIF is restricted to blighted areas. The blight definition included areas with dilapidated or deteriorated buildings, faulty street or lot layout, overcrowding, traffic congestion, tax delinquency, unsanitary or unsafe conditions, or arrested economic development.

In 1992, the Legislature expanded the use TIF to enterprise zones, historic preservation areas, and "reinvestment areas."[69] Historic preservation areas do not require a showing of blight. Reinvestment areas must include a blighted area and be considered detrimental to public health, welfare, safety, and morals. Reinvestment areas, however, may include additional land "requiring public improvements… to reverse economic stagnation or decline, to serve as a catalyst for retaining or expanding employment, to attract major investment in the area or to preserve or enhance the tax base or in which fifty percent (50%) or more of the structures in the area have an age of thirty-five (35) years or more."[70]

Oregon

Oregon was among the first states to use TIF to combat blight. Today, the program has been weakened to allow TIF to be used for unrelated economic development projects.

In 1961, Oregon became one of the earliest states to authorize the use of TIF. Like California, Oregon originally used TIF as a means to provide local matching funds for federal urban renewal grants. Early urban renewal projects focused on the redevelopment of blighted residential neighborhoods.

In 1977, a legislative task force found that TIF was being misused by some jurisdictions. In some cases, TIF was used to finance greenfield development. For example, the city of Albany created a TIF district that included a substantial amount of undeveloped land. Sixty percent of the district was vacant land and 80 percent of the district was located outside of city limits.[71] Other cities were including large portions of their tax base in TIF districts. Lincoln City included 95 percent of its land area in a TIF district.[72] These large TIF districts had a significant fiscal impact on overlapping taxing districts. The task force also found that citizens and other taxing districts were not given enough opportunity to participate in the approval process.[73]

Rather than restricting the use of TIF, the Legislature in 1979 loosened the definition of blight to reflect the shifting nature of TIF from urban renewal to economic development projects unrelated to blight. The new blight definition required:

> "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."[74]

The amendment also allowed TIF to be used in areas with inadequate streets, inadequate utilities, faulty planning or misshapen lots.

The 1979 amendment did not address the issue of using TIF to develop vacant land. It did, however, limit the amount of land and assessed value that could be included in a TIF district.[75] Additionally, opportunities for public participation were expanded.

South Carolina

South Carolina has extended the use of TIF to areas outside of blighted districts. As long as the new area is within city limits, TIF monies can be used for other redevelopment projects.

South Carolina enacted tax increment financing for municipalities in 1984 and extended it to counties in 1999.[76] TIF districts in incorporated municipalities must be in blighted or conservation areas. County TIFs must be in blighted, conservation or *"sprawl areas."* A *"sprawl area"* is an unincorporated area at risk of becoming blighted because the area has a high population density, inadequate roads, or could be developed as a planned community.[77]

An amendment in 2001 allowed TIF projects to be located outside of a TIF district in "redevelopment project areas" as long as " the municipality makes specific findings of benefit to the redevelopment project area and the project area is located within the municipal limits."[78]

Utah

Utah no longer requires blight for economic development projects funded by TIF. Redevelopment projects, however, require a special blight study and blight hearing before they can be approved.

Utah's TIF law was enacted in 1953. Originally, at least one of nine blight conditions had to be met, with buildings in a proposed TIF area unfit or unsafe to occupy, or conducive to ill health or crime. The conditions also included overcrowding, continued disuse, or inadequate ventilation among others.

In 1993 the law was loosened to allow the use of TIF in "economic development project areas." Blight is not required and TIF may be used in such an area if the project will promote the creation or retention of jobs as a result of "office industrial… parking, public or other facilities, or other improvements that benefit the state or a community." Blight is required in order to use TIF in "redevelopment project areas." A project plan for a redevelopment area must include a finding of blight after a study and a hearing have been conducted. At least three blight conditions listed in the statute must be shown to exist. [79]

Utah's law also requires that 20 percent of TIF funds be set aside for affordable housing.

Virginia

Virginia has eliminated the blight requirement from its TIF law. The intent of the program has been greatly loosened to promote "commerce and prosperity."

Virginia's original TIF law, enacted in 1988, reserved the use of TIF funds for blighted areas, which were defined as having impaired property values or tax revenues, being conducive to crime and disease, or being detrimental to public health, safety, morals and welfare. In 1989, the definition was expanded to include "any area adjacent to or in the immediate vicinity thereof which may be improved or enhanced in value by the placement of a proposed highway construction project".[80]

In 1990, the word "blight" was struck from the definition of a TIF district. The amendment allows TIF to be used in *any* area designated by a local government.[81] The intent section of the law was broadened by stating that the promotion of "commerce and prosperity" was in the public interest and that TIF could be used to increase the property tax base of an area, as well as eliminate blight.[82]

Chapter 3: Enterprise Zone State Summaries

Arkansas

In 1993, Arkansas abandoned the poverty criteria it had used to designate an enterprise zone. While any business may now apply for incentives, poverty criteria were added to the zone job tax credit in 2003. The change makes employers in poorer counties eligible for a larger credit than those in wealthier areas of the state.

Arkansas enacted its enterprise zone law in 1983. The original legislation allowed zones to be created in areas that met specific poverty criteria. In 1993, the Legislature eliminated these criteria and made the entire state an enterprise zone.

Prior to 1993, a zone was defined as an economically distressed census tract in need of business expansion and job creation. An area qualified for zone designation by meeting criteria relating to poverty growth, adult and youth unemployment, business vacancies and the need for capital improvements. No more than 15 zones could be designated annually. No more than 25 percent of the state's eligible census districts could be designated as an enterprise zone.[83]

The 1993 amendment allowed businesses throughout the state to qualify for zone credits if they created the number of jobs required in the statute.[84] A business must also receive an endorsement resolution from its local government, which must be approved by the state. Poverty criteria no longer determined which businesses qualify, although a business located in a "high unemployment county" could receive an income tax credit of $6,000 for each new employee. The credit for businesses located elsewhere was $3,000 per employee.

In 2003 the law was amended to add back poverty criteria for the purpose of determining the size of zone credits. Counties are now grouped into four tiers based upon the rate of unemployment, population growth, per capita income and poverty growth. Rather than the number of new jobs created, the percentage of payroll for new employees is the new basis for the size of the credit. Employers in the poorest tiers are eligible for a tax credit equal to four percent of the payroll for new employees, versus one percent in the most prosperous tier. Businesses must also maintain a certain payroll threshold for new employees. Any business that fails to maintain the threshold is liable for repayment of all benefits received. These changes were intended to bring Arkansas' wage levels by zone businesses nearer to the national average wage, and to make businesses more accountable for the incentives.[85]

California

The size and duration of California's enterprise zones have increased since the program began in 1986. The number of zones has more than doubled.

California's enterprise zone program grew from 19 zones after the program was created in 1986 to 39 zones in 2000. In 2001, the Legislature approved 3 more zones bringing the total to 42.

A 1996 amendment allows a city or county to add contiguous land and expand the size of its zone by 15 percent. The land must be zoned for industrial or commercial use and include basic water, gas and electrical infrastructure. The amendment also allowed any zone up to 13 square miles to expand by a maximum of 20 percent.[86] In 1998, the law was amended to permit additional contiguous land into an adjacent city or county.[87]

The duration of a zone is 15 years. In 1998, the law was amended to allow zones designated before 1990 to retain that designation for 20 years. At least 19 zones have applied for the extension.

The 1998 amendment also expanded the state's duty to audit the zone program. The state is required to audit each zone at least every five years to determine whether it is superior, passing, or failing. The audit results can support a "dedesignation" of an enterprise zone, and the exclusion of a jurisdiction from a zone at that jurisdiction's request.[88]

As usual, a business must be located in a zone to be eligible for benefits. Special legislation was passed in 1997, however, that allowed one company to locate outside of a zone and claim credits.[89]

Connecticut

As enterprise zones have been enlarged, their poverty criteria have been loosened. Two amendments allow numerous kinds of businesses located outside of zones to receive zone subsidies, and a rule denying benefits to companies that leave a zone has been repealed.

The number of enterprise zones in Connecticut has grown from 6 to 33 since the program took effect in 1982. The original criteria required that at least 25 percent of a zone's population have an income below the poverty level or be on public assistance. Alternatively, the unemployment rate had to be at least

200 percent of the state rate.

Over the years, the permissible size of zones has increased while the poverty criteria have been loosened. A 1984 amendment allows a zone to add contiguous land if the Commissioner of Economic Development finds that the land has significant job potential, an unemployment rate that is 150 percent of the state rate (down from 200 percent), and a 15 percent poverty rate (down from 25 percent).[90]

A 1986 amendment allows a municipality to create a zone anywhere within its borders as long as the area is contiguous to a zone in another municipality and meets the 1984 reduced poverty criteria. It also permits the Commissioner to make certain facilities located outside of but contiguous to a zone eligible for zone benefits.[91] The following types of businesses are eligible:

> "depository institutions, nondepository credit institutions, insurance carriers, holding or other investment offices, business services, health services, … motor freight transportation and warehousing, water transportation, transportation by air, transportation services, security and commodity brokers, dealers, exchanges and services, telemarketing or engineering, accounting, research, management and related services … or industry group … which establishment, auxiliary or operating unit shows a strong performance in exporting goods and services."[92]

In 1996, municipalities were permitted to award zone benefits to manufacturing plants located outside of their zones.[93]

The original law denied zone benefits to a company if it relocated from an enterprise zone. A 1992 amendment nonetheless allows a company leaving a zone to qualify for benefits if the Commissioner determines that the relocation will result in a net expansion of business operations or employment. This type of amendment undermines the original justification of awarding zone incentives to bring jobs to high-poverty areas.

In 1994, the Legislature allowed three or more contiguous municipalities to establish an "enterprise corridor zone" in order to grant industrial businesses in a corridor zone the same benefits as businesses in an enterprise zone. To qualify as a corridor zone, the population of each municipality could not exceed 30,000. In 1996, this population limit was increased to 35,000. In 2000, it was increased again to 60,000.

Indiana

Increases in zone size and population limits have weakened the poverty requirements of Indiana's enterprise zone program. A 1993 prohibition against the creation of new zones has been extended twice, to 2003 and then to 2015.

Indiana enacted its enterprise zone program in 1983. For an area to be designated as a zone, at least 25 percent of its population must be under the federal poverty level, the unemployment rate must be at least 150 percent of the statewide rate, and the area's population must be at least 2,000. In 1999, the zone's maximum permissible population was increased from 8,000 to 10,500. The amendment also increased the maximum zone size from three square miles to four.[94]

The original 1983 law created six enterprise zones. In 1984, the maximum number of zones was increased to 10.[95] A 1992 amendment prohibited the creation of new zones after 1995.[96] In 1993, however, this cutoff date was extended to 2003.[97] In 2001, the date was further extended to 2015.[98] Currently Indiana has 27 enterprise zones.

The 1993 amendment also limited the zone renewal period from ten years to five. It established criteria for renewal and also required the consent of the state budget committee in order to renew a zone.

Changes have additionally been made regarding the distribution of enterprise zone funds. A 1995 amendment made package liquor stores ineligible for benefits.[99] The 1999 amendment permitted zone funds to be used for brownfield restoration and redevelopment projects as well. It also prohibited a business that reduces its operation in order to relocate into a zone from reducing the health and pension benefits of its employees without their consent.

Kansas

Since enacting its enterprise zone law in 1982, the Kansas program has changed from one that is targeted to blighted areas to one that offers incentives to businesses anywhere in the state. The list of eligible types of businesses has also grown.

The original 1982 law authorized cities to designate enterprise zones and provide businesses with sales tax exemptions and income tax credits for job creation and investment if at least two jobs were created. The following year, the law was amended to require cities seeking zone designation to provide

documentation of the following criteria: widespread poverty, underemployment and general distress; and either substantial deterioration or abandonment of commercial or residential structures, or high tax arrearages. Job creation credits were enhanced for businesses that hire zone residents.

A 1986 amendment allowed counties to participate as well. Industrial parks located outside a city were also permitted to be included within the city's enterprise zone. By 1992, every city and county in the state had qualified to apply for zone designation.

In 1992, the law was repealed and replaced with legislation that made zone credits available to businesses throughout the state without regard to location.[100] Eligibility is based on the number of new jobs created – and on the company's classification as either manufacturing, retail or non-manufacturing, which covers all other types of business. Businesses in the state's six major metropolitan counties are eligible. Businesses in non-metropolitan counties qualify if the county has a regional economic development organization and has adopted a long-range strategic plan. As of 2002, 87 out of 105 counties were participating in the zone program.

A 1994 amendment expanded the definition of "non-manufacturing business,"[101] to include a corporate headquarters that created at least 20 new jobs. Lessors granting a commercial lease of five years of more also became eligible. In 1996, the definition of "non-manufacturing business" was further broadened to include operations ancillary to a corporate headquarters if 20 more jobs were created. The amendment also allowed insurance and financial companies to apply their job and investment tax credits against their privilege tax.[102] In 1997, the definition of "non-manufacturing business" was again extended to include auto racetrack operations which invest at least $100 million. [103]

The widespread use, or in some cases abuse, of enterprise zone benefits has been monitored by the Kansas Department of Revenue. Last year, the state's highest court upheld the Department's denial of a tax exemption to a business that failed to increase its workforce by five employees. The Kansas Enterprise Zone Act allows a sales tax exemption upon "documented evidence of job expansion involving the employment of at least five additional full-time employees." The Department's three-year audit of the company found a consistent loss of employees during that period. The company tried to claim the exemption under another law that grants a tax credit for retaining at least five employees as a result of its investment. The Court agreed with the Department that the two laws are different. The zone tax exemption is only allowed where five or more jobs are created.[104]

Louisiana

Originally, businesses were required to both locate in a zone and hire zone residents to qualify for credits. Today, it is no longer necessary for a business to be located in a zone or to hire residents from the same zone providing the credits.

The number of enterprise zones in Louisiana has grown from 800 in 1981 to as many as 1,740 presently. For zone designation, an area must show high rates of unemployment, low income and a high percentage of residents on public assistance. In order to qualify for incentives under the original law, a business had to be located in a zone and hire zone residents who were receiving public assistance and lacked basic work skills.

A 1992 amendment eliminated the requirement that the new employees reside in the same zone as the business. The amendment allows credit if at least 35 percent of the new employees either reside in a contiguous zone or in another zone in the same parish, or, reside in a contiguous parish if the business has at least 500 employees.[105]

Under a 1999 amendment, a business no longer has to even be located in a zone to receive credits. To qualify for zone benefits, at least 35 percent of its new employees must either reside in a zone in the same parish as the business, or be residents of a zone in a contiguous parish if the business has 500 or more employees.[106]

Maryland

As part of its effort to discourage sprawl, Maryland has limited the location of new enterprise zones to areas that are already developed.

Maryland adopted its enterprise zone program in 1982. In 2000, the state mandated that all new enterprise zones must be located in priority funding areas (PFAs) designated by the state. PFAs are areas that already have infrastructure or are slated to get it. This provision is part of the state's "Smart Growth" initiative which aims to discourage sprawl by restricting state investment to developed areas of the state.[107]

New York

New York's Empire Zone program has been criticized for losing sight of its original

goal by allowing zones to be located in affluent areas. A 1993 amendment which allows zones to include "nearby" land has fueled the problem.

New York's "Empire Zone Program" was created in 1986. The original law spawned 40 zones in less than eight years. The number of zones has since grown to approximately 62. Zones are designated by a state board and must be distributed evenly among urban, suburban and rural sections of the state.

The poverty criteria for zone designation have been diluted over the years. Every zone must still be characterized by pervasive poverty, high unemployment and general economic distress, correspond to traditional neighborhood boundaries, and where appropriate, be bounded by major physical boundaries. Originally census tracts were only eligible if they had a poverty rate of at least 20 percent, an unemployment rate at least 125 percent of the state rate, and a population of at least 2,000.[108]

In 1990, counties became eligible if within the prior two years they had at least a 13 percent poverty rate, an unemployment rate at least 125 percent of the state rate, and did not otherwise contain a census tract, city, town or village qualifying as a zone. The amendment also increased the permissible zone size from one square mile to two.[109]

Several amendments in 1993 loosened the law. Boundary rules were relaxed to permit the inclusion of land "nearby or contiguous" to a census tract meeting zone criteria if the Commissioner of Economic Development finds that the land has significant potential for business development and job creation. In addition, complicated alternative criteria were added to the poverty requirements for counties and municipalities.

Under the amendment, counties also became eligible where: (1) the unemployment rate of the metropolitan statistical area (MSA) exceeds the national rate, and the MSA has experienced or is likely to experience within three years the lesser of a loss of 4,000 jobs or a dislocation of workers equal to 0.5 percent of the area's workforce, 50 percent of which results from the action of a single employer or 80 percent of which occurs within a single industry; (2) the unemployment rate of the MSA is equal to or less than the national rate, and the MSA has or is likely to experience within three years the lesser of the loss of 8,000 jobs or a dislocation of workers equal to 1 percent of the MSA's workforce, 50 percent of which results from the action of a single employer or 80 percent of which occurs within a single industry; (3) the unemployment rate exceeds the national rate and the labor market area (LMA) has experienced or is likely to experience within three years the lesser of a loss of 500 jobs or a

dislocation of workers equal to 2 percent of the LMA's workforce; or (4) the LMA has an unemployment rate equal to or less than the national rate, and has experienced or is likely to experience within three years the lesser of a loss of 500 jobs or a dislocation of workers equal to 2 percent of the LMA's workforce.

The 1993 amendment also broadened the eligibility of municipalities to those: declared a natural disaster area; containing a military facility designated for closure; or containing a mental health facility designated for closure or downsizing.[110]

In 1999, the Legislature again broadened the zone eligibility of municipalities to include those: with an unemployment rate equal to or exceeding the state rate; with a poverty rate of at least 20 percent; with at least 14 percent of the households receiving public assistance; located a "non-metropolitan area;" or with no other empire zone in the county.[111]

In 2002, the Legislature revised the restrictions on non-contiguous areas. The amendment was intended to curtail the practice by the Department of Economic Development, which had been approving the designation of zones in non-contiguous areas by rulemaking. Under the amendment, 75 percent of a zone must be located in no more than three non-contiguous areas. If the Commissioner determines that a project cannot locate within three non-contiguous areas, however, he may allow more than 25 percent of the zone to exist in land outside the three non-contiguous areas if a project offers significant potential for the zone's economic development.[112]

The 2002 amendment also restricts the amending of zone boundaries to once yearly following public notice and a hearing. Previously, a hearing was only required where there was a proposal to remove land from a zone.

New York's empire zone program has been criticized for straying from its original goal and losing its ability to provide targeted economic relief to distressed areas. Many zones have been designated in areas with low unemployment rates. Some companies have received job credits without creating jobs by setting up new organizations in zones and then transferring on paper a "new" job and property ownership to the new organization.[113] The *Buffalo News* investigated that city's empire zone and found that while zone incentives saved downtown banks and law firms millions of dollars in taxes, few jobs for low-income residents were created and investment lagged in distressed neighborhoods. Two-thirds of the businesses that obtained benefits failed to meet their employment goals. Further, the city had divided the zone into more than 130 non-contiguous parcels in order to reach as many companies as possible.[114]

North Carolina

North Carolina tightened its zone criteria after certain municipalities abused the poverty threshold rules. The state also made businesses ineligible for credits if they have or develop a record of health and safety or environmental violations.

Since North Carolina established its enterprise zone program in 1998, the number of zones has grown to approximately 64. To qualify, an area must have at least 1,000 residents, and more than 20 percent of the population must be below the poverty level.

In 1999, the law was amended to curb abuses by certain zones with poverty levels below 20 percent. [115] The zones in question would "borrow" a high-poverty tract from a non-contiguous area in order to satisfy the zone eligibility criteria. Under the amendment, any zone tract with less than 10 percent poverty must be adjacent to a tract with more than 20 percent poverty. Further, no tract can be located in more than one zone. The duration of zones was also reduced from four years to two.

In addition, the 1999 amendment includes new labor standards for job creation and worker training tax credits. An employer must pay at least 50 percent of the health insurance premiums of its new employees. In addition, an employer is ineligible for credits if it has had an Occupational Health and Safety Act violation within the prior three years or an environmental violation within the prior five years.

Ohio

Ohio's enterprise zone law was enacted in 1981 with the intent of stimulating economic development in distressed urban communities with longstanding economic decline. Today the intent is to reduce business property taxes to protect Ohio against competition from other states.

Like other state enterprise zone programs, Ohio's program when enacted in 1981 was intended to reduce blight in distressed urban areas. Amendments between 1987 and 1994 changed this purpose to the now commonly cited intention to reduce Ohio's business property taxes in order to keep and attract companies to the state.[116]

Starting in 1987, an amendment was passed that required rural zones to have a minimum population of 4,000, substantial portions of vacant or undeveloped lands, and a low-income area or a 10 percent population loss from 1970 to 1980.

While the amendment was intended to target Appalachian counties with unemployment problems, it also qualified large areas in the rest of the state. Although the amendment required that enterprise zones have continuous borders, a zone could span more than one municipality. As a result, an affluent community could use its poorer neighbors to qualify, a practice sometimes referred to as "renting a slum."[117]

An amendment in 1994 was intended as a reform. It restricted intrastate relocations by zone businesses. A thirty-day notice was required for a facility moving from within the state into a zone. Any facility that had received a property tax abatement within the past five years was ineligible for an abatement at its new location unless it received a waiver from the Director of Development.

The law, however, contained exceptions. A business with a prior tax abatement could obtain a waiver by showing that "market conditions necessitate the move." New zones could be established in central cities with a population of at least 4,000 if they met two of eight criteria including a "prevalence of commercial and industrial structures vacant, demolished, or … tax delinquent," and industrial structures not used because of "age, obsolescence, deterioration, relocation of the former occupants or cessation of operations." Rural counties outside of Appalachia could qualify if they had a population of at least 1,000 and not more than 300,000.

Ohio's program has been criticized for providing benefits to the same companies at different locations throughout the state. Zones exist in affluent areas where unemployment is low.[118] The program's abandoned purpose of reducing blight has been has been replaced by its success at reducing corporate property taxes.

South Carolina

South Carolina has changed its law to make the entire state into an enterprise zone. Businesses in every county are eligible for incentives, which vary according to the county's poverty level.

South Carolina created its enterprise zone program in 1995. Originally, zones were designated annually by the Department of Commerce and had to meet criteria such as low median incomes, military base closures, or manufacturing layoffs. Additionally, the 16 poorest counties could be designated as enterprise zones.

The following year, an amendment effectively turned the whole state into an enterprise zone. Incentives that were originally targeted to zone businesses became available to businesses anywhere in the state. The criteria for enterprise zones were eliminated and replaced with a four-tier system. Counties were ranked by per capita income and unemployment rates and then assigned to tiers. The value of incentives varies by tier, with higher tax breaks for businesses located in poorer tiers.[119]

A 1998 amendment allows companies locating in counties with high unemployment rates to receive a moratorium on their state corporate income taxes. To qualify, at least 90 percent of a company's investment must be in a county with an unemployment rate that is twice the state average. Businesses that create 100 new jobs are eligible for a 10-year moratorium. Businesses that create 200 new jobs can qualify for a 15-year moratorium.[120]

Texas

Texas has broadened the size and number of its enterprise zones and loosened the rules on boundary changes. The number of projects permitted by the state has also greatly increased.

The Texas enterprise zone program was established in 1983. In 1987, the maximum size of a zone was changed from 10 square miles to the greater of 10 square miles or 5 percent of a local unit’s area. The maximum permissible number of zones per jurisdiction was increased from one to three.[121] In 1989, the rules for changing zone boundaries were modified. Local governments no longer need state approval to modify boundaries, but are limited to one modification per year.[122]

In 1987, Texas also created a new package of incentives for enterprise zone businesses. To receive these incentives, a business must be located in a zone and be designated as an enterprise project. Originally, the State Economic Development Commission could designate only 10 projects annually. Currently, the Commission may approve up to 85 projects within a two-year period. In 2001, the total number of projects that could be designated within a county was limited to six.[123]

Utah

The designation of zones has become more discretionary since the state economic

development agency discontinued its use of a matrix to evaluate applicants. Changes in the structure of credits encourage employers to pay better wages and benefits.

When Utah enacted its enterprise zone program in 1988, only counties were eligible for zone designation. The law required a county to provide clear evidence of the need for development and meet criteria of significant economic distress based on a matrix established by the Department of Community and Economic Development. These criteria include: pervasiveness of poverty, unemployment and general distress; reduction in commercial property value; potential for new investment and economic development; and projected employment for zone residents.

A 1996 amendment expanded the program to allow all counties and cities to participate.[124] The eligibility criteria have not changed but the Department no longer uses its matrix. Instead it evaluates projects on a case-by-case basis. The 1996 amendment also changed the tax credits to encourage higher wages and benefits. A $750 job tax credit can increase to $900 if the employer pays at least 50 percent of the new employee's health insurance premium for two consecutive years. An additional $500 tax credit may be claimed if the new position pays at least 125 percent of the county's average weekly wage.

Wisconsin

A lower unemployment threshold and larger zone size have weakened Wisconsin's zone program. The number of zones has greatly increased, along with the amount of credits available to businesses.

In 1987, Wisconsin enacted legislation to establish enterprise zones known as "community development zones" (CDZs), which are designated by the Department of Commerce. Originally, an area's unemployment rate had to be greater than 150 percent of the state rate. A 1995 amendment weakened these criteria by only requiring unemployment to be higher than the state rate. The maximum allowable size of a zone was also increased from 5 to 10 percent of a municipality's total land value. The amendment also permitted entire counties with populations under 75,000 to be designated as zones. [125]

The CDZ program has been expanded several times. The maximum number of CDZs has been increased from 8 to 22, all of which have been designated.[126] The maximum value of credits has been increased from $14 million to $38 million.[127] In 1999, the maximum duration of a CDZ was increased from 7 to 20 years.[128]

In 1995, Wisconsin created a new program known as the Enterprise Development Zone program (EDZ).[129] EDZ designations are awarded by the Department to individual businesses, rather than to local areas. Companies designated as an EDZ do not have to be located in CDZs, but they do have to be located in areas meeting the same distress criteria as CDZs. Originally, a maximum of 50 zones were allowed, but in 1999 was increased to 79.[130] As of 2002, 65 zones had been certified.[131]

Chapter 4. Summary of Findings

This chapter summarizes the changes that states have made to either weaken or strengthen the anti-poverty provisions of their original enterprise zone and tax increment financing laws. Amendments that allow loose eligibility criteria, enlarge boundaries, include non-contiguous land, or increase the size of a zone or district weaken the laws. Eligibility criteria have been loosened by measures that relax the definition of blight or poverty, add alternate criteria unrelated to blight or poverty, or create new types of districts with weaker criteria. Boundaries have been enlarged by measures that allow non-contiguous land which does not meet blight or poverty criteria. Amendments that increased zone or district size grant subsidies to companies outside the most distressed part of the zone or district.

Changes that strengthen enterprise zone and TIF laws include amendments which tighten the eligibility criteria or decrease the size of zones or districts.

The study of these states found the following:

Finding #1: Most states included blight as criteria for tax increment financing and poverty as criteria for enterprise zones.

TIF and enterprise zones were originally intended to aid urban renewal efforts and help distressed areas attract investment. That intent was reflected in the eligibility criteria of the original state legislation. All of the 40 states that have enterprise zone programs originally included poverty factors in their eligibility criteria.

Of the 48 jurisdictions that use TIF, 37 originally included blight as criteria for eligibility. Some of these states also originally permitted TIF to be used in non-blighted areas such as conservation areas and economic development areas.

Finding #2: Sixteen states have weakened their TIF laws.

Sixteen states have weakened their TIF laws either by loosening the eligibility criteria or the boundary rules: Alaska, Georgia, Idaho, Illinois[1], Indiana, Iowa,

[1] Illinois created a district with weaker criteria for one company. The original TIF legislation for other districts was later strengthened with tighter criteria.

Minnesota, Mississippi, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Carolina, Utah and Virginia.

- Fifteen states relaxed the criteria that areas must meet to be designated as a TIF district.

- Twelve of those 15 states either weakened the definition of blight, or added alternative criteria that are not directly related to blight: Alaska, Georgia, Indiana, Iowa, Minnesota, Mississippi, Nevada, North Dakota, Oregon, Utah and Virginia.

- Idaho, Illinois and Nebraska created a second type of TIF district with weaker criteria than the original TIF district.

- Minnesota, Nevada and South Carolina have authorized non-contiguous TIF districts or allowed TIF revenue to be spent on projects located outside the district.

Finding #3: Seven states have strengthened their TIF programs.

Seven states have enacted reforms to strengthen their TIF laws: California, Colorado, Florida[2], Illinois, Nebraska[3], Ohio and Oregon.

- Five states tightened their blight criteria: California, Colorado, Florida, Illinois and Nebraska.

- Ohio created a second type of TIF district with stronger criteria than the original program.

- Nebraska and Oregon limited the percentage of land a municipality may include in a TIF district.

Finding #4: Eleven states have weakened their enterprise zone programs.

Eleven states have weakened their enterprise zone programs through various measures: Arkansas, California, Connecticut, Indiana, Kansas, Louisiana,

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[2] Florida weakened and then strengthened the blight criteria in its TIF law.

[3] Nebraska also created a second type of TIF district in 1995 with weaker criteria, but the program expired in 1999. The criteria for the original program have been strengthened.

New York, Ohio, South Carolina, Texas and Wisconsin.

- Four states weakened their zone eligibility criteria: Connecticut, New York, Ohio and Wisconsin.

- Arkansas, Kansas, and South Carolina turned the entire state into an enterprise zone.

- Four states added non-contiguous land to a zone or allowed businesses outside a zone to claim credits: California, Connecticut, Louisiana and New York.

- Five states increased the size of their zones: California, Indiana, New York, Texas and Wisconsin.

Finding #5: One state has strengthened its enterprise zone program.

North Carolina tightened the eligibility criteria for enterprise zones. It also reduced the duration of its zones.

NOTES

[1] The federal empowerment zone and enterprise community programs were established in the Omibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat.323 (1993).
[2] Peter Fisher and Alan Peters, *Tax Incentives, Enterprise Zones, and Job Redistribution, 1990-1997,* University of Iowa Graduate Program in Urban and Regional Planning, 1998.
[3] 2002 Alaska Sess. Laws, ch. 126
[4] California State Controller, *Community Redevelopment Agencies Annual Report Fiscal Year 2001-2002*, April 19, 2002, at iv, vii.
[5] 1993 Cal. Stat., ch. 942 § 4
[6] Ibid.
[7] Barbara Beach-Courchesne v. City of Diamond Bar, 95 Cal. Rptr.2d 565 (2000).
[8] 1976 Cal. Stat., ch. 1337
[9] 2001 Cal. Stat. 2001, ch. 938 § 2
[10] 1976 Colo. Sess. Laws, p.701 § 1
[11] 1999 Colo. Sess. Laws, p.529 § 1
[12] 1981 Fla. Laws, ch. 44
[13] 1984 Fla. Laws, ch. 356
[14] 2002 Fla. Laws, ch. 294
[15] 2001 Ga. Laws, p.304 § 4
[16] 1988 Idaho Sess. Laws, ch. 210
[17] 1990 Idaho Sess. Laws, ch. 430
[18] 2000 Idaho Sess. Laws, ch. 275
[19] 1994 Idaho Sess. Laws, ch. 381
[20] Illinois Tax Increment Association, FAQs, www.illinois-tif.com/faqs.htm.
[21] Neighborhood Capital Budget Group, *Who Pays for the Only Game in Town?,* 2002, at 2.
[22] 1989 Ill. Laws, ch.127; See also, Good Jobs First, *A Better Deal for Illinois: Improving Economic Development Policy*, January 2003, at 36-37.
[23] Neighborhood Capital Budget Group, at 3.
[24] Reed-Custer Community Unit School District No. 255-U v. City of Wilmington, 625 N.E.2d 381 (1993).
[25] 1999 Ill. P.A. 91-478
[26] Ind. Code § 36-7-1-3
[27] 1987 Ind. Acts, P.L. 380
[28] J. Drew Klacik, "*Tax Increment Financing in Indiana,*" Tax Increment Financing and Economic Development, (Craig Johnson and Joyce Man eds., SUNY Press, 2001).
[29] Ibid.
[30] 1995 Ind. Acts, P.L. 25
[31] 1985 Iowa Acts, ch. 66
[32] 1991 Iowa Acts, ch. 214
[33] David Swenson and Liesl Eathington, *Do Tax Increment Finance Districts in Iowa Spur Regional Economic and Demographic Growth?* Iowa State University Department of Economics, June 2002.
[34] 1994 Iowa Acts, ch. 1182

[35] 1996 Iowa Acts, ch. 1204
[36] Iowa Legislative Fiscal Bureau, Tax Increment Financing, July 16, 1997; See also, Peter Fischer and Charles Bruner, *Tax Increment Financing in Iowa: What Should Be Done?,* The Iowa Policy Project, April 2003.
[37] Fisher and Bruner, 2003.
[38] C. Clayton, *"Farm Bureau tax plan is 'all the buzz' at Capitol Statewide Tax Increment Renewal,"* Omaha World-Herald, February 17, 2003.
[39] Becky Sisco,*"Developer unfazed by Vision Iowa Withdrawal,"* Telegraph Herald, April 24, 2003.
See also, Chase Davis, *"Clayton County Nears Resort Deal,"* Telegraph Herald, June 5, 2003.
[40] 1990 Minn. Laws, ch. 604
[41] Minnesota State Auditor, *Tax Increment Financing Report,* May 1, 2003, at 5.
[42] 2001 Minn. Laws, ch. 5
[43] 1995 Minn. Laws, ch. 264
[44] Minnesota State Auditor, at 7.
[45] D. Wascoe, "*Cities Face Big Drop in Redevelopment Funds,*" Star Tribune, May 16, 2003.
[46] National Education Association, *Protecting Public Education From Tax Giveaways to Corporations,* January, 2003, at 23,24.
[47] Miss. Code Ann. § 21-45-3
[48] 1993 Miss. Laws, ch. 494.
[49] Neb. Rev. Stat. § 18-2103
[50] Ibid.
[51] 1984 Neb. Laws, L.B. 1084
[52] Ibid. No more than 35 percent of first class cities, 50 percent of second-class cities and villages could be declared blighted.
[53] 1997 Neb. Laws, L.B. 875
[54] 1999 Neb. Laws, L.B. 774
[55] 1995 Neb. Laws, L.B. 830
[56] Neb. Rev. Stat. § 18-2103
[57] 1985 Nev. Stat., ch. 639
[58] Ibid.
[59] 1991 Nev. Stat., ch. 621
[60] 1993 Nev. Stat., ch. 410
[61] 1999 Nev. Stat., ch. 254
[62] 1989 N.D. Laws, ch. 499
[63] Ibid.
[64] City of Jamestown v. Leevers Supermarkets, 552 N.W.2d 365 (1996)
[65] Cleveland State University Urban Center, *An Assessment of the Costs, Benefits, and Overall Impacts of the State of Ohio's Economic Development Programs,* May 28, 1999, at 149,150.
[66] Residential TIFs must be located in cities.
[67] 2001 Ohio Laws, H.B. 405
[68] 1992 Ohio Laws, S.B. 363

[69] 1992 Okla. Sess. Laws, ch. 342
[70] Okla. Stat., §62-853.
[71] *Report of the Joint Legislative Interim Task Force on Urban Renewal Financing,* Oregon Sixtieth Legislative Assembly, December 1977, at 79.
[72] Ibid.
[73] Ibid.
[74] 1979 Or. Laws, ch. 621
[75]In municipalities with a population greater than 50,000, no more than 15 percent of the land area or assessed value may be included in TIF districts. In municipalities with a population under 50,000, no more than 25 percent of the land or value may be included.
[76] 1999 S.C. Acts, Act 93
[77] Ibid.
[78] 2001 S.C. Acts, Act 207
[79] 1993 Utah Laws, ch. 2
[80] 1989 Va. Acts, ch. 418
[81] 1990 Va. Acts, ch. 296
[82] Ibid.
[83] 1989 Ark. Acts, no. 462, § 4
[84] 1993 Ark. Acts, no. 947, § 14
[85] 2003 Ark. Acts, no. 182
[86] 1996 Calif. Stat., ch. 955
[87] 1998 Calif. Stat., ch. 323
[88] 1998, Calif. Stat., ch. 323
[89] 1997, Calif. Stat., ch. 602
[90] 1984 Conn. Pub. Acts, 84-144
[91] 1986 Conn. Pub. Acts, 86-258
[92] Conn. Gen. Stat. 578 § 32-9p(d)
[93] 1996 Conn. Pub. Acts, 96-239
[94] 1999 Ind. Acts, P.L. 204
[95] 1984 Ind. Acts, P.L. 9
[96] 1992 Ind. Acts, P.L. 18
[97] 1993 Ind. Acts, P.L. 27
[98] 2001 Ind. Acts, P.L. 289
[99] 1995 Ind. Acts, P.L. 26
[100] 1992 Kan. Sess. Laws, ch. 202
[101] 1994 Kan. Sess. Laws, ch. 268
[102] 1996 Kan. Sess. Laws, ch. 207
[103] 1997 Kan. Sess. Laws, ch. 159
[104] In The Matter of the Appeal of HCA Services, 51 P.3d 1119 (2002).
[105] 1992 La. Act 466
[106] 1999 La. Act 977
[107] 2000 Md. Laws, ch. 464
[108] N.Y. Gen. Mun. Law 958
[109] 1990 N.Y. Law, ch. 624

[110] 1993 N.Y. Law, ch. 708
[111] 1999 N.Y. Law, ch. 492
[112] 2002 N.Y. Law, ch. 84
[113] Jay Gallagher, *"Businesses Accused of Abusing Tax Breaks,"* Gannett News Service, February 28, 2002.
[114] James Heaney and Patrick LaKamp, *"Failed Empire,"* Buffalo News, June 9, 2003.
[115] 1999 N.C. Sess. Laws, ch. 360
[116] Cleveland State University Urban Center, *.An Assessment of the Costs, Benefits, and Overall Impacts of the State of Ohio's Economic Development Programs,* 1999.
[117] Ed Hill, *Tax Abatement War Within a State: Ohio's Enterprise Zone Tax Abatement Program,* Cleveland State University College of Urban Affairs, August 1994.
[118] Ibid.
[119] 1996 S.C. Acts, Act 462
[120] 1998 S.C. Acts, Act 419
[121] 1987 Tex. Gen. Laws, ch. 765
[122] 1989 Tex. Gen. Laws, ch. 1106
[123] 2001 Tex. Gen. Laws, ch. 813
[124] 1996 Utah Laws, ch. 292
[125] 1995 Wis. Laws, Act 209
[126] Wisconsin Legislative Fiscal Bureau, *State Economic Development Programs Administered by the Department of Commerce: Informational Paper 82,* January, 2003, at 63.
[127] The value of maximum tax credits was increased in 1989, 1993, 1995, 1997, and 1999. 1989 Wis. Laws, Act 336; 1993 Wis. Laws, Act 16; 1995 Wis. Laws, Act 209; 1997 Wis. Laws, Act 27; and 1999 Wis. Laws, Act 9.
[128] 1999 Wis. Laws, Act 193
[129] 1995 Wis. Laws, Act 27
[130] 1999 Wis. Laws, Act 9
[131] Wisconsin Legislative Fiscal Bureau, at 66.