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HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE NO. 2434

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The bill was read for the first time and referred to the Committee on Taxes

A bill for an act

relating to tax increment financing; making technical and minor policy changes; amending Minnesota Statutes 2006, sections 469.174, subdivisions 10, 10a; 469.175, subdivision 3; 469.176, subdivisions 2, 4l, 7; 469.1761, subdivision 1; 469.177, subdivision 1; 469.178, subdivision 7; 469.1791, subdivision 3; repealing Minnesota Statutes 2006, section 469.174, subdivision 29.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 469.174, subdivision 10, is amended to read:

Subd. 10. **Redevelopment district.** (a) "Redevelopment district" means a type of tax increment financing district consisting of a project, or portions of a project, within which the authority finds by resolution that one or more of the following conditions, reasonably distributed throughout the district, exists:

(1) parcels consisting of 70 percent of the area of the district are occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance;

(2) the property consists of vacant, unused, underused, inappropriately used, or infrequently used railyards, rail storage facilities, or excessive or vacated railroad rights-of-way;

(3) tank facilities, or property whose immediately previous use was for tank facilities, as defined in section 115C.02, subdivision 15, if the tank facilities:

(i) have or had a capacity of more than 1,000,000 gallons;

(ii) are located adjacent to rail facilities; and

(iii) have been removed or are unused, underused, inappropriately used, or infrequently used; or

(4) a qualifying disaster area, as defined in subdivision 10b.

(b) For purposes of this subdivision, "structurally substandard" shall mean containing defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors, which defects or deficiencies are of sufficient total significance to justify substantial renovation or clearance.

(c) A building is not structurally substandard if it is in compliance with the building code applicable to new buildings or could be modified to satisfy the building code at a cost of less than 15 percent of the cost of constructing a new structure of the same square footage and type on the site. The municipality may find that a building is not disqualified as structurally substandard under the preceding sentence on the basis of reasonably available evidence, such as the size, type, and age of the building, the average cost of plumbing, electrical, or structural repairs, or other similar reliable evidence. The municipality may not make such a determination without an interior inspection of the property, but need not have an independent, expert appraisal prepared of the cost of repair and rehabilitation of the building. An interior inspection of the property is not required, if the municipality finds that (1) the municipality or authority is unable to gain access to the property after using its best efforts to obtain permission from the party that owns or controls the property; and (2) the evidence otherwise supports a reasonable conclusion that the building is structurally substandard. Items of evidence that support such a conclusion include recent fire or police inspections, on-site property tax appraisals or housing inspections, exterior evidence of deterioration, or other similar reliable evidence. Written documentation of the findings and reasons why an interior inspection was not conducted must be made and retained under section 469.175, subdivision 3, clause (1). Failure of a building to be disqualified under the provisions of this paragraph is a necessary, but not a sufficient, condition to determining that the building is substandard.

(d) A parcel is deemed to be occupied by a structurally substandard building for purposes of the finding under paragraph (a) or by the improvements described in paragraph (e) if all of the following conditions are met:

(1) the parcel was occupied by a substandard building or met the requirements of paragraph (e), as the case may be, within three years of the filing of the request for certification of the parcel as part of the district with the county auditor;

(2) the substandard building ~~was~~ or the improvements described in paragraph (e) were demolished or removed by the authority or the demolition or removal was financed

by the authority or was done by a developer under a development agreement with the authority;

(3) the authority found by resolution before the demolition or removal that the parcel was occupied by a structurally substandard building or met the requirements of paragraph (e) and that after demolition and clearance the authority intended to include the parcel within a district; and

(4) upon filing the request for certification of the tax capacity of the parcel as part of a district, the authority notifies the county auditor that the original tax capacity of the parcel must be adjusted as provided by section 469.177, subdivision 1, paragraph (f).

(e) For purposes of this subdivision, a parcel is not occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures unless 15 percent of the area of the parcel contains buildings, streets, utilities, paved or gravel parking lots, or other similar structures.

(f) For districts consisting of two or more noncontiguous areas, each area must qualify as a redevelopment district under paragraph (a) to be included in the district, and the entire area of the district must satisfy paragraph (a).

EFFECTIVE DATE. This section is effective for requests for certification made after June 30, 2007.

Sec. 2. Minnesota Statutes 2006, section 469.174, subdivision 10a, is amended to read:

Subd. 10a. **Renewal and renovation district.** (a) "Renewal and renovation district" means a type of tax increment financing district consisting of a project, or portions of a project, within which the authority finds by resolution that:

(1)(i) parcels consisting of 70 percent of the area of the district are occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures; (ii) 20 percent of the buildings are structurally substandard; and (iii) 30 percent of the other buildings require substantial renovation or clearance to remove existing conditions such as: inadequate street layout, incompatible uses or land use relationships, overcrowding of buildings on the land, excessive dwelling unit density, obsolete buildings not suitable for improvement or conversion, or other identified hazards to the health, safety, and general well-being of the community; and

(2) the conditions described in clause (1) are reasonably distributed throughout the geographic area of the district.

(b) For purposes of determining whether a building is structurally substandard, whether parcels are occupied by buildings, streets, utilities, paved or gravel parking lots,

or other similar structures, or whether noncontiguous areas qualify, the provisions of subdivision 10, paragraphs ~~(c), (e), and~~ (b) through (f) apply.

EFFECTIVE DATE. This section is effective for requests for certification made after June 30, 2007.

Sec. 3. Minnesota Statutes 2006, section 469.175, subdivision 3, is amended to read:

Subd. 3. **Municipality approval.** (a) A county auditor shall not certify the original net tax capacity of a tax increment financing district until the tax increment financing plan proposed for that district has been approved by the municipality in which the district is located. If an authority that proposes to establish a tax increment financing district and the municipality are not the same, the authority shall apply to the municipality in which the district is proposed to be located and shall obtain the approval of its tax increment financing plan by the municipality before the authority may use tax increment financing. The municipality shall approve the tax increment financing plan only after a public hearing thereon after published notice in a newspaper of general circulation in the municipality at least once not less than ten days nor more than 30 days prior to the date of the hearing. The published notice must include a map of the area of the district from which increments may be collected and, if the project area includes additional area, a map of the project area in which the increments may be expended. The hearing may be held before or after the approval or creation of the project or it may be held in conjunction with a hearing to approve the project.

(b) Before or at the time of approval of the tax increment financing plan, the municipality shall make the following findings, and shall set forth in writing the reasons and supporting facts for each determination:

(1) that the proposed tax increment financing district is a redevelopment district, a renewal or renovation district, a housing district, a soils condition district, or an economic development district; if the proposed district is a redevelopment district or a renewal or renovation district, the reasons and supporting facts for the determination that the district meets the criteria of section 469.174, subdivision 10, paragraph (a), clauses (1) and (2), or subdivision 10a, must be documented in writing and retained and made available to the public by the authority until the district has been terminated;

(2) that, in the opinion of the municipality:

(i) the proposed development or redevelopment would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future; and

(ii) the increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the

market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the district permitted by the plan. The requirements of this item do not apply if the district is a ~~qualified~~ housing district;

(3) that the tax increment financing plan conforms to the general plan for the development or redevelopment of the municipality as a whole;

(4) that the tax increment financing plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the development or redevelopment of the project by private enterprise;

(5) that the municipality elects the method of tax increment computation set forth in section 469.177, subdivision 3, paragraph (b), if applicable.

(c) When the municipality and the authority are not the same, the municipality shall approve or disapprove the tax increment financing plan within 60 days of submission by the authority. When the municipality and the authority are not the same, the municipality may not amend or modify a tax increment financing plan except as proposed by the authority pursuant to subdivision 4. Once approved, the determination of the authority to undertake the project through the use of tax increment financing and the resolution of the governing body shall be conclusive of the findings therein and of the public need for the financing.

(d) For a district that is subject to the requirements of paragraph (b), clause (2), item (ii), the municipality's statement of reasons and supporting facts must include all of the following:

(1) an estimate of the amount by which the market value of the site will increase without the use of tax increment financing;

(2) an estimate of the increase in the market value that will result from the development or redevelopment to be assisted with tax increment financing; and

(3) the present value of the projected tax increments for the maximum duration of the district permitted by the tax increment financing plan.

(e) For purposes of this subdivision, "site" means the parcels on which the development or redevelopment to be assisted with tax increment financing will be located.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to all districts, regardless of when the request for certification was made.

Sec. 4. Minnesota Statutes 2006, section 469.176, subdivision 2, is amended to read:

Subd. 2. **Excess increments.** (a) The authority shall annually determine the amount of excess increments for a district, if any. This determination must be based on the tax

increment financing plan in effect on December 31 of the year and the increments and other revenues received as of December 31 of the year. The authority must spend or return the excess increments under paragraph (c) within nine months after the end of the year.

(b) For purposes of this subdivision, "excess increments" equals the excess of:

(1) total increments collected from the district since its certification, reduced by any excess increments paid under paragraph (c), clause (4), for a prior year, over

(2) the total costs authorized by the tax increment financing plan to be paid with increments from the district, reduced, but not below zero, by the sum of:

(i) the amounts of those authorized costs that have been paid from sources other than tax increments from the district;

(ii) revenues, other than tax increments from the district, that are dedicated for or otherwise required to be used to pay those authorized costs and that the authority has received and that are not included in item (i);

(iii) the amount of principal and interest obligations due on outstanding bonds after December 31 of the year and not prepaid under paragraph (c) in a prior year; and

(iv) increased by the sum of the transfers of increments made under section 469.1763, subdivision 6, to reduce deficits in other districts made by December 31 of the year.

(c) The authority shall use excess increment only to do one or more of the following:

(1) prepay any outstanding bonds;

(2) discharge the pledge of tax increment for any outstanding bonds;

(3) pay into an escrow account dedicated to the payment of any outstanding bonds; or

(4) return the excess amount to the county auditor who shall distribute the excess amount to the city or town, county, and school district in which the tax increment financing district is located in direct proportion to their respective local tax rates.

(d) For purposes of a district for which the request for certification was made prior to August 1, 1979, excess increments equal the amount of increments on hand on December 31, less the principal and interest obligations due on outstanding bonds or advances, qualifying under subdivision 1c, clauses (1), (2), (4), and (5), after December 31 of the year and not prepaid under paragraph (c).

(e) The county auditor must report to the commissioner of education the amount of any excess tax increment distributed to a school district within 30 days of the distribution.

(f) For purposes of this subdivision, "outstanding bonds" means bonds which are secured by increments from the district.

(g) The state auditor may exempt an authority from reporting the amounts calculated under this subdivision for a calendar year, if the authority certifies to the auditor in its report that the total amount authorized by the tax increment plan to be paid with

increments from the district exceeds the sum of the total increments collected for the district for all years by ... percent.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to all districts regardless of when the request for certification was made, including districts for which the request for certification was made on or before August 1, 1979.

Sec. 5. Minnesota Statutes 2006, section 469.176, subdivision 4l, is amended to read:

Subd. 4l. **Prohibited facilities.** (a) No tax increment from any district may be used for:

(1) a commons area used as a public park; or

(2) a facility used for social, recreational, or conference purposes.

(b) This subdivision does not apply to a privately owned facility for conference purposes or a parking structure, whether it is public or privately owned or whether it is ancillary to a use listed in paragraph (a).

EFFECTIVE DATE. This section confirms the original intent of the legislature in enacting Minnesota Statutes, section 469.176, subdivision 4l, and is effective the day following final enactment and applies to any expenditure subject to Minnesota Statutes, section 469.176, subdivision 4l.

Sec. 6. Minnesota Statutes 2006, section 469.176, subdivision 7, is amended to read:

Subd. 7. **Parcels not includable in districts.** (a) The authority may request inclusion in a tax increment financing district and the county auditor may certify the original tax capacity of a parcel or a part of a parcel that qualified under the provisions of section 273.111 or 273.112 or chapter 473H for taxes payable in any of the five calendar years before the filing of the request for certification only for:

(1) a district in which 85 percent or more of the planned buildings and facilities (determined on the basis of square footage) are a qualified manufacturing facility or a qualified distribution facility or a combination of both; or

(2) a ~~qualified~~ housing district.

(b)(1) A distribution facility means buildings and other improvements to real property that are used to conduct activities in at least each of the following categories:

(i) to store or warehouse tangible personal property;

(ii) to take orders for shipment, mailing, or delivery;

(iii) to prepare personal property for shipment, mailing, or delivery; and

(iv) to ship, mail, or deliver property.

(2) A manufacturing facility includes space used for manufacturing or producing tangible personal property, including processing resulting in the change in condition of the property, and space necessary for and related to the manufacturing activities.

(3) To be a qualified facility, the owner or operator of a manufacturing or distribution facility must agree to pay and pay 90 percent or more of the employees of the facility at a rate equal to or greater than 160 percent of the federal minimum wage for individuals over the age of 20.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to all districts regardless of when the request for certification was made.

Sec. 7. Minnesota Statutes 2006, section 469.1761, subdivision 1, is amended to read:

Subdivision 1. **Requirement imposed.** (a) In order for a tax increment financing district to qualify as a housing district:

(1) the income limitations provided in this section must be satisfied; and

(2) no more than 20 percent of the square footage of buildings that receive assistance from tax increments may consist of commercial, retail, or other nonresidential uses.

(b) The requirements imposed by this section apply to property receiving assistance financed with tax increments, including interest reduction, land transfers at less than the authority's cost of acquisition, utility service or connections, roads, parking facilities, or other subsidies. The provisions of this section do not apply to districts located in a targeted area as defined in section 462C.02, subdivision 9, clause (e).

(c) For purposes of the requirements of paragraph (a), the authority may elect to treat an addition to an existing structure as a separate building if:

(1) construction of the addition begins more than three years after construction of the existing structure was completed; and

(2) for an addition that does not meet the requirements of paragraph (a), clause (2), if it is treated as a separate building, the addition was not contemplated by the tax increment financing plan which includes the existing structure.

EFFECTIVE DATE. This section is effective for expenditures of tax increment authorized and made after the day following final enactment, regardless of when the request for certification of the district was made.

Sec. 8. Minnesota Statutes 2006, section 469.177, subdivision 1, is amended to read:

Subdivision 1. **Original net tax capacity.** (a) Upon or after adoption of a tax increment financing plan, the auditor of any county in which the district is situated shall,

upon request of the authority, certify the original net tax capacity of the tax increment financing district and that portion of the district overlying any subdistrict as described in the tax increment financing plan and shall certify in each year thereafter the amount by which the original net tax capacity has increased or decreased as a result of a change in tax exempt status of property within the district and any subdistrict, reduction or enlargement of the district or changes pursuant to subdivision 4. The auditor shall certify the amount within 30 days after receipt of the request and sufficient information to identify the parcels included in the district. The certification relates to the taxes payable year as provided in subdivision 6.

(b) If the classification under section 273.13 of property located in a district changes to a classification that has a different assessment ratio, the original net tax capacity of that property must be redetermined at the time when its use is changed as if the property had originally been classified in the same class in which it is classified after its use is changed.

(c) The amount to be added to the original net tax capacity of the district as a result of previously tax exempt real property within the district becoming taxable equals the net tax capacity of the real property as most recently assessed pursuant to section 273.18 or, if that assessment was made more than one year prior to the date of title transfer rendering the property taxable, the net tax capacity assessed by the assessor at the time of the transfer. If improvements are made to tax exempt property after the municipality approves the district and before the parcel becomes taxable, the assessor shall, at the request of the authority, separately assess the estimated market value of the improvements. If the property becomes taxable, the county auditor shall add to original net tax capacity, the net tax capacity of the parcel, excluding the separately assessed improvements. If substantial taxable improvements were made to a parcel after certification of the district and if the property later becomes tax exempt, in whole or part, as a result of the authority acquiring the property through foreclosure or exercise of remedies under a lease or other revenue agreement or as a result of tax forfeiture, the amount to be added to the original net tax capacity of the district as a result of the property again becoming taxable is the amount of the parcel's value that was included in original net tax capacity when the parcel was first certified. The amount to be added to the original net tax capacity of the district as a result of enlargements equals the net tax capacity of the added real property as most recently certified by the commissioner of revenue as of the date of modification of the tax increment financing plan pursuant to section 469.175, subdivision 4.

(d) If the net tax capacity of a property increases because the property no longer qualifies under the Minnesota Agricultural Property Tax Law, section 273.111; the Minnesota Open Space Property Tax Law, section 273.112; or the Metropolitan

Agricultural Preserves Act, chapter 473H, or because platted, unimproved property is improved or market value is increased after approval of the plat under section 273.11, subdivision 14, 14a, or 14b, the increase in net tax capacity must be added to the original net tax capacity.

(e) The amount to be subtracted from the original net tax capacity of the district as a result of previously taxable real property within the district becoming tax exempt, or a reduction in the geographic area of the district, shall be the amount of original net tax capacity initially attributed to the property becoming tax exempt or being removed from the district. If the net tax capacity of property located within the tax increment financing district is reduced by reason of a court-ordered abatement, stipulation agreement, voluntary abatement made by the assessor or auditor or by order of the commissioner of revenue, the reduction shall be applied to the original net tax capacity of the district when the property upon which the abatement is made has not been improved since the date of certification of the district and to the captured net tax capacity of the district in each year thereafter when the abatement relates to improvements made after the date of certification. The county auditor may specify reasonable form and content of the request for certification of the authority and any modification thereof pursuant to section 469.175, subdivision 4.

(f) If a parcel of property contained a substandard building or improvements described in section 469.174, subdivision 10, paragraph (e), that ~~was~~ were demolished or removed and if the authority elects to treat the parcel as occupied by a substandard building under section 469.174, subdivision 10, paragraph (b), or by improvements under section 469.174, subdivision 10, paragraph (e), the auditor shall certify the original net tax capacity of the parcel using the greater of (1) the current net tax capacity of the parcel, or (2) the estimated market value of the parcel for the year in which the building ~~was~~ or other improvements were demolished or removed, but applying the class rates for the current year.

(g) For a redevelopment district qualifying under section 469.174, subdivision 10, paragraph (a), clause (4), as a qualified disaster area, the auditor shall certify the value of the land as the original tax capacity for any parcel in the district that contains a building that suffered substantial damage as a result of the disaster or emergency.

EFFECTIVE DATE. This section is effective for requests for certification made after June 30, 2007.

Sec. 9. Minnesota Statutes 2006, section 469.178, subdivision 7, is amended to read:

Subd. 7. **Interfund loans.** The authority or municipality may advance or loan money to finance expenditures under section 469.176, subdivision 4, from its general

fund or any other fund under which it has legal authority to do so. The loan or advance must be authorized, by resolution of the governing body or of the authority, whichever has jurisdiction over the fund from which the advance or loan is made, before money is transferred, advanced, or spent, whichever is earliest. The resolution may generally grant to the authority the power to make interfund loans under one or more tax increment financing plans or for one or more districts. The terms and conditions for repayment of the loan must be provided in writing and include, at a minimum, the principal amount, the interest rate, and maximum term. The maximum rate of interest permitted to be charged is limited to the greater of the rates specified under section 270C.40 or 549.09 as of the date the loan or advance is made, unless the written agreement states that the maximum interest rate will fluctuate as the interest rates specified under section 270C.40 or 549.09 are from time to time adjusted.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to all districts subject to Minnesota Statutes, section 469.178, subdivision 7, regardless of when the request for certification was made.

Sec. 10. Minnesota Statutes 2006, section 469.1791, subdivision 3, is amended to read:

Subd. 3. **Preconditions to establish district.** (a) A city may establish a special taxing district within a tax increment financing district under this section only if the conditions under paragraphs (b) and (c) are met or if the city elects to exercise the authority under paragraph (d).

(b) The city has determined that:

(1) total tax increments from the district, including unspent increments from previous years and increments transferred under paragraph (c), will be insufficient to pay the amounts due in a year on preexisting obligations; and

(2) this insufficiency of increments resulted from the reduction in property tax class rates enacted in the 1997 and 1998 legislative sessions.

(c) The city has agreed to transfer any available increments from other tax increment financing districts in the city to pay the preexisting obligations of the district under section 469.1763, subdivision 6. This requirement does not apply to any available increments of a ~~qualified~~ housing district.

(d) If a tax increment financing district does not qualify under paragraphs (b) and (c), the governing body may elect to establish a special taxing district under this section. If the city elects to exercise this authority, increments from the tax increment financing district and the proceeds of the tax imposed under this section may only be used to pay preexisting obligations and reasonable administrative expenses of the authority for the tax

increment financing district. The tax increment financing district must be decertified when all preexisting obligations have been paid.

EFFECTIVE DATE. This section is effective the day following final enactment and applies to districts regardless of when the request for certification was made.

Sec. 11. **REPEALER.**

Minnesota Statutes 2006, section 469.174, subdivision 29, is repealed.

EFFECTIVE DATE. This section is effective the day following final enactment. For purposes of any special law authorizing or limiting the use of increments to projects meeting the requirements of a qualified housing district, expenditures for housing districts satisfying the requirements of Minnesota Statutes, sections 469.174, subdivision 11; 469.176, subdivision 4d; and 469.1761, as amended, also satisfy the requirements of the special law.

469.174 DEFINITIONS.

Subd. 29. **Qualified housing district.** "Qualified housing district" means:

(1) a housing district for a residential rental project or projects in which the only properties receiving assistance from revenues derived from tax increments from the district meet the rent restriction requirements and the low-income occupancy test for a qualified low-income housing project under section 42(g) of the Internal Revenue Code of 1986, as amended through December 31, 2002, regardless of whether the project actually receives a low-income housing credit; or

(2) a housing district for a single-family homeownership project or projects, if 95 percent or more of the homes receiving assistance from tax increments from the district are purchased by qualified purchasers. A qualified purchaser means the first purchaser of a home after the tax increment assistance is provided whose income is at or below 85 percent of the median gross income for a family of the same size as the purchaser. Median gross income is the greater of (i) area median gross income, or (ii) the statewide median gross income, as determined by the secretary of Housing and Urban Development.