



## Statement of Position Temporary Transfer Authority (2021 Law)

Tax increment revenue may be spent only as permitted by the Tax Increment Financing Act (TIF Act).<sup>1</sup> In 2021, the Legislature enacted expanded, temporary authority to transfer unobligated tax increments for purposes of assisting private development consisting of the construction or substantial rehabilitation of buildings and ancillary facilities, if doing so will create or retain jobs in the state.<sup>2</sup> Proposed amidst the COVID-19 pandemic, the enacted law is narrower than initially proposed and is similar to 2010 legislation that temporarily expanded the use of TIF with the aim of stimulating economic recovery after the Great Recession.<sup>3</sup>

### Authority, Purposes

The new law temporarily permits a development authority to elect, by resolution, to transfer unobligated increment for certain specified purposes. The new law does not, however, override requirements to pay bonds to which increments are pledged.

Any transfer under this provision must be for the purpose of assisting private development that meets all of the following criteria:

1. it consists of the construction or substantial rehabilitation of buildings and ancillary facilities;
2. it creates or retains jobs in the state, including construction jobs; **and**
3. construction commences before December 31, 2025, and would not have commenced before that date without the assistance.<sup>4</sup>

Developments that would already commence construction prior to December 31, 2025, or those that do not add or retain jobs in the state, would not be permitted beneficiaries of the transfer.

Transfers must provide the assistance in one or both of the following ways:

1. by providing improvements, loans, interest rate subsidies, or assistance in any form to the private development; or

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<sup>1</sup> The TIF Act is found at Minn. Stat. §§ 469.174 to 460.1794.

<sup>2</sup> Minn. Stat. § 469.176, subd. 4n, as enacted by 2021 Minn. Laws, 1<sup>st</sup> Spec. Sess., ch. 14, art. 9 sec. 1.

<sup>3</sup> The 2021 enacted provision does not include transfers to the general fund, nor more-generalized support for businesses impacted by the pandemic, as was initially entertained. While similar to the 2010 Jobs Stimulus provision, additional details are included. For information about the 2010 provision, see the separate TIF Jobs Stimulus Program statement of position on our website.

<sup>4</sup> Minn. Stat. § 469.176, subd. 4n(a).

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2. by making an equity or similar investment in a corporation, partnership, or limited liability company that the authority determines is necessary to make construction of a development financially feasible.<sup>5</sup>

In order to demonstrate compliance with the new provision, an authority may wish to include affirmation of the qualifications in the written resolution electing to make the transfer. The authority also should keep documentation that demonstrates that the development created or retained jobs in the state and that commencement of construction by December 31, 2025, depended on the transfer.

### **Approvals and Spending Plans**

Prior to approving the use of this temporary transfer authority by resolution, a development authority must also create a written spending plan that authorizes the development authority to provide the assistance or make the investment that makes the development qualify.<sup>6</sup> The plan must detail the use of transferred increment.<sup>7</sup> The OSA recommends identifying planned expenditures using the same categories identified in TIF plans and TIF reporting (e.g., acquisition, site preparation, financing costs, etc.), except for a category for administrative expenses, because administrative expenses are not included in the permissible uses of the transferred increment in the new law.

The municipality (which may or not be the same as the development authority) must also approve the authority's spending plan after holding a public hearing.<sup>8</sup> The municipality must publish notice of the hearing in a newspaper of general circulation in the municipality and on the municipality's public website at least ten days, but not more than 30 days, prior to the date of the hearing.<sup>9</sup>

An authority making a transfer under this authority must provide a copy of the spending plan approved and signed by the municipality to the Office of the State Auditor.<sup>10</sup> Plans should be emailed to [TIF@osa.state.mn.us](mailto:TIF@osa.state.mn.us) as soon as possible after their approval.

### **Parameters and Limitations**

The authority to transfer increments under this provision expires on December 31, 2022.<sup>11</sup> Amounts being transferred under this provision must be transferred from the fund or account in which tax increments are segregated and into a separate fund or account by December 31, 2022. Amounts must not be expended directly from the transferring TIF fund or account, and may not be spent after December 31, 2022, if they remain in the TIF district's fund or account at that time.<sup>12</sup> All transfers must be spent by December 31, 2025.<sup>13</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> Minn. Stat. § 469.176, subd. 4n(c).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* A city's housing and redevelopment authority or economic development authority, for example, may be the development authority while the city itself is the municipality.

<sup>9</sup> *Id.*

<sup>10</sup> Minn. Stat. § 469.176, subd. 4n(e).

<sup>11</sup> Minn. Stat. § 469.176, subd. 4n(f).

<sup>12</sup> Minn. Stat. § 469.177, subd. 5, requires an authority to segregate tax increment received with respect to any district in a special account or accounts on its official books and records. This authority allows transfers out of such accounts as opposed to expenditures from within these accounts.

<sup>13</sup> Minn. Stat. § 469.176, subd. 4n(f).

Transfers from a TIF district in calendar years 2021 and 2022 are limited to a maximum transfer equal to the excess of the district's unobligated increment.<sup>14</sup> Under the provision, unobligated increment includes any increment not required for payment of obligations due during the six months following the transfer on outstanding bonds, binding contracts, and other outstanding financial obligations of the district to which the district's increment is pledged.<sup>15</sup> Unobligated increment may include either in-district or out-district shares of tax increment.

This authority does not provide any exception to pay those obligations to which tax increment is pledged, and an authority should not transfer amounts that might impair their ability to make payments on those obligations.

Increment that is improperly retained, received, spent, or transferred is not eligible for transfer under this authority.<sup>16</sup> Therefore, balances of tax increment should be carefully evaluated prior to making transfers. For example, excess increment calculated for 2019 that might remain in the TIF fund after it should have been returned by September 30, 2020, would not be eligible for transfer. Likewise, if a district receives tax increment after it should have decertified under the Six-Year Rule, such amounts of increment would also not be eligible for transfer.

### **Unspent Transfers**

Increment not spent by December 31, 2025, must be returned to the fund(s) of the contributing TIF district(s).<sup>17</sup> The distribution of returned amounts need not be proportional to the amount contributed, but the amount returned to each TIF district must not exceed the amount transferred from the district.

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<sup>14</sup> Minn. Stat. § 469.176, subd. 4n(b).

<sup>15</sup> *Id.* Interfund loans are included in the definition of "bonds" in the TIF Act (*see* Minn. Stat. § 469.174, subd. 3), so payments on interfund loans should not be foregone to increase a transfer under this authority. Although the effective date indicates the change applies to increments "unobligated as of the date of final enactment," the provision itself identifies unobligated increments "for each calendar year" relative to increments required for payments "due during six months following the transfer."

<sup>16</sup> Minn. Stat. § 469.176, subd. 4n(d).

<sup>17</sup> Minn. Stat. § 469.176, subd. 4n(f).