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Statement of Position Special Legislation to Extend the Duration of TIF Districts

Occasionally, circumstances arise that may cause development authorities to seek special legislation. “Special legislation” or a “special law” is a law which, on the date it goes into effect (the “effective date”), applies to a single local government unit or a group of such units in a single county or a number of contiguous counties. The special law must name the local unit of government to which it applies.¹

Special legislation is sometimes used to extend the duration of an existing tax increment financing (TIF) district or to establish a new district with longer duration limits than is permitted by the TIF Act.² A longer duration limit means that tax increment revenues are collected over a longer period of time and that, as a result, more tax increment revenues are collected. Some reasons for seeking such special legislation include development activity that cannot be completed all at once and needs to be completed in stages, or unanticipated circumstances that significantly increase costs, cause unforeseen delays in the completion of a project, or result in significantly reduced tax increments that jeopardize bonds or project completion. Longer duration limits can also help an authority that is unable to meet debt service payments.

The Minnesota Constitution provides:

The legislature may enact special laws relating to local government units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit [or units] expressed through the voters or the governing body and by such majority as the legislature may direct.³

¹ Minn. Const., art. XII, § 2; Minn. Stat. § 645.021, subd. 2. If a special law applies to a group of local government units in a single county or in a number of contiguous counties, it shall be sufficient to name the county or counties where the affected units are situated, but this is generally not seen with special laws for TIF districts.

² The TIF Act, at Minn. Stat. §§ 469.174 to 469.1794 (as amended).

³ Minn. Const., art. XII, § 2.

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This Statement of Position is not legal advice and is subject to revision.

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This constitutional provision is also codified in Minnesota Statutes Section 645.021, which requires formal approval by each affected local unit of government must be by resolution adopted by a majority vote of all the members of the governing body.⁴ It also requires a certificate of approval and a copy of the resolution(s) to be filed with the Secretary of State.⁵

Generally, the affected local government unit for most special laws related to TIF is the local government unit referenced in the special law. However, for special laws that provide a duration extension, the TIF Act contains a provision that declares the affected local government units include the city or town, county, and school district in which the TIF district is located.⁶ The county and school district, like the city or town, are affected by the continued capture of tax base caused by the duration extension and would forego receipt of property taxes on the captured value for the extended period.

Special laws with a duration extension provision generally have an effective date provision, such as the following, which cites both statutes:

EFFECTIVE DATE: This section is effective upon compliance by the governing bodies of the City of _____, _____ County, and Independent School District No. _____ with the requirements of Minnesota Statutes, section 469.1782, subdivision 2, and 645.021, subdivisions 2 and 3.⁷

After the county, city, and school district have approved the special law, the chief clerical officer of the city must file a certificate with the secretary of state. The certificate must state the essential facts necessary to validate approval. Resolutions adopted by a majority vote of all members of governing bodies are required. Copies of each of the resolutions of approval by the city, the school district, and the county should be attached.⁸ The certificate of approval is available from the Office of the Secretary of State.

If the municipality fails to file the certificate of approval before the first day of the next regular session of the legislature, the extension of the duration, and only the extension of the duration, is deemed to be disapproved. If the law contains provisions in addition to an extension of the duration and if the municipality otherwise complies with section 645.021, the additional provisions take effect.⁹

⁴ Minn. Stat. § 645.021, subd. 2.

⁵ Minn. Stat. § 645.021, subd. 3.

⁶ Minn. Stat. § 469.1782, subd. 2(a).

⁷ The “effective date” language for other special laws that do not include a duration extension will generally cite only Minn. Stat. § 645.021.

⁸ Minn. Stat. § 645.021, subd. 3; Minn. Stat. § 469.1782, subd. 2(b).

⁹ Minn. Stat. § 469.1782, subd. 2(b).