

Testimony Presented on HB 1495 to the
House Finance and Taxation Committee
Representative Craig Headland, Chairman

James Gilmour, Strategic Planning Director
City of Fargo

January 27, 2023

Mr. Chairman and Members of the Committee,

House Bill 1495 adds to the unfairness of an existing law that allows counties to opt out of TIF projects, creating a windfall for the county and shifting the county's share of the burden onto the city, leaving the city and school district to bear their own TIF project burden along with that of the county.¹ This is not fair or appropriate. The county should not be allowed to avoid sharing its fair share of the load. The county should not be allowed to harvest a windfall. HB 1495 only makes an unfair situation even worse and, therefore, I oppose HB 1495 unless it is fixed by an amendment. The city's proposed amendment would continue to empower counties to opt out of TIF projects (school districts as well) but, if they do "opt out" then cities should be given additional time in which to recoup the public investment. The existing 15-year and 25-year caps should be extended by an additional ten (10) years during which the TIFs can remain in place. A simple amendment could resolve the unfairness.

If the county is going to shift the burdens associated with providing economic incentives onto its cities, then the cities should be given more time to shoulder the added weight. The solution is simple—give cities a longer period of time to capture the city's (and possibly the school district's) share of the tax increment.

Fargo has had a thoughtful and elaborate "economic development policy" since the 1970s—a policy that has been thoughtfully groomed, massaged and amended many times in the decades since that time, with the benefit of insight from Cass County representatives, school district representatives, stakeholders and civic leaders. The recent inroads on the use of tax increment threaten our city's economic development policy. I seek a "do not pass" recommendation from your committee.

Exhibit enclosed.

Sixty-eighth Legislature

¹ Under the existing law, N.D.C.C. §40-05-24, school districts also have the opportunity to opt out, in whole or in part, of the TIF financing; but in the experience of the City of Fargo school districts have not done so.

N.D.C.C. §40-05-24, as it would look with the amendment supplied by House Bill 1495:

N.D.C.C. §40-05-24. Duties of cities granting property tax incentives.

1. Notwithstanding any other provision of law, before granting a property tax incentive on any parcel of property that is anticipated to receive a property tax incentive for more than five years, the governing body of a city shall send the chairman of each county commission and the president of each school district affected by the property tax incentive a letter, by certified mail, which provides notice of the terms of the proposed property tax incentive.
2. Within thirty days from receipt of the letter, each affected county and school district shall notify the city, in writing, whether the county or school district elects to participate in granting the tax incentive on the county or school district portion of tax levied on the property. The notification from a county or school district electing not to participate must include a letter explaining any reason for which the entity elected not to participate and whether the county or school district is willing to negotiate the terms of the property tax incentive with the city.
3. If the city does not receive a response from an affected county or school district within thirty days of delivery of the letter, the county and school district must be treated as participating in the property tax incentive.
4. The term "negotiation" as used in this sectionAs used in this section:
 - a. "Negotiation" means the governing body of an affected county or school district may negotiate the terms of participating in the tax incentive, including the duration of the tax incentive and the taxable value selected for the base year for purposes of computing tax increments.
 - b. "Property tax incentive" includes a tax increment finance district used to offset public or private costs for urban renewal.
5. If an agreement is reached through negotiation under this section, the property tax incentive must be applied in accordance with the agreement.
6. Property subject to a development agreement entered pursuant to section 40-58-20.1 before August 1, 2017, and all amendments to the development agreement, is not subject to the requirements under this section.

[Remainder left blank—see next page]

N.D.C.C. §40-58-20. Tax increment financing.

At any time after the governing body of a municipality has approved a development or renewal plan for any development or renewal area and has filed that plan with the department of commerce division of community services, it may request the county auditor and treasurer to compute, certify, and remit tax increments resulting from the development or renewal of the area in accordance with the plan and any modifications thereof, and the county auditor and treasurer shall do so in accordance with this section.

1. At any time after the governing body of a municipality has approved a development or renewal plan for any development or renewal area and has filed that plan with the department of commerce division of community services, it may request the county auditor and treasurer to compute, certify, and remit tax increments resulting from the development or renewal of the area in accordance with the plan and any modifications thereof, and the county auditor and treasurer shall do so in accordance with this section.

a. For a tax increment district established before July 1, 2011, the base year for tax increments computed for a development or renewal area under this section or section 40-58-20.1 may not be used for more than twenty-five taxable years without the governing body of the municipality establishing a new base year using taxable values, established as of February first of the following year, which are not more than fifteen years old. Regardless of length of the initial district, the new base year may be used to compute tax increments for up to an additional fifteen years after which time the tax increment district must be closed, except that the original base year for tax increments pledged for an indebtedness incurred before July 1, 2011, may continue until the indebtedness is paid.

b. For a tax increment district established after July 1, 2011, the base year for tax increments computed for a development or renewal area under this section or section 40-58-20.1 may not be used for more than twenty-five taxable years without the governing body of the municipality establishing a new base year using taxable values, established as of February first of the following year, which are not more than fifteen years old. The new base year may be used to compute tax increments for up to an additional five years after which time the tax increment district must be closed.

c. For a tax increment district established after July 1, 2023, the base year for tax increments computed for a development or renewal area under this section or section 40-58-20.1 may not be used for more than twenty-five taxable years without the governing body of the municipality establishing a new base year using taxable values, established as of February first of the following year, which are not more than fifteen years old; provided, however, that if a county or school district, or if both a county and school district, opt out of the full participation of the grant of a tax exemption, as contemplated by section 40-05-24, then said annual tax exemption may extend for a period not to exceed thirty-five years. The new base year may be used to compute tax increments for up to an additional five years after which time the tax increment district must be closed.

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11. As an alternative to the sale of bonds to be amortized with tax increments as provided in this section, the governing body of a municipality may, in its discretion, grant a total or partial tax exemption for the project in order to provide assistance to a project developer in a development or renewal area, pursuant

to agreement with the municipality. However, if a developer of a development or renewal project receives a tax exemption for that project pursuant to this subsection, that project developer may not receive a tax exemption for that project under section 40-57.1-03, 40-57.1-04, 40-57.1-04.1, or 40-57.1-04.3. The amount of annual tax exemption under this subsection is limited to the tax increment as defined in this section as it applies to the development or renewal project and may extend for a period not to exceed fifteen years; provided, however, that if a county or school district opts out of the full participation of the grant of a tax exemption, as contemplated by section 40-05-24, then said annual tax exemption may extend for a period not to exceed twenty-five years and if the county and school district so opt out, then said exemption may extend for a period not to exceed thirty-five years. In determining the total amount of the tax exemption to be authorized, the municipality shall give due consideration to the same elements as are involved in the sale of bonds to be amortized by tax increments. The amount to be reimbursed, by tax exemption, to the project developer must be all or a portion of eligible public costs which have been paid by the project developer, plus interest on those costs at a rate not to exceed ten percent per annum. The amount of tax exemption must be an amount sufficient to reimburse the project operator for those eligible costs, amortized pursuant to the agreement between the project developer and the municipality.