

TIDD WORKING GROUP

Comments on Specific Provisions of the Draft Rule

Bases for Dedication of a Portion of the State's Increment

- A** We strongly support the Board evaluating whether the project could occur whether or not the state increment is granted. The current statute is missing the requirement for a “but for” test – that the applicant prove that the project would not be done but for the public subsidy. Public financing should only be made available for projects that meet public policy goals and require a public investment in order to be viable. The Board’s evaluation of the necessity of using the state tax increment would address the questions of whether TIDD projects are likely to be undertaken even without the use of the tax increments and the appropriateness of using state taxes to finance such projects.
- B(2)** We recommend that this section specify that the new jobs and economic opportunities expected to be generated should be **new to the state** and not just to the TIDD area. One of the main concerns with TIDDs is that they will shift the tax base from one area of the state to another. It is important to determine whether a proposed TIDD that could help the area it is in, would in fact harm the larger area by overbuilding some types of projects (industrial, commercial, housing) and have a competitive advantage due to the TIDD subsidy.
- B(3)** We support the Board’s making clear that it will evaluate whether the application meets the current statute’s requirement for planning for workforce housing and public school facilities. However, we would recommend strengthening this element by stating that the Board will determine whether the TIDD plan includes specific goals and commitments for workforce housing and public school facilities. This would require reviewing the master development agreement between the developer, the TIDD Board and the governing entity. At this point, the approved TIDDs have very different levels of commitment to these goals as evidenced by their master development agreements. There should be evidence that the TIDD planners have had their plans for school facilities approved and accepted by the school board involved. The definition of Workforce Housing, always a problem, should be shown by economic analysis to be consistent with the income levels and needs of the area of the TIDD.
- C(1)** We strongly support the Board’s consideration of whether the proposed development within a TIDD is greenfield development versus revitalization/redevelopment. Use of public financing should support public policy goals such as reinvestment in and revitalization of existing communities, which are already served by public infrastructure but where economic activity is low, rather than subsidizing development in areas in which development is low-risk and low-cost and most likely to attract private investment.
- C (3)** We strongly recommend an emphasis on TIDD’s plans for attracting businesses from outside the state. Businesses relocating to TIDDs can receive significant advantages due to the subsidy of the TIDD funding, warping the market and harming the New Mexico communities from which the businesses moved.

C (8), (9) and (11)

We strongly support the Board's consideration of the public policy goals included in these provisions including the use of innovative planning and development techniques, the application of "environmentally protective technologies," and availability of water and water rights. The Act makes clear that sustainable development is one of the overarching policy goals. Availability of water, while not mentioned in the Act specifically, is a crucial element of sustainability. Consideration of whether TIDD applications meet the sustainability requirements mentioned in five provisions within the Act must include water availability as well as the other elements mentioned in the draft rule. The Board is encouraged to ensure that the measures called for here are included in the Master Development Agreement, and required as part of the construction of the project at all phases. This would help ensure that promises made in the TIDD plan become reality.

C (6) We strongly support the Board's consideration of the proposed TIDD's impact on surrounding or non-participating government entities. As mentioned earlier, one of the main concerns about TIDDs is the shifting of tax base, jobs, and shopping from older communities within the state that may have infrastructure deficits to TIDDs which will offer much newer infrastructure. In fact, an analysis submitted by an applicant for TIDDs in Bernalillo County showed that much of the demand for industrial space within the TIDD would not come from outside the state but from the greater Albuquerque area. While this economic activity may be new to the TIDD and perhaps the county, if it is drawn from Albuquerque the city will be adversely affected. TIDDs must be considered within the overall context of the region, including other planned development in the surrounding area.

C (10) We support keeping the bond terms as short as possible. Consistent with basing all financial plans and feasibility of the project in part on the actual total cost of financing, including bonding costs and interest, keeping the bond terms short provides a direct saving of tax increment funds.

C (12) Consideration of the governance of the TIDD is essential in the Board's review. Based on the TIDDs currently approved and proposed, some of the projects will involve hundreds of millions if not billions of state gross receipts taxes over their lifetime. Control of such a large amount of public funds should not be solely in the hands of private interests. The current TIDD statute allows for TIDD boards to be elected by property owners within the TIDD after the first six years. Depending on how the TIDD boards are first established, this means that after six years, the Boards could be controlled by developers within the TIDD since they are often the majority landowners. Neither the local government nor the state would have direct management of the taxpayer funds available to TIDDs for rest of the TIDD's lifetime, which could be twenty years or likely more.

Application Submittal, Process, Evaluation Methodology and Effective Date and Duration of Dedication

- A(1)** We recommend that the site plan and supporting documentation of the project form the basis for a contractual commitment from the developer to the funding agencies for the detailed way the project will be built. This comment also applies to several points in A(2), which section we strongly concur with.
- A (2)e** We strongly call for all financing plans to include the total cost of financing – bond origination fees, payoff amounts including interest, etc. Since there is no backup for the tax increments as the way to pay off the bonds, the calculations of tax increment availability and requirements must include the full range of costs to be paid from tax increment revenues.
- A(3)** We strongly support requiring that the applicant submit information on other public and private funds expected to be used for the project. Applicants should clearly state up front whether they plan to use the special property tax levy of up to 5 mills allowed under the Act. This is particularly important since the discussion of TIDDs often suggests that there will be no new taxes required, yet the Act foresees the possibility of increased property taxes for TIDD residents. This should be made clear so that residents in areas that are proposed for TIDDs are aware of this possibility. This is also true for the use of Improvement Districts.

We recommend that this provision be amended to also include the use of Public Improvement Districts [Section 5-11-1 through 5-11-27 NMSA 1978] (one TIDD has already received approval for PIDs within its TIDDs), Business Improvement Districts [Section 3-63-1 through 3-63-16 NMSA 1978], Sewer and Water Tap Fees, Impact Fees, Water and Wastewater Revenue Bonds and other public financing mechanisms in addition to the state and local tax increments provided by the TIDD.

- A(4)** We recommend including in the required economic development plan the availability and expected use of tax incentives as well as other economic development programs such as job training. These are usually important elements of any economic development plan and should be included. For example, two companies locating from out of state to a TIDD have already been offered almost \$170 million in state and local government incentives.

A (4), (5) and (6)

We strongly support the detailed analysis of the proposed development within the TIDD that these sections require. Such information should greatly strengthen the Board's ability to make informed decisions about dedicating the state tax increment.

We recommend adding a requirement that the applicant provide estimates of the growth within the TIDD that is above and beyond the expected baseline growth within the overall state economy. Developers and companies make decisions to locate in certain areas based on growth trends. The question that needs to be asked when a TIDD is proposed is how much of the estimated growth in the TIDD comes from the expected baseline growth due to population increases and other factors and how much is purely the result of a TIDD bringing in new economic activity above what would have occurred anyway.

Up to now, the analysis of TIDDs has not focused on these projects within the overall context of economic activity within the state. There needs to be a recognition that some baseline economic growth will occur and that the state revenue forecasts have already assumed a certain rate of growth. TIDD applicants must be able to prove that the growth promised by the development would be above and beyond that already assumed by baseline economic projections. Otherwise, TIDDs are diverting future revenue away from statewide programs that rely on growth in gross receipts tax revenue to increase the recurring General Fund available for such programs.

A(6)(b) and (c)

Given the discussion above, we recommend requiring that the population projections by year and the housing unit projections by year be broken out into the baseline expected growth based on regional forecasts versus the growth that is expected to be solely attributable to the TIDD.

A(6)(e) A comprehensive estimate of the effect on the state General Fund is essential in deciding whether to dedicate state gross receipts taxes to a TIDD project. The analysis required by this provision will provide better information than has been available to the Board and public so far. We support all elements and make the following recommendations:

- (e)(i)(1) – At a minimum, rewrite the sentence to read “the sum of all general fund costs to the state associated with the provision of services to individuals and businesses including, *but not limited to*, public education costs. This at least indicates that there will be more costs to the state than just public school and higher education costs, even though one TIDD proposal seems to have included only education costs as the state costs. Another TIDD proposal more accurately included education costs as well as state police, health and human services, economic development and general government costs. This provision could also be rewritten to include these categories. Including the full range of costs the state is likely to incur in these districts will lead to better analysis of the overall impact on the state and help ensure the TIDD will not cost the state over its 25+ year lifetime.
- (e)(i)(4) – We recommend rewriting the sentence to read “the total amount of capital outlay appropriated from the legislature for projects within the proposed districts and for projects in the immediately surrounding areas that benefit the district.” As written, the requirement could seem to apply to the Legislature’s total capital outlay appropriation for economic development statewide. It would be more helpful to make clear that capital outlay appropriations made for projects either directly within the proposed TIDD or that benefit the TIDD in the surrounding area should be included in the General Fund impact calculation. Because TIDDs are supposed to pay for public infrastructure such as public school facilities and sewer systems that may not always be classified as “economic development projects” it is important to not limit the capital outlay appropriations to only those for “economic development.” Especially if the definition of which capital outlay projects are for economic development is open to interpretation. Investments that the state has already made to improve public infrastructure and/or attract new development should be considered when deciding whether dedicating a portion of state gross receipts taxes to the project is in the best interests of the state.

- A(7)** This is a valuable provision, but should be expanded to include operation and maintenance of the infrastructure and utilities built by the TIDD and deeded over to the local government. This provision provides needed protection for the local government dedicating too much of the local tax increments to the TIDD Board for construction of public infrastructure and then incurring costs for operating and maintaining the infrastructure that are higher than the tax increment revenue the local government is receiving from the TIDD.
- A (8)** We recommend that this timeline should be in adequate detail to be used as a measure of accomplishment over time, and be updated annually to provide an ongoing estimate of time to completion and performance against the projections.

A(9) and (10)

The specific requirements for the financing plan and for information relating to the developer that will be undertaking the development within the TIDD are essential for the Board to undertake a comprehensive review of the project and its viability. We absolutely support all of the provisions in these sections. We recommend that the Board require all of these submissions, calculations, plans, and estimates to be updated and resubmitted to the Board annually. If there are changes that indicate the situation is developing significantly differently than initially projected, the Board should recommend halting parts of the process until it is brought back on track. Or, that the Board make the information available to others who have the authority and jurisdiction to effect change.

- A(15)** The Board must receive an approved master development agreement between the TIDD developer, TIDD Board and governing body in order to make an informed decision about whether the TIDD project fulfills the public policy goals of the Act and deserves a dedication of the state tax increment. As has been seen by the three major TIDD projects approved or proposed so far, the master development agreement is the document in which the specific commitments to the elements within the TIDD plan are really made. The master development agreement can be very specific but it can also be very vague. Without seeing the master development agreement, the Board and the public cannot really know whether the public policy goals of the Act such as job creation, workforce housing, sustainable development and financing of public school facilities are really being met.

This issue is important enough to provide a concrete example. With regard to public school facilities, one TIDD master development agreement requires that the developer dedicate the land for public school facilities improved with infrastructure as would typically be provided for by a developer delivering a developed "pad site", and additionally contribute \$3,000 per residential home or \$1,800 per multi-family dwelling unit dedicated to capital improvements for schools within the project. Another TIDD master development agreement does not include this requirement and further states "[the governing entity] shall not condition any approval on: (1) dedication [of] any school land other than by fair market price sale; and (2) the payment of any school impact fee or exaction for school needs; and (3) construction of any public school facility."

- B** This section provides guidance in cases in which the Board is considering the TIDD application before a district has officially been formed by a local governing entity. We strongly recommend that in these cases the Board take no action until it has seen the governing entity resolutions and the master development agreement, which really controls the deliverables in a TIDD in terms of job

creation, workforce housing, public school facilities, transit-oriented development and other sustainable development elements. Without the master development agreement, the Board cannot know the true commitment of the developer(s) within the TIDD to fulfilling the public policy goals of the Act.

We also strongly recommend that the Board add a provision within this rule specifying that it will schedule opportunities for public comment at the time of any informational presentations as well as the meetings at which TIDD applications are considered. We also recommend that informational presentations are not just given by the developer proposing the TIDD but from representatives of the governing entity to discuss their analysis of the impact on the TIDD locally and the public interest that merits including the state tax increment. The Board is the first line of the review in terms of state-level approval of the TIDDs in general and the only entity with the authority to dedicate the state increment. Given that, hearing comment from all affected entities on the public interest issues in approving use of state gross receipts taxes in a TIDD is essential.

We strongly support the Board's requirement that all material must be submitted electronically and that it will be publicly available. Transparency in the TIDD formation and approval process has been lacking. The public's ability to get the information being considered by the local governing bodies has been difficult. And if electronic copies are not made available, getting such information can be prohibitively expensive. For example, getting a copy of one TIDD applicant's proposal to the local governing body cost \$250 – and that was after a 50% discount from the usual copying fee for public documents. We appreciate the Board setting the example for making public involvement easier in a public process that involves millions of dollars of taxpayer funds.

The availability of all application information, and an open opportunity for public input at the Board is extremely important. Experience with one TIDD proposal showed clearly that the developer's sophisticated packaging of the proposal resulted in their application initially receiving very strong support from county staff and elected officials. Strong public input and a detailed analysis of the developer's proposal disclosed its shortcomings and resulted in it being withdrawn.

However, the developer's data which was used in the analysis was not available routinely to the public. It was available only through public records requests and the efforts of one county commissioner. This example is provided to show the importance and value of careful and detailed review of TIDD applications by both the Board and the public.

- C** We support all the elements of the proposed methodology. These will strengthen the protection to the state and the taxpayers by ensuring that the Board considers whether the “but for” test is met – whether the project would be viable even without the state tax increment. It will also ensure that the Board considers a TIDD proposal within the larger context of all the economic development activities occurring in the state. One aspect of the discussion that has been missing so far is how the proposed TIDDs fit in within all the other economic development incentives provided, included state and local capital outlay, tax incentives, job training programs, etc. Also important for reasons discussed more fully above is the analysis of the impact on surrounding communities and non-participating governments.

It is essential that the impact of the subsidized TIDD on the entire area and region where it is located be estimated before it is approved. TIF distorts market-based decisions, since it provides the developer no-cost financing for certain key elements within the TIDD and reduces the risk of not building to local market conditions. The effect of an over-built TIDD, with too many of some types of projects, all financed at an advantage to the developer, can have a devastating effect on privately-funded developments in the wider region.

- D** This provision is essential in order to allow the Legislature the ability to fully review a TIDD's proposed bond authorization. Right now, the Legislature is almost put in the position of rubber-stamping a TIDD bond authorization if the Board approves the tax increment and the tax increment payments start accruing to the TIDD before the bonds are approved. The Legislature must have the ability to review the proposal on its merits and without the pressure that the funds have already started flowing to the TIDD.

Reporting Requirements

In general, we support all the reporting requirements. These should result in more information about the progress of approved TIDDs and an understanding of whether the proposed public benefits of TIDDs are being met. We note that the rule does not provide for any recourse if job creation and other goals within the TIDD are met but recognize that it is probably not within the Board's authority under the current statute to require penalties or reimbursements. A salutary effect of this section is that it enables the Board to ensure that there is always a clear window open to the public on every TIDD, regardless of what happens at the local level. If TIDDs continue to proliferate, this will become an increasingly valuable asset for the public, and for managing TIDDs overall. We make the following recommendations to further strengthen the reporting requirements:

- **B** – This report should be required for the entire life of the TIDD or at least the length of the TIDD bonds. It is unclear why it is limited to the first four years after issuance of the TIDD bonds. The TIDD bonds must be repaid from the increased tax revenue within the TIDD. Job creation within the TIDD is an essential factor in generating those increased revenues and one of the main reasons the public subsidy is being provided. The commitment to the job creation targets should stay in place for as long as the bonds must be repaid.
- **E** – This provision should be mandatory not discretionary. The Board should require annual reports that include discussion of how the public policy goals listed in the provision are being met as well as the implementation of the sustainable development elements of the TIDD since that is also a major public policy goal of the Act.
- We strongly recommend adding a requirement that all reports to the Board will be publicly available so that the taxpayers can be informed about the uses of taxpayer funds within TIDDs.

Technical Clarification/Edits

Definitions

K. The definition of “gross receipts tax increment” uses the term “base gross receipts taxes” but this term is not defined in the rule.

L. Citation to the Improvement District Act seems to be limited to the definition of an improvement district – Section 3-33-2E NMSA 1978 – rather than the entire act. The authority to impose a property tax is not specifically given in this particular section.

Bases for Dedication of a Portion of the State’s Increment

A - Suggest adding the phrase “requested portion of” before the phrase “state’s increment”

C(2) and (3) - We suggest that the Board add the phrase “within the district” after “tax revenue and employment” in both items to make it clear that the Board will be considering the increases generated within the TIDD from either new companies locating to New Mexico or from existing New Mexican companies relocating to the TIDD. We assume this is the purpose of these two provisions. Otherwise it seems as if the Board is evaluating economic growth in the state overall and not just that attributable to the TIDD.

Application Submittal, Process, Evaluation Methodology and Effective Date and Duration of Dedication

A(2)(d) – is not consistent with the statute. Statute language reads “whether it is proposed to use gross receipts *tax* increment bonds or property tax increment bonds *or both* to finance all or part of the public improvements;” – emphasis added to show words missing in current provision in rule.

A(2)(j) – is not consistent with the statute. The difference is only use of “in” versus “by” but since the statute requires that the TIDD plan include information on public school facilities expected to be “created, improved, rehabilitated or constructed *by* the project”, the distinction is important [emphasis added]. The TIDD is responsible for the public school facilities within the TIDD. Use of the phrase “in the project” could suggest that responsibility for the facilities is not the TIDD’s.

A(6)(e)(i)(4) – the term “state’s incremental tax revenue” is not consistent with the term “state’s increment” that is used elsewhere in the rule and has a specific definition included in the Definitions section. Even though most applicants will know that only the state gross receipts tax is available for use by a TIDD, use of the term “state’s incremental tax revenue” may be too broad since it could include more taxes than gross receipts taxes.