The State of Wisconsin has a long and important history of Business Improvement District (BID) creation and operation. In fact, the state ranks third in the nation in the total number of operating districts. BIDs have been created in communities large and small, all over the state, to essentially create a local self-assessment against properties in a defined area of that municipality and with the collected assessments being used just for work in that particular district. Some BIDs use their collected assessments to keep the district neighborhood clean, some to act as a merchant’s association to sponsor events to draw shoppers into the district and some to provide streetscaping and landscaping to beautify an area. At least one BID sponsors parking ramps in a district whose buildings otherwise could not be fully utilized due to a lack of parking.

The State Business Improvement Law (Section 66.1109 Wis. Stats.) has long excused properties from this assessment, if the properties were either exempt from real estate taxes, or if they were “used exclusively for residential purposes.” The BID law does not define whether “residential purposes” includes only single family homes, or if it also includes apartment buildings and condominiums. In a small community, with commercial properties interspersed with homes, it makes sense to exempt those homes, and the extensive legislative history of the law seems to indicate an intention to exempt homes because of a presumption that they could not benefit from an increase in value due to the activities of this “business” improvement district.

However, one could argue that an apartment building or condominium building stands to gain just as much from the BID activities as other businesses, even though they are in the “business” of providing residences. Of course, because the assessment applies to all of the tax parcels included within the district, and because each condominium unit, by definition, is a separate tax parcel, the inclusion of condominium units in a BID is measured unit by unit.

Across the state, there are also many properties within BID districts that are used partly for residential purposes, and partly for commercial purposes, such as a classic main street building with ground floor commercial and office and residential uses above. Since the BID law does not define what is “residential,” but does contain the language that only “exclusively” residential properties are exempt, BID plans can assess mixed-use buildings. However, a BID is governed by an operating plan, that is really just a municipal ordinance, which is generally only effective for one year, and must be reauthorized each year, allowing the opportunity for amendments to the plan. Many BID operating plans incorporate a “cap” and “floor” into their assessments, so that one large building does not unfairly bear too large a burden of the budget. In many BID districts which contain a large number of mixed use buildings, the BID operating plan itself contains an adjustment factor for mixed-use buildings. At least one such plan initially assesses the building for its full value, but then allows that owner to have the assessment reduced proportional to the number of square feet of the building which are in residential vs. commercial use, upon providing proof to the BID of that square footage calculation from the official building inspector’s or assessor’s records. This adjustment mechanism allows that mixed use building owner to effectively only pay a
ratio of the assessment which matches the proportion of commercial space in the affected building without having to go through the cost and effort of condominiumizing the property to create separate tax parcels. Many properties, for example, that have ground floor retail and three floors of apartments above, are effectively assessed at 25% of the initial BID assessment.

All of that is a very long way of explaining the new proposed changes to the BID law, introduced as Senate Bill 203, which reads as follows:

Section 1.66.1109 (5) (d) of the statutes is created to read:

66.1109 (5) (d) If real property that is specially assessed as authorized under this section is of mixed use such that part of the real property is exempted from general property taxes under s.70.11 or is residential, or both, and part of the real property is taxable, the municipality may specially assess as authorized under this section only the percentage of the real property that is not tax-exempt or residential.

There is currently a debate over this proposal between owners of mixed-use buildings who are concerned about BID plans that might obligate their properties to pay these assessments, and opponents who feel this law is unnecessary to accomplish the stated goals, even though many BID plans voluntarily contained proration for mixed-use buildings. Opponents of this language correctly identify that assessors do not create value assessments of buildings based on square footage; there is only an assessment for the whole tax parcel, and since most BIDs make their assessment as a percentage of the property tax assessment, it would not be possible to calculate the “value” of the commercial area of a building, based on the assessor’s assessment. Remember that under the Wisconsin Constitution, we are obligated to have taxes “uniform” and assessments “rational” and not discretionary, so it is important to have a concrete, non-discretionary method of calculating the assessment for the purposes of the BID, which assessment is contained in the tax bill for the property and which carries the lien of a special assessment, plus interest and penalties if not paid.

Other objections have been raised to this bill because it mandates a “one size fits all” remedy on all BID districts and takes away vital local control. The beauty of the current BID law is that the local municipality, from the smallest to the largest in the state, can determine which formula is appropriate for its own district, its own goals and mandatory changes in the state law force heavy-handed obligations without knowledge of local needs. Remembering that BID operating plans are able to be drafted for the particular needs of that BID district, are almost always the result of negotiation between the municipality and the owners in that district, and can be amended each year, this type of mandate is not needed. The proposed bill has been called “a solution in search of a problem.”

The bill was introduced in late June and has not yet been set for committee hearings.

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