

MINUTES OF THE HOUSE COMMITTEE ON NEW ECONOMY.

The meeting was called to order by Chairperson William Mason at 3:30 p.m. on February 6, 2001 in Room 522-S of the Capitol.

All members were present except: Representative Ray Cox - E

Committee staff present: Bob Nugent, Revisor of Statutes
Renae Jefferies, Revisor of Statutes
April Holman, Legislative Research Department
Lynne Holt, Legislative Research Department
Rose Marie Glatt, Secretary

Conferees appearing before the committee: Representative Doug Patterson
Allen Bell, Director of Economic Development - Wichita
Sandy Jacquot, League of Kansas Municipalities
Kathy Peters, Attorney, McDowell, Rice, Smith & Garr
for City of Roland Park

Others attending: See Attached List

The Chairman opened the hearing on **HB 2005**. April Holman gave a briefing on the Recommendations of the Joint Committee on Economic Development. Copies of an excerpt of the complete publication, on file in the Legislative Research Department, were distributed, (Attachment 1). She reviewed the refinement of the tax increment financing statutes giving the background, committee activities, conclusions and recommendations.

Bob Nugent reviewed the bill introduced by the Joint Committee. The bill does not contain many substitute changes to the law and is primarily a reorganization of the tax increment financing procedures. He stated that there are additional technical corrections and procedural changes that cities and bond councils desire to make to the bill, so there may be requests for amendments coming forward. He explained the changes made in the interim:

Section 1 omits the word *blighted*, replacing it with *eligible areas within and without a city thereby*, taking away the stigma of declaring an area of a city/county as blighted. There are a couple of inconsistencies where *blighted* terminology is still used so the committee may choose to change that language.

Section 2 combines all the definitions used in the TIF statutes. He explained (t) "substantial change" had been altered at the committees request to reflect a question of intent rather than a question of scale.

Section 3 concerns the provisions that deal with establishing the redevelopment district. They have been streamlined and condensed into the section.

Section 4 deals with environmental re-mediation; the changes put all environmental issues in one section.

Section 5 creates a separate historical section.

Section 6 is the Nascar Section that relates to major tourism areas

Section 7 concerns itself with the ability to deal with Enterprise Zones as an area to locate a TIF project.

Section 8 is the Topeka amendment that concerns itself with reviving a dead project (Capitol Plaza Project). It may be repealed.

Section 9 now contains all the provisions and procedures that deal with setting up the redevelopment project, not the district but the project itself.

Section 10 relates to things that can be done in a redevelopment project.

Section 11 repeals the ability of the city to undertake an OZ type of project.

Sections 14-20 are conformity, statutory cross-references that have been changed due to the reorganization of the bill.

Representative Patterson spoke in support of the bill and the efforts being made to improve it.

Allen Bell, Director of Economic Development Director, City of Wichita, distributed reports on two TIF Redevelopment Projects regarding identified groundwater contamination sites in Wichita, and explained the current status of the projects (Attachment 2). He outlined changes Wichita would like to see in **HB 2005**: (1) increase the time frame from 20-30 years, (2) reinstate statewide mill levies as part of the tax increment financing calculation, (3) eliminate the prohibition on the use of tax increment financing revenues to finance improvements to privately owned/leased property and (4) eliminate the prohibition against the use of condemnation in conservation areas.

Sandy Jacquot, Director of Law/Legal Counsel, League of Kansas Municipalities, spoke in support of simplification and streamlining of the TIF statutes, stating that they would support substitute language in place of the current bill to accomplish these goals, (Attachment 3).

Kathy Peters, Attorney, McDowell, Rice, Smith & Garr, (no written testimony provided) expressed areas of concern that they would like to change: definitions of redevelopment project plan and redevelopment district plan and comprehensive plan and the time lines of various projects within a district.

Discussion followed regarding the advantageous and disadvantages of a corrected version of the bill verses a substitute bill. It was agreed that due to time constraints they should go forward with the original bill with corrections. The Chairman closed the hearing on **HB 2005** and added that it would be continued on February 13.

Representative Kuether moved, seconded by Representative Compton that the minutes from the January 25 and 30th meetings be approved. The motion carried.

The next meeting is February 8.

The Chairman adjourned the meeting at 4:50 p.m.

REFINEMENT OF THE TAX INCREMENT FINANCING STATUTES

CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes that the current TIF law has become overly complex and difficult for cities to follow. As a result, the Committee recommends legislation to reorganize and clarify certain terms and provisions of the TIF act.

The Committee affirms a strong belief that only elected officials should have the authority to exercise eminent domain.

The Committee also recommends that further attention be given to several TIF-related suggestions raised by conferees during the interim study.

Proposed Legislation: HB 2005.

BACKGROUND

The Legislative Coordinating Council referred this topic to the Committee after receiving a request from the League of Kansas Municipalities and representatives of the Unified Government of Wyandotte County and Kansas City, Kansas for simplification of the Tax Increment Financing (TIF) statutes and process.

In general terms, TIF enables a city to dedicate future increased revenues (*i.e.*, the "increment") for a fixed period of years to finance improvements in connection with a redevelopment project. The acquisition of property and improvements may be financed through the issuance of special obligation bonds of the city, repayable from the tax increment generated from the redeveloped property. In addition to the local property tax increment, other revenue sources may be committed to repayment of the principal and interest on the bonds as permitted by statute.

Current TIF law authorizes cities to create redevelopment districts, acquire certain property, and to issue special obligation bonds or full faith and credit

tax increment bonds for the financing of redevelopment projects. Any city proposing to undertake one or more redevelopment project must create a redevelopment district by adoption of an ordinance. The district must be located in:

- An enterprise zone established prior to July 1, 1992 (including area added in enterprise zones that are of state-wide importance);
- A blighted area (including area that is environmentally contaminated);
- A conservation area (not yet blighted);
- An environmentally contaminated area located within and outside of a city;
- A major tourism area; or
- An historic theater area.

There are a number of procedures which must be observed. If a district exceeds the boundaries of the city, there must first be written consent of the board of county commissioners of the affected county. Likewise before privately owned

property subject to ad valorem taxation may be acquired and redeveloped under the provisions of the act, the board of county commissioners or the board of education levying taxes on property proposed to be included in the district must determine that the proposed district will not have an adverse effect on such county or school district.

The city must prepare a redevelopment plan in consultation with the planning commission of the city. The plan must contain, among other items, a summary of the comprehensive feasibility study showing that the benefits derived from the project will exceed the costs and that the income therefrom will be sufficient to pay for the project. The plan also must contain a description of the buildings and facilities proposed to be constructed or improved and a relocation assistance plan for property owners within the district. The city is required to conduct a public hearing on the adoption of the plan. At the conclusion of the public hearing, the governing body of the city may approve the plan, by ordinance with a two-thirds vote.

Once the redevelopment plan has been adopted in accordance with the specific provisions of the act, the city may purchase or otherwise acquire real property. Eminent domain proceedings may be pursued (except in conservation areas) upon two-thirds vote of the governing body of the city. Any property acquired by the city under the act may be sold or leased to any person, firm, or corporation, as the developer, in accordance with the plan.

The redevelopment plan may be undertaken in separate stages but projects are to be completed within 20 years after the transmittal of a redevelopment plan and environmentally-related projects

must be completed within 20 years from the date of a consent decree agreement with environmental regulators. The statutory exception to this time span is 30 years for an auto race track, the Oz Theme Park, a project that may be developed on the Parsons Ammunition site in Labette County or a multisport facility at Kansas City Kansas Community College.

The TIF statutes have been amended several times since the act's inception and concerns have arisen as to the complexity of the act and difficulty encountered by cities trying to use TIF.

COMMITTEE ACTIVITIES

The Committee was briefed on this topic at the August meeting and received testimony both at the August and September meetings. The Committee received briefings from the Kansas Legislative Research Department, the Legislative Division of Post Audit, and the Kansas Department of Education. Included in the list of conferees testifying on the issue were representatives of: Gilmore and Bell; the League of Kansas Municipalities; the Unified Government of Kansas City, Kansas and Wyandotte County; the cities of Wichita, Topeka, Olathe, Lenexa, Manhattan, Concordia, and Merriam; CloudCorp; the Kansas Industrial Developers Association; the Kansas Association of School Boards; Aeolian Corporation; Chapman Securities, Inc.; the Riley County Commission; and an individual citizen, Vic Miller.

Conferees advised the Committee of problems with the current TIF statutes and made a variety of suggestions in the areas of structural change, clarification of terms and policies, and substantive change, many of which were recommended for further study (see Conclu-

sions and Recommendations).

The Committee was provided an initial bill draft from the office of the Revisor of Statutes at the September meeting. At this time, the Committee focused primarily on the definition section of the TIF act. Further revisions were made to the bill draft that was considered by the Committee at the October meeting.

At that meeting, the Committee review focused primarily on re-organizing the TIF act. After several adjustments to the bill draft, the Committee recommended that it be introduced as a House bill to the 2001 Legislature.

CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes that the current TIF law has become overly complex and difficult for cities to follow. As a result, the Committee recommends legislation to re-organize and clarify certain terms and provisions of the TIF act.

The Committee affirms a strong belief that only elected officials should have the authority to exercise eminent domain.

The Committee also recommends that further attention be given to the following TIF-related suggestions raised by conferees during the interim study. (In making these recommendations, the Committee does not necessarily endorse these suggestions but acknowledges they may warrant further review.)

- Clarify the term “financial guarantees” in KSA 12-1772(a)(4). The city’s resolution requires the prospective developer to have such guarantees.
- Clarify the time frame for maturity of TIF bonds and specifically when the

period of maturation begins.

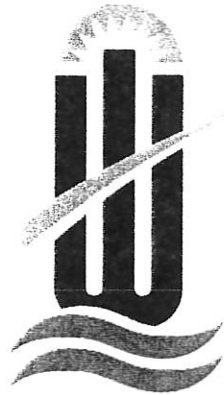
- Amend KSA 12-1775, dealing with the increment. Since the adoption of the original TIF act, the date for establishment of the property tax increment had been the date of establishment of the redevelopment district. However, 1998 amendments changed the date to January 1 of the year preceding the date of transmittal of the redevelopment plan to the county clerk. The Committee was asked to change this provision back to its original state.
- Clarify KSA 12-1775 which specifies the manner in which ad valorem taxes are to be distributed to the taxing jurisdiction, and specifies that each redevelopment district shall be a separate unit for the levy of taxes. In response to a conflict in Johnson County, a change in the statute was requested to explicitly require county clerks to subtract the incremental valuation in redevelopment districts prior to establishing mill levies.
- Expedite, simplify, and streamline the TIF process.
- Allow mail ballots to be used in order to hold down election-related costs in elections held on redevelopment projects in accordance with KSA 12-1774(b)(2) and (b)(3). Mail ballots also could be authorized as an alternative to operating polls if a regularly scheduled election is not held within 90 days.
- Revoke KSA 12-1771b, a prohibition against the operation of a lottery at certain redevelopment projects as lotteries are addressed in other sections of the Kansas Statutes.
- Require periodic legislative review of

redevelopment districts and projects by the House Economic Development Committee and Senate Commerce Committee to ensure that cities are using the TIF law as the Legislature intended.

- Expand the list of permissible uses for TIF proceeds to make it more similar to Missouri law and remove the competitive advantage for that state.
- Prevent tax base erosion in a redevelopment district. A redevelopment district is larger than any single redevelopment project and includes properties that are not slated for redevelopment at the same time. If unimproved property in a redevelopment district loses value for any reason, any gains resulting from improvements to other property in the district may be eroded. Other states have devised ways to prevent eroded valuation of the redeveloped property.
- Address the financial feasibility of newer TIF projects. The 1996 Legislature removed the statewide education levy as a source of TIF financing. Currently, 80 mills of tax revenue (instead of 100 mills that would have been available under prior law) are available in Wichita for TIF projects. This lower amount reduces the scope of improvements that may be financed.
- Shift more of the risk of TIF to developers. Payment-in-lieu of taxes or supplemental tax payments have been suggested as methods of protecting a city from gaps between projected taxes

and actual taxes based on appraisals.

- Consider using terms other than "blighted."
- Allow use of neighborhood revitalization property tax rebates in areas within a TIF district.
- Limit the resources used to measure the ability of the district to pay its share of the education fund to only those tax resources that generate revenue for the district.
- Limit the authority of the state, cities, and counties to grant property tax abatements to existing property.
- Require school district input before tax abatements are granted to newly created valuation and that state approval be required before the state-imposed minimum levy is abated.
- Require all land in a TIF district to be used in the redevelopment projects.
- Require all land to be acquired within five years of the creation of the redevelopment district.
- Disallow the placement of the same restrictions on general obligation bonds as are placed on TIF bonds for pledging revenues for issue and payment.
- Exclude TIF districts from the School Equalization Formula just as neighborhood revitalization act areas are currently.



CITY OF
WICHITA

**Gilbert & Mosley
Tax Increment Financing District**

**REPORT TO THE
LEGISLATURE**

Senate Committee on Finance
House New Economy Committee

March 2006

**Senate Commerce Committee
House New Economy Committee**

**City of Wichita – Gilbert & Mosley Tax Increment Financing District
2001 Report to the Legislature**

The Gilbert & Mosley Tax Increment Financing (TIF) Redevelopment District was established by the City of Wichita in 1991 as a secondary funding source for the investigation and remediation of the KDHE identified groundwater contamination site known as Gilbert and Mosley. This document is the 2001 biennial report to the Kansas Legislature on the status of the investigation and remediation project as required by K.S.A. 12-1771a(g). This report also supports legislation to extend the time that TIF funding may be used for environmental projects.

Background

The Gilbert & Mosley Site is located in Wichita, Kansas, and is approximately four miles long and 2 miles wide, encompassing approximately 3,850 acres. The land use within the Site is diversified and ranges from residential and recreational to commercial and industrial. It includes the Core Area.

In 1990, the Kansas Department of Health and Environment (KDHE) released a site investigation report that identified an area of groundwater contamination consisting of various chemicals of concern, particularly volatile organic compounds. KDHE recommended that the Site be evaluated for Superfund listing. In response to the KDHE determination, City of Wichita officials and members of the community voiced concern about the impact of these contaminants to human health and the environment. Also of concern was the resulting economic threat to property values and Core Area revitalization plans. The presence of the contamination posed issues of potential environmental liability that resulted in a reluctance of lending institutions to make loans for real estate purchases, business expansions or structure renovations.

In 1991, the City of Wichita assumed responsibility for the investigation and clean-up of the Gilbert & Mosley Site by creating a unique partnership with the business and financial community and local and state governments. The Gilbert & Mosley Site Project was initiated by the City after extensive community participation and support by citizens, local official, legislators, business representatives, and others. This project was intended to protect the health of the community while lifting the cloud of uncertainty that hung over Core Area after the discovery of groundwater contamination.

The Gilbert & Mosley Project is comprised of the following elements:

1. Environmental Study: Camp Dresser & McKee (CDM) was hired as the City's environmental engineer in February of 1991. Its field investigation of the Site was completed in July of 1992. Thereafter, CDM did the analytical work and prepared a Remedial Investigation/Feasibility Study (RI/FS). The RI/FS was submitted to KDHE in October of 1992. After revision and public comment, KDHE issued a Corrective Action Decision (CAD) in September of 1994, which identified cleanup standards and methods.

2. Kansas Department of Health and Environment (KDHE) and City of Wichita Settlement Agreement. On March 26, 1991, the City of Wichita entered into a voluntary Settlement Agreement with KDHE in which the City agreed to undertake the responsibility for the investigation and clean-up of groundwater contamination in the Gilbert & Mosley Site. The KDHE Agreement gave the City the authority to issue Certificates of Release to property owners, lenders, and others located within the Site who did not contribute to the contamination.
3. City of Wichita and Coleman Company Inc. Agreement. In 1991, the City entered into an agreement with one of the Potential Responsible Parties (PRPs), The Coleman Company, under which Coleman agreed to pay for the cost of the investigation (RI/FS), subject to future reallocation. A formula was established by which Coleman would pay its fair share of the cost of the clean-up.
4. TIF Legislation. During the 1991 Kansas Legislative Session, the City of Wichita sought changes to the State of Kansas "tax increment finance" law and amendments to the "cash basis" statutes. These changes allowed for the creation of tax increment financing districts for environmental conditions and enabled the City to commit operating revenues for more than one year (since the project was originally thought to be a 20 year project). During the legislative session statutes were amended to allow the City of Wichita to create an environmental TIF district for the Site. The legislation also allowed up to 20% of the district's ad valorem taxes to be used as a "secondary" financing source to supplement the financial contributions from the PRPs. Funds guarantee the financial ability to perform the clean-up and to provide actual funding for that portion of the costs that can not be recovered from responsible parties.
5. Certificate of Release and Lending Institutions. A number of lending institutions in Wichita entered into agreements stating that institutions will not refuse to make loans based solely on "environmental liability." To date, approximately 3500 certificates have been issued on properties in the Site and they continue to be available to eligible property owners. Certificates continue to facilitate real estate transactions and lending on properties located within the Site. Parties who hold Certificates of Release are entitled to the contribution protection that is provided under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). A holder of a Certificate of Release should not be subject to claims for response costs at the Site, as long as the certificate holder has provided information in its application for the certificate that is not false or misleading.
6. Citizen Involvement. Public input and participation in the project was gained through a citizen's advisory committee, a citizen's technical committee, and through the dissemination of public information. The City of Wichita created the two groups for the purpose of communicating information to the public and utilizing the expertise of the committee members to assist in implementation of the technical and non-technical aspects of the project.

7. Pursuit of Financial Support. The City committed to identify and vigorously pursue (through voluntary efforts or litigation) financial participation by all parties that contributed to the groundwater contamination. The City of Wichita realized that the funding mechanisms in place through the TIF and the Coleman Agreement would provide only part of the total cost of the project.

Remediation of the groundwater contamination of the Gilbert & Mosley Site is the underlying purpose of all of the effort and expenses of this project. An important concept of the City's innovative approach to a contaminated site was to avoid the remediation delays that have occurred in so many Superfund sites across the county. In planning and in reality, remedial investigation and design has been able to proceed on a concurrent track with the efforts to secure cost contribution from private parties.

A major success of the project to date has been the protection of property values in Gilbert & Mosley area. Commercial and real estate activity in the Core Area, Old Town, and adjacent areas has been brisk and vital. Businesses are able to get bank loans, Old Town has developed, and over \$250 million in Core Area investment and redevelopment has taken place – as investigation and remediation efforts continue. The City is not aware of any reduction of property values within the Site based upon the environmental conditions, and the City has participated along with Sedgwick County in successfully defending against isolated efforts to reduce those values.

Investigation Status

A remedial investigation (RI) has been completed to determine the nature and extent of contamination at the Site. The RI effort included: a characterization of the groundwater flow; estimated the rate of contaminant migration; assessed the risk to the human health and the environment; and made appropriate recommendations to address remediation. The RI was accomplished through: the installation of groundwater monitoring wells; groundwater sampling and analysis; hydrogeological studies; modeling of the contaminant flow; determination of the fate and transport of contaminants; and performing an assessment of potential risks to humans and the environment based on the data gathered from the field investigation and environmental modeling.

The procedures and protocols established by state and federal laws and regulations have been followed during the investigation and the development of the clean-up program for the Site. The primary guidance that was utilized is known as the National Contingency Plan (NCP). The NCP is a component of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Although the Gilbert & Mosley Site is not a "Superfund Site," all of the investigative requirements of CERCLA were complied with to assure that an adequate investigation was performed. Additionally all state and federal "applicable, relevant and appropriate regulations" (ARARs) were adhered to during the investigative process and development of clean-up options.

Extensive groundwater sampling efforts have identified six different groundwater contamination plumes within the Site. (These plumes have been given alphabetical designations using the

letters A through F.). The Gilbert & Mosley RI found that these contaminate plumes emanate from multiple sources throughout the Site. The principle contaminants are Tetrachloroethene (PCE), Trichloroethene (TCE), 1, 2-Dichloroethene (1,2 DCE), 1, 1-Dichloroethene (DCE), Vinyl Chloride (VC), Chloroform, and Benzene. These compounds are generically referred to as volatile organic compounds (VOCs). These compounds are commonly used as degreasing solvents and cleaning fluids, or are degradation products of PCE and TCE. The concentration of contamination ranges from 10,000 ppb to 5 ppb.

As a consequence of the RI as required by law, KDHE issued a Corrective Action Decision (CAD) in September of 1994. The CAD identified and required several actions to be taken:

- Establish institution controls to reduce public exposure to the contamination. The risk assessment portion of the RI (dealing with impacts to human health and the environment) determined that despite the presence of these contaminants, risks to human health or the environment from exposure would be minimized or eliminated by: remediation measures for the Site; development of institutional controls; and public awareness to prevent exposure to the underlying contaminated groundwater. To protect the public health the City has adopted a water well code and continues with information efforts, including the development of an educational brochure that provides citizens with information on groundwater quality and the use of wells for purposes other than drinking. These measures were taken to protect citizens from exposure to contaminated groundwater from private wells. The code has provisions for enforcement to require well sampling, plugging of abandoned wells, and connection to public water supply for drinking water wells located in areas of groundwater contamination.
- Hydraulic containment of the contamination plumes. The City is required to prevent the migration of contaminated groundwater through the installation of extraction wells. Treatment and disposal of the groundwater is part of an overall groundwater remediation strategy.
- Installation of a compliance monitoring system in areas where contamination is not present. The purpose is to monitor, on a routine basis, the status of the contamination migration and effectiveness of the groundwater contamination clean-up system when it is installed in 2001.
- The development and installation of a long term groundwater monitoring system that will be used to monitor the quality of the groundwater for a minimum of 10 years after completion of the hydraulic containment phase of the project.

Individual source control activities are required to be established on sites where sources of contamination to the groundwater still exist. The purpose of this action is to eliminate and reduce the toxicity, mobility, and volume of waste/contaminant at specific locations within the Site. Source control will be required of individual property owners or the City at locations determined to be continuing sources of groundwater contamination. Some of the sources control activities have already been undertaken.

Identification and recovery from responsible parties

The RI identified possible source areas for the VOCs that have contaminated the groundwater. These areas were further identified and narrowed by additional investigation by the City. The identification of each facility was based upon concentration of contaminants found in the groundwater in the proximity of the facility, public records regarding chemical usage and disposal practices, and computer modeling. The City required the owners or operators of the identified sites to participate in the cost of the investigation and clean-up.

A number of potentially responsible parties (PRPs) were identified. The Coleman Company initially agreed to accept responsibility for its fair share of site costs and has paid approximately \$1 million toward the full amount of its share.

In October of 1998, the City brought an action in United States District Court to recover costs spent in protecting the groundwater under the City. The lawsuit named 26 defendants which owned or operated businesses at 16 locations within the Site. The City believes these parties were responsible for historic or current contamination. The lawsuit sought recovery of about \$4.5 million in costs that had already been expended and the estimated costs for future clean-up.

To date, the City has reached settlement with eight parties and one non-party. The settlements total \$6.3 million in recovery by the City, including a commitment from the Kansas State Dry Cleaner Trust Fund to assume responsibility for activity that is valued at \$4.5 million.

Litigation efforts toward cost recovery continue with the remaining parties. Discovery is scheduled for completion in the near future and the pretrial conference is scheduled for March, 2001.

From the time the City undertook this project, there has been the potential of litigation. The City has always been forthright in its intent to use whatever means were necessary – including litigation – to recover costs from the parties responsible for the contamination of the Site. The City committed that it would aggressively seek these contributions and not place the burden of this project on the taxpayers. The unwillingness of the remaining defendants to pay their fair share or settle necessitates the continuing expenditure of costs and time for litigation.

Remediation Status

Extensive groundwater sampling efforts have identified six different plumes of contamination in the Site. Plumes A, B, and E will be addressed by a groundwater treatment system. Plume C is not migrating or increasing in contaminate concentrations and, therefore, is currently being monitored to identify the potential need, if any, for future remedial action. Plume D is being addressed by the KDHE Dry Cleaner Trust Fund, and the City has made application for Dry Cleaner Trust Fund consideration for Plume F which has no viable PRPs.

While remediation has not proceeded as rapidly as the City originally envisioned, it is now well underway. Much preparatory work and investigation was needed before the first drop of water could be cleaned. The investigatory work has been continuous since the beginning of the Project. Plume remediation investigations were conducted in 1997-1998. The City Council recommended remedial design alternatives on March 2, 1999, and the remedial designs were

approved by KDHE late in 1999. Some clean-up has already been accomplished to date, with source control completed in 1998 on one site acquired by the City.

The City prepared a final design report ("Revised Final Interim Groundwater Remediation Plumes ABE Gilbert & Mosley Site") for the remediation and submitted this report to KDHE on September 21, 2000. KDHE approved the Final Design Report for the groundwater treatment system on October 5, 2000. The approval means the City of Wichita can move forward with actual construction of the system that will clean the pollution from the groundwater. The City of Wichita approved a contract with CDM to construct the treatment system on December 19, 2000. Construction activities will begin in the spring of 2001. Construction of the clean-up project is expected to be completed in the fall of 2001. The remedial system is expected to operate for 60 years.

The remedial system will address the major portion of the cleanup of groundwater in the Gilbert & Mosley site. The clean-up will pump approximately 1.2 millions gallons of water a day from 13 wells out of the underlying aquifer and pipe the water to a treatment system in Herman Hill Park, located in the south part of Wichita (southwest of the intersection of Pawnee and Broadway). The equipment to be installed is similar to that used at other sites locally and nationally. It has a high level of effectiveness and efficiency for removing contaminants so that the remediated water meets or exceeds drinking water standards (although there are no current plans to reuse the water for human consumption). The system will be designed to allow for beneficial reuse of the water for purposes such as irrigating landscaping along the River corridor or development of a meandering creek and water features at the Park.

The treatment system will be installed in a building to be constructed in Herman Hill Park. The groundwater treatment system will consist of a hydraulic-venturi air stripper unit and various other equipment items. The influent groundwater flow from the extraction wells will be pumped through a series of hydraulic-venturi treatment heads. These units will create highly turbulent jets of water that will create a large amount of surface area in the water flow. The high-speed water flow will also aspirate a flow of air to volatilize the contaminants and remove them from the water. The treated effluent water will then be discharged into the Arkansas River in accordance with a National Pollutant Discharge Elimination System (NPDES) permit that will be issued by KDHE.

The City is currently considering design enhancements for the treatment building that might include a covered public area, public restroom facilities, an aquarium, and various educational displays depicting a cross section of the groundwater aquifer, a map locating the extraction wells, and other environmental educational exhibits. These displays will highlight the project activities and will discuss the importance of protecting the environment. The treatment area will be designed to accommodate public tours and classroom activities. City staff members and other environmental educators will be involved in guided tours, presentations, training and related activities for the purpose of educating the public about water resources, groundwater remediation, impacts on aquatic habitat, and related issues. It is anticipated that the facility will be visited by school groups, civic organizations, and other interested groups.

The treated water discharge from the treatment system may be used to construct a meandering creek water feature that will drain into the Arkansas River. This meandering creek will enhance Herman Hill Park and will provide a positive use of the treated effluent water before it is discharged into the river.

TIF District Status

The City now has two environmental TIFs authorized by K.S.A. 12-1771a. The first in the State was the Gilbert & Mosley TIF District. The City's second was the North Industrial Corridor (NIC) TIF site established in 1996.

When the City began searching for solutions to the Gilbert & Mosley dilemma, financing the investigation and remediation was the keystone. The Gilbert & Mosley Site, which included much of the Core Area, represented a significant portion of the total assessed valuation for local governments, all of which rely heavily on ad valorem property taxes. Property values in the nearby 29th & Mead Superfund site had already been reduced 40% by the county assessor. If this scenario were to occur in the Gilbert & Mosley Site, a city-wide reduction in assessed valuation of 2.6% would occur, which could mean a loss of over \$5 million in taxes annually for the City, County, and School District. Obviously, the City and other units of government had a very practical reason to avoid the impact of Superfund.

The City determined that it would provide a secondary source of financing to supplement the financial contributions of the PRPs. This secondary source was the Tax Increment Finance District. The initial plan of the City, based upon the assumption that property values in Gilbert & Mosley would be reduced with the discovery of contamination, was to use the increment created after the property values were restored. It was discovered that the timing of valuation as required by statute would not support the project and an amendment to the State law was needed. The result was the adoption of a special section of the TIF Act to specifically address environmental projects in 1991 Kansas Session Laws, ch. 29 (now K.S.A. 12-1771a). It was also necessary to amend the Kansas Cash Basis and Budget Laws to allow the City to commit to operating expenses of the project (as opposed to capital expenses) beyond one year. K.S.A. 12-1771(i).

The Kansas TIF for environmental projects has now been used on a number of projects throughout the State, including the two in Wichita. A city may establish an environmental TIF when the following conditions of the statute (K.S.A. 12-1771a(a)) are met:

- i. The proposed district has been identified as environmentally contaminated.
- ii. The city enters a consent decree or settlement agreement with KDHE or EPA agreeing to address "the investigation and remediation of the environmental contamination." This requires an up-front commitment to both the investigation (RI/FS) and the remediation (RD/RA) phases.
- iii. The consent decree or settlement agreement "contains a provision that has the effect of releasing property owners who are not responsible for the contamination from the responsibility of paying the response costs of the investigation and remediation of the contamination."

iv. The city intends to establish a TIF district to finance the project in whole or part.

Before any TIF project is initiated, a comprehensive feasibility study must be undertaken that shows the “benefits derived from such project will exceed the costs and that the income therefrom will be sufficient to pay for the project” (K.S.A. 12-1771(j)). Once established, an environmental TIF project contains the following elements:

- A city is allowed to use an amount of annual tax revenues up to 20% of the taxes that are produced in the first year of the project. This is an “artificial TIF” that is used only for environmental TIFs and does not depend on a change in valuation. It allows a city to plan and budget for specific amounts of funds each year, irrespective of the actual increment produced. This has also been referred to as a tax “decrement.” K.S.A. 12-1771a(b).
- A city establishes an annual budget (parallel to the city budgeting process) projecting the revenues and expenditures for the coming year and designating the portion of project costs expected to come from the TIF. Until this budget year, only a portion of the 20% decrement in Gilbert & Mosley was collected. K.S.A. 12-1771a(c).
- The tax funds are collected with other ad valorem taxes and paid into a special fund to be used only for the environmental project. Any TIF funds unused one year are carried over to the next year, and any unused TIF funds are to be refunded to the other taxing subdivisions at the end of the project. K.S.A. 12-1771a(d).
- The environmental TIF project must be completed within 20 years of the date of the consent decree. (While the environmental remediation could continue beyond that date TIF funds will not be available under the current statute.) K.S.A. 12-1771(g).
- TIF funds may be used to pay project costs directly or to pay principle and interest on special obligation bonds or full faith and credit tax increment bonds used to finance the project. Bonds may have a maximum maturity of 20 years (compared to 15 year for traditional TIF bonds). K.S.A. 12-1771(h).
- Biennial reports must be made to the Legislature on the status of the investigation and remediation. K.S.A. 12-1771a(g).

In the Gilbert & Mosley Site, TIF funds are used as a guarantee that the project will be completed, while the City has reserved all rights against potentially responsible parties. TIF funds are available to pay for “orphan shares,” or the shares of any non-participating party from whom the City has been unable to recover. The City has made a political commitment to the other taxing subdivisions, as well as the public, to use its best efforts to seek all contributions and minimize the need for TIF funds.

The Gilbert & Mosley TIF budget and budget history are attached.

Conclusion.

The Environmental TIF remains as a viable and valuable tool for the City. Remedial efforts on the Gilbert & Mosley Site are active and proceeding at this time. It remains the City's position that those parties who are responsible for the contamination of the Gilbert & Mosley site should pay for that remediation. The City will continue to aggressively pursue contribution from those parties by all appropriate means including litigation, as it has from the beginning of this Project. The City is committed to the principle that the taxpayers should not have to bear the burden of the remediation costs. The TIF remains as a major funding mechanism for the ongoing remediation only until, and to the extent, contributions are obtained from the responsible parties. For the future, however, to ensure that TIF funding remains to complete the project, legislative changes will be needed.

Need for TIF Legislative Changes.

While the TIF legislation has been effective to this point, the City sees that changes to the TIF statutes are necessary in the future. The primary concern is the 20 year limitation of completion of a project and the resulting implied limitation on the length of time for TIF district funding (K.S.A. 12-1771(g)).

At the time the City undertook this project, it assumed that an environmental project could be completed in 20 years. The statute likewise contemplates a 20 year project time frame. The City has discovered through its projects, however, that 20 years is now considered a short time for remediation, and project clean-ups are calculated over a much longer timeframe.

The problem is two-fold. The statute requires the project to be "completed within 20 years from the date a city enters into a consent decree agreement" (K.S.A. 12-1771(g)). First, the City has discovered that it takes a number of years after the agreement before clean-up can even begin. In the case of Gilbert & Mosley, the Agreement was in 1991 and the investigation was completed in 1992, but it was 1994 before KDHE approved the investigation. There have been subsequent delays in approval of the remedial design, as well, and the City did not get KDHE approval to proceed with construction until late 2000. It will be a full 10 years from the time that the City "entered into an ... agreement" until construction actually begins. That leaves only 10 years to complete the remediation of the project.

The second concern is the actual time required for remediation. While projecting 20 years for clean-up in 1991, the City's environmental engineers are now designing a remediation system approved by KDHE that will operate for at least 60 years. The experience of ten years has revealed much new information about both the science of remediation and the nature of the soil and groundwater under Wichita. While the capital expenditures, the most expensive part of the system, will be installed within the 20 year project time frame, there will continue to be on-going operation and maintenance expenses over the 60 year life. There will also be periodic replacement expenses, as well. Wichita's Gilbert & Mosley is not the only environmental project facing long review and design delays and extended remediation timeframes.

Several types of Legislative relief are needed:

- Amend K.S.A. 12-1771(g) to remove the absolute requirement that a project be “completed” in 20 years. It is suggested that there is no necessity to having a legal time limit on the project by statute, but rather defer to the requirements established by KDHE or EPA consistent with prevailing technology.
- Ensure that there is TIF funding to complete a significant portion of the project. Under the statute, bonds to finance remediation projects are limited to a maximum maturity of 20 years (K.S.A. 12-1771(h)). While a city may continue to collect the increment to pay principal and interest on bonds so long as they are outstanding, the direct costs of the investigation and remediation are currently limited to the 20 year TIF project time (K.S.A. 12-1771a(b)). The Act should be amended to ensure the availability of increment funding to complete or continue for the project beyond 20 years from the “agreement.” If a limitation on the District’s life is still deemed necessary, it is suggested that the limitation is more appropriately timed from the start of construction of remediation (e.g., “ 20 years from notice from KDHE or EPA to proceed with construction of the remedial system”) rather than from the date of the agreement.

These changes would reflect the reality of environmental projects and the experiences that cities are actually facing. Such changes would continue to encourage cities to become involved in environmental projects by ensuring continued availability of funding.

These legislative amendments could be incorporated into HB 2005 recommended by the Joint Committee on Economic Development and assigned to the House New Economy Committee, or by separate legislation.

01/24/00

Gilbert & Mosley TIF

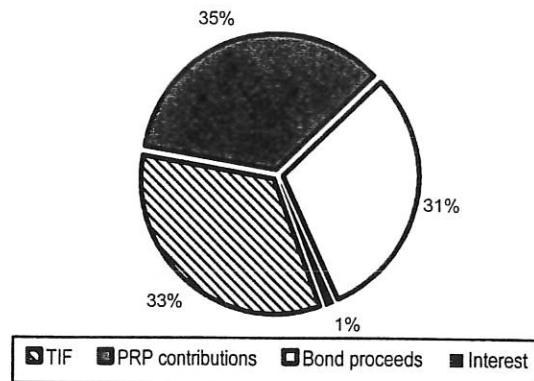
Overview. Kansas State law (KSA 12-1771a) allows the City to fund the cleanup of an environmentally contaminated area through the use of a special type of Tax Increment Financing (TIF). Tax increment financing involves the restoration of property values in a contaminated area to higher, pre-contamination levels, and capturing up to 20% of the "increment" of property tax produced by the valuation increase to pay cleanup costs.

Tax Increment Financing District #1 was established in August 1991 to fund the clean-up of groundwater contamination in the Gilbert & Mosley area. At that time, the City entered into an agreement with the Kansas Department of Health and Environment (KDHE) whereby the City agreed to undertake the clean up and avoid the substantial cost and stigma associated with designation of the district as a Superfund site.

Finance and Operations. Gilbert & Mosley project expenditures for 2000, 2001 and 2002 include capital, operational, debt service, and administrative costs. The project's remedial design has received final KDHE approval, and construction of the contamination abatement system is scheduled to begin in late 2000 and continue through 2002.

The remedial design as approved by KDHE involves extraction and treatment of the contaminated groundwater. Additional public amenities, such as a public education facility and an aquarium stocked with native fish, are currently under consideration.

Gilbert & Mosley TIF Fund
Revenue Summary 1999-2002



The City has initiated cost recovery action against several local businesses and individuals identified as responsible for the contamination in the Gilbert & Mosley area. The City's legal staff and outside legal advisors aggressively pursue the goal of holding potentially responsible parties (PRPs) financially liable for all costs of the clean-up of contamination caused by PRPs in the district.

Remediation activities are not projected to be complete within the 20-year time period during which TIF funding can be legally made available. City staff are currently exploring options for addressing the statutory 20-year limitation, which could include petitioning the Kansas State Legislature for a waiver or extension of the deadline, or re-establishing the district upon its expiration.

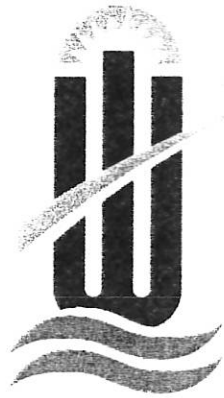
Gilbert & Mosley TIF Fund Budget Summary

	1999 Actual	2000 Adopted	2000 Revised	2001 Adopted	2002 Approved
Gilbert & Mosley Fund Revenue	6,019,924	6,830,610	4,558,170	6,126,040	4,620,460
Personal Services	26,122	41,660	40,800	42,730	45,870
Contractual Services	1,743,991	2,154,650	3,175,270	1,723,940	1,204,490
Commodities	4,238	4,050	3,250	3,250	3,250
Capital Outlay	1,938	4,004,000	3,500,000	3,504,000	2,000,000
Other	33,347	555,520	623,280	838,160	831,200
Total Fund Expenditures	1,809,636	6,759,880	7,342,600	6,112,080	4,084,810
Revenue Over (Under) Expenditures	4,210,288	70,730	(2,784,430)	13,960	535,650
Allocation - Future Debt Service	0	0	0	0	(500,000)
Gilbert & Mosley Fund Balance	2,796,807	84,879	12,377	26,337	61,987
Position Summary					
Total FTE	1	1	1	1	1

2-13

FUND HISTORY - TAX INCREMENT FINANCING DISTRICTS 1 & 2

<u>FUND/CATEGORY</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>TOTAL</u>
Tax Increment Financing District #1: "Gilbert & Mosley" Site									
<i>REVENUES:</i>									
--Property Tax Increment	\$503,975	\$414,391	\$454,138	\$362,710	\$429,328	\$485,046	\$624,327	\$718,915	\$2,649,588
--PRP Contributions	846,039	259,368	157,431	0	0	0	0	964,623	1,262,838
--Interest Earnings	4,492	14,564	46,501	75,490	59,618	60,329	37,138	36,386	260,994
--Bond Proceeds	0	0	0	0	0	0	0	4,300,000	
TOTAL REVENUES	1,354,506	688,323	658,070	438,200	488,946	545,375	661,465	6,019,924	4,173,420
<i>EXPENDITURES:</i>									
--Personal Services	\$393	\$1,258	\$0	\$10,430	\$0	\$19,333	\$37,521	\$26,122	\$31,414
--Contractuals	700,467	258,204	167,654	1,136,109	1,480,769	849,330	2,394,749	1,743,991	4,592,533
--Commodities	2,224	3,000	1,268	4,128	4,212	2,825	3,024	4,238	17,657
--Capital Outlay	0	0	51,500	481	1,266	1,421	145,422	1,938	54,668
--Other	246,250	0	0	0	9,350	25,299	41,367	33,347	280,899
TOTAL EXPENDITURES	949,334	262,462	220,422	1,151,148	1,495,597	898,208	2,622,083	1,809,636	4,977,171
BUDGETED INCOME (LOSS): *	\$405,172	\$425,861	\$437,648	(\$712,948)	(\$1,006,651)	(\$352,833)	(\$1,960,618)	\$4,210,288	(\$803,751)
Tax Increment Financing District #2: "North Industrial Corridor" Site									
<i>REVENUES:</i>									
--Property Tax Increment	\$0	\$0	\$0	\$0	\$0	\$415,625	\$147,901	\$544,493	\$415,625
--PRP Contributions	0	0	0	0	382,500	0	0	0	382,500
--Interest Earnings	0	0	0	0	5,243	25,907	27,278	23,938	31,150
TOTAL REVENUES	0	0	0	0	387,743	441,532	175,179	568,431	829,275
<i>EXPENDITURES:</i>									
--Personal Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
--Contractuals	0	0	0	0	131,337	134,439	386,549	255,503	265,776
--Commodities	0	0	0	0	7,190	1,252	304	569	8,442
--Capital Outlay	0	0	0	0	0	0	0	0	0
--Other	0	0	0	0	0	0	0	0	0
TOTAL EXPENDITURES	0	0	0	0	138,527	135,691	386,853	256,072	274,218
BUDGETED INCOME (LOSS):	\$0	\$0	\$0	\$0	\$249,216	\$305,841	(\$211,674)	\$312,359	\$555,057



CITY OF
WICHITA

**North Industrial Corridor (NIC)
Tax Increment Financing District**

REPORT TO THE
LEGISLATURE

**Senate Commerce Committee
House New Economy Committee**

**City of Wichita - North Industrial Corridor (NIC) Tax Increment Financing District
2001 Report to the Legislature**

The North Industrial Corridor (NIC) Tax Increment Financing (TIF) Redevelopment District was established in 1996. The District was established by the City of Wichita as a secondary funding source for the investigation and remediation of a site of groundwater contamination. This is the 2001 biennial report to the Kansas Legislature on the status of the investigation and remediation project as required by KSA 12-1771a(g).

Background

The NIC site is located in Wichita and is an area where the groundwater is contaminated by volatile organic compounds (VOCs). The site is roughly 5.5 miles long and 1.2 miles wide (approximately 4,000 acres) and is situated along the rail corridor that runs through the center of the City of Wichita. Land use in the area is primarily industrial and commercial mixed with some residential neighborhoods.

A portion of the Site, called the 29th & Mead Site, was placed on the EPA National Priorities List (NPL) as a "Superfund" site on February 21, 1990. The site has been under investigation since 1981 by the Kansas Department of Health and Environment (KDHE). In order to address the contamination, a number of businesses within the area formed a Potentially Responsible Party (PRP) group known as the Wichita North Industrial District (WNID). The WNID Group (23 property owners, including the City through ownership of urban renewal land) entered into an agreement with the KDHE to perform an environmental study know as a Remediation Investigation and Feasibility Study (RI/FS). After several years of data collection and investigation, the RI portion of the RI/FS was provided to the KDHE. KDHE denied approval of the 29th & Mead RI and requested that the WNID group expand its investigation. WNID did not respond satisfactorily to KDHE's request and KDHE subsequently referred the matter to EPA for additional investigation and possible enforcement. This eventually resulted in EPA's designation as a "Superfund" site in 1990.

One of the areas requiring additional investigation was the 13th & Washington area immediately adjacent and down gradient from the 29th & Mead Site. The City conducted a field investigation of that site on behalf of KDHE in 1993 that confirmed contamination had migrated from the 29th & Mead Site.

Of concern was a recurring theme of idle properties, economic stagnation, and a reluctance to lend money for real estate purchase, refinancing, remodeling or expansion due to the potential liability associated with Superfund designation for the area. As a result of the impact of this environmental liability, some property owners in the area sought relief from property taxes and were granted a 40% reduction in property valuations due to the groundwater contamination and related environmental conditions.

Because of the PRP Group's inability to complete an RI/FS and the expansion of the investigation area, businesses and property owners in the area began requesting that the City take on the Site utilizing the same action steps as in the Gilbert & Mosley model. The City initially did not think this would work because: 1) there was not enough tax base to support a TIF; and 2) Superfund listing seemed to complicate the process and did not make it a viable site. An added impetus for action was given by a combination of factors including: the loss of a large industry considering a move to that area of Wichita; the inability of some existing large businesses in the area to get financing to expand; and the belief that EPA was planning to take over the site and expand the Superfund area to include 13th & Washington.

In response to these circumstances the City of Wichita responded to the environmental and economic concerns by proposing a redevelopment plan for the area similar to the one previously implemented at the Gilbert and Mosley site. In early 1994, the City began actively working to see if a remediation project were possible for the area. The City believed two elements were essential to rescue the site: Delisting of the Site from the Superfund and restoration of property values. These processes were successful and culminated with a Settlement Agreement between the City of Wichita and KDHE on November 14, 1995. The TIF District to implement this project was established in January 1996.

As a result of the City of Wichita's efforts, the EPA deleted the site from the federal National Priority or "Superfund" List on January 31, 1996. This was a very unusual step by EPA and is a recognition of the City's success to date in providing funding and investigation for remediation project.

The NIC Project is comprised of the following elements:

1. Environmental Study. Camp Dresser & McKee (CDM) was hired as the City's environmental engineer in early 1997. It started with the uncompleted 29th & Mead RI data, gathered data from the various PRPs, and conducted several phases of its own field investigation.
2. Settlement Agreement with KDHE. KDHE was designated the lead agency by the EPA as part of the delisting. The City and KDHE negotiated the November 14, 1995, agreement where the City took responsibility for the completion of the investigation and clean-up of the entire site, with the City reserving the right to recover its costs from parties that caused the contamination. The KDHE Agreement gave the City of the Wichita the authority to issue Certificates of Release to property owners, lenders, and others located within the Site who did not contribute to the contamination.
3. Participant Agreement. A "Participant Agreement" was entered into by 28 PRPs to fund the RI/FS and to participate in the allocation of final remediation costs. The Participants also provided the results of their investigation and source control efforts to date. Several additional parties have joined the

Participant Group since its inception.

4. TIF District. The TIF District established for the NIC site is instrumental in supplementing the initial funding provided by the participants and in guaranteeing the funding necessary for the completion of the project. The City was able to use the environmental TIF legislation originally enacted for the Gilbert & Mosley District.
5. Certificate of Release and Lending Institutions. A number of lending institutions in Wichita entered into agreements stating that institutions will not refuse to make loans to entities that have Certificate of Release based solely on “environmental liability.” To date, over 1000 certificates have been issued on properties in the Site and they continue to be available to eligible property owners. Certificates continue to facilitate real estate transactions and lending on properties located within the Site. Parties who hold Certificates of Release are entitled to the contribution protection that is provided under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). A holder of a Certificate of Release should not be subject to claims for response costs at the Site as long as the certificate holder has provided information in its application for the certificate that is not false or misleading.
6. Citizen Involvement. The Project began with public meetings and citizen involvement. Communicating information to the public and utilizing the expertise of the citizens to assist in implementation of the technical and non-technical aspects of the project remains a strong goal. A citizen’s technical review committee established for the Gilbert & Mosley District is used for the NIC District.
7. Pursuit of Financial Support. The City committed to identify and vigorously pursue (through voluntary efforts or litigation) financial participation by all parties that contributed to the groundwater contamination.

Remediation of the groundwater contamination of the NIC Site is the underlying purpose of all of the effort and expenses of this project. An important concept to the City’s duplication of its previous innovative approach at the Gilbert & Mosley site was to avoid the remediation delays that have occurred in so many Superfund sites across the country and to restore property values quickly within the area of contamination. In planning and in reality, remedial investigation has been able to proceed on a concurrent track with the City’s efforts to secure participation and cost contribution by private parties.

A major success of the project to date has been the restoration and protection of property values in the District. Commercial and real estate activity has vigorously resumed as investigation and remediation efforts continue. The property values in the Site were restored to pre-contamination values and the City, with the support of Sedgwick County, has successfully defended against isolated efforts to reduce those values.

Investigation Status

In addition to combining 13th & Washington and 29th & Mead into one NIC site, early investigative activities by KDHE and EPA had already identified sites within the NIC that required remedial activity. These specific sites were known as “operable units” where clean-up activity within the property boundaries was already underway. These sites included Evcon, Coleman/York, and Coastal Refinery. Additionally, sites north and adjacent were added to the NIC investigation including Unocal, USD 259, Phillips Pipeline Company, Continental Tank Car, and the Coleman Northeast Plant.

Fieldwork and the site investigation began on October 6, 1997. CDM submitted a revised work plan to KDHE to initiate the Remediation Investigation RI for the NIC site. The work plan and field sampling plan were subsequently approved and CDM is currently in the process of implementing the Phase II field investigation to determine the sources of contamination, nature, extent, concentration, ground water flow and characterization of the contamination to complete the RI. The RI will be completed in 2001 or early 2002.

After completion of the RI, work will begin on the Feasibility Study (FS) that will identify and assess the feasibility of various technologies available to remediate the ground water contamination.

The City has concurrently sought to identify source areas and responsible parties. The City is working with the identified properties to participate with the Group and is working with KDHE to identify where source control will be required.

Even though the site was delisted by EPA and EPA is no longer directly involved in the Site, EPA required reimbursement of its own costs. The City and 10 other PRP entered into a settlement agreement by which EPA was reimbursed \$226,000 of its costs.

TIF District Status

The City now has two environmental TIFs authorized by K.S.A. 12-1771a. The first in the State was the Gilbert & Mosley TIF District. The City's second was the North Industrial Corridor (NIC) TIF site established in 1996.

The Kansas TIF for environmental projects has now been used on a number of projects throughout the State, including the two in Wichita. A city may establish an environmental TIF when the following conditions of the statute (K.S.A. 12-1771a(a)) are met:

- i. The proposed district has been identified as environmentally contaminated.
- ii. The city enters a consent decree or settlement agreement with KDHE or EPA agreeing to address “the investigation and remediation of the environmental contamination.” This requires an up-front commitment to both the investigation (RI/FS) and the remedation (RD/RA) phases.
- iii. The consent decree or settlement agreement “contains a provision that has the

effect of releasing property owners who are not responsible for the contamination from the responsibility of paying the response costs of the investigation and remediation of the contamination.”

iv. The city intends to establish a TIF district to finance the project in whole or part.

Before any TIF project is initiated, a comprehensive feasibility study must be undertaken that shows the “benefits derived from such project will exceed the costs and that the income therefrom will be sufficient to pay for the project” (K.S.A. 12-1771(j)). Once established, an environmental TIF project contains the following elements:

- A city is allowed to use an amount of annual tax revenues up to 20% of the taxes that are produced in the first year of the project. This is an “artificial TIF” that is used only for environmental TIFs and does not depend on a change in valuation. It allows a city to plan and budget for specific amounts of funds each year, irrespective of the actual increment produced. This has also been referred to as a tax “decrement.” K.S.A. 12-1771a(b).
- A city establishes an annual budget (parallel to the city budgeting process) projecting the revenues and expenditures for the coming year and designating the portion of project costs expected to come from the TIF. (Only a portion of the 20% decrement in NIC has been collected to date.) K.S.A. 12-1771a(c).
- The tax funds are collected with other ad valorem taxes and paid into a special fund to be used only for the environmental project. Any TIF funds unused one year are carried over to the next year, and any unused TIF funds are to be refunded to the other taxing subdivisions at the end of the project. K.S.A. 12-1771a(d).
- The environmental TIF project must be completed within 20 years of the date of the consent decree. (While the environmental remediation could continue beyond that date TIF funds will not be available under the current statute.) K.S.A. 12-1771(g).
- TIF funds may be used to pay project costs directly or to pay principle and interest on special obligation bonds or full faith and credit tax increment bonds used to finance the project. Bonds may have a maximum maturity of 20 years (compared to 15 year for traditional TIF bonds). K.S.A. 12-1771(h).
- Biennial reports must be made to the Legislature on the status of the investigation and remediation. K.S.A. 12-1771a(g).

In the NIC Site, TIF funds are used as a guarantee that the project will be completed. The City will seek reimbursement and payment from the Participants and has reserved all rights against other potentially responsible parties. TIF funds are available to pay for “orphan shares,” or the shares of any non-participating party from whom the City has

been unable to recover. The City has made a political commitment to the other taxing subdivisions, as well as the public, to use its best efforts to seek all contributions and minimize the need for TIF funds.

The NIC TIF budget and budget history are attached.

Future of the TIF.

The City believes that changes to the TIF statutes will be necessary in the future. The statute contemplates a 20 year project (K.S.A. 12-1771(g)). The City has discovered through its projects, however, that 20 years is now considered a short time for remediation, and project clean-ups are calculated much longer than that. The City has also discovered that it takes a number of years before clean-up can even begin, partly because of the review time required by KDHE. For example, the City only recently received the approval to proceed with the last phase of field investigation under an agreement signed in 1995. As a result of needing more time to complete projects, the City will be looking to the Legislature for an extension of the time frame for completing projects and collecting environmental TIFs.

The rationale and proposals for TIF statute amendments are contained in the Gilbert & Mosley TIF Report to the Legislature.

Conclusion.

The Environmental TIF remains as a viable and valuable tool for the City. Investigative activity in the Site, partially funded by the TIF district, is active and proceeding at this time. It remains the City's position that those parties who are responsible for the contamination of the NIC site should pay for that remediation. The City will continue to aggressively pursue contribution from those parties by all appropriate means including litigation, as it has from the beginning of this Project. The City is committed to the principal that the taxpayers should not have to bear the burden of the remediation costs. The TIF remains as a major funding mechanism for the ongoing remediation only until, and to the extent, contribution is obtained from the responsible parties.

01/24/01

North Industrial Corridor TIF

Overview. Kansas State law (KSA 12-1771a) allows the City to fund costs related to the cleanup of an environmentally contaminated area through the use of a special type of Tax Increment Financing (TIF). This mechanism involves the restoration of property values in a contaminated area to their higher pre-contamination levels and capturing up to 20% of the "increment" of property tax produced by the valuation increase to pay cleanup costs.

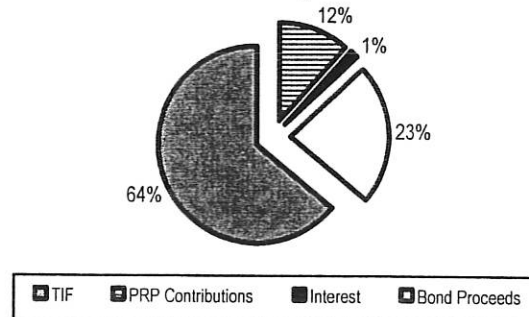
Tax Increment Financing District #2 was established in January 1996 to fund the clean-up of groundwater contamination in the North Industrial Corridor area. The City is currently investigating the area to identify the potentially responsible parties (PRPs) who caused the contamination. The City intends to make every effort to see that PRPs reimburse the City for as much of the clean-up costs incurred by the City and funded by the TIF as possible. Using a proactive approach, the City has sought to keep the lines of communication open between City staff, PRPs, and agencies such as the Kansas Department of Health & Environment (KDHE) and the Environmental Protection Agency (EPA) to head off conflicts that may otherwise force expensive and time-consuming legal action.

Finance and Operations. North Industrial Corridor (NIC) project expenditures for 2000, 2001 and 2002 include legal and project consultant fees, laboratory costs, KDHE/EPA oversight costs, testing/sampling materials, and other administrative costs.

Currently, City staff and the NIC project's primary contractor are conducting the remedial investigation phase of this project, whereby testing and sampling is done to determine the extent of contamination. In an unexpected development, KDHE is now requiring that this phase should

include a preliminary identification of PRPs, a change that will substantially increase the time and cost involved in this phase. This investigative phase is scheduled for completion in 2000, at which time development of a clean-up plan will begin. Remedial design will begin after these tasks are completed, with remedial construction (contamination abatement) scheduled to begin in 2002.

North Industrial Corridor TIF Fund
Revenue Summary 1999-2002



The City has already received an initial payment for some of the remediation costs from one potentially responsible party. The City's legal staff and outside legal advisors will continue to aggressively pursue the project's goal of holding PRPs financially liable for the clean-up of all contamination they have caused in the district.

Certificates of release of environmental liability have been issued for many of the properties within the NIC site. These releases of liability promote fairness by ensuring that those proven not responsible for contamination in the district are not burdened by the legal difficulties of proving their lack of culpability.

North Industrial Corridor (NIC) TIF Fund Budget Summary

	1999 Actual	2000 Adopted	2000 Revised	2001 Adopted	2002 Approved
North Industrial Corridor Fund Revenue	568,431	1,316,030	952,140	1,257,440	3,004,560
Personal Services	0	600	600	600	600
Contractual Services	255,503	1,617,880	1,159,160	1,308,230	2,007,200
Commodities	569	8,350	4,450	2,750	2,750
Capital Outlay	0	0	4,130	150,000	1,000,000
Total Fund Expenditures	256,072	1,626,830	1,168,340	1,461,580	3,010,550
Revenue Over (Under) Expenditures	312,359	(310,800)	(216,200)	(204,140)	(5,990)
Allocation - Future Debt Service	0	0	(205,000)	205,000	0
North Industrial Corridor Fund Balance	465,785	28,956	44,585	45,445	39,455

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FUND HISTORY - TAX INCREMENT FINANCING DISTRICTS 1 & 2

FUND/CATEGORY	1992	1993	1994	1995	1996	1997	1998	1999	TOTAL
Tax Increment Financing District #1: "Gilbert & Mosley" Site									
<i>REVENUES:</i>									
--Property Tax Increment	\$503,975	\$414,391	\$454,138	\$362,710	\$429,328	\$485,046	\$624,327	\$718,915	\$2,649,588
--PRP Contributions	846,039	259,368	157,431	0	0	0	0	964,623	1,262,838
--Interest Earnings	4,492	14,564	46,501	75,490	59,618	60,329	37,138	36,386	260,994
--Bond Proceeds	0	0	0	0	0	0	0	4,300,000	
TOTAL REVENUES	1,354,506	688,323	658,070	438,200	488,946	545,375	661,465	6,019,924	4,173,420
<i>EXPENDITURES:</i>									
--Personal Services	\$393	\$1,258	\$0	\$10,430	\$0	\$19,333	\$37,521	\$26,122	\$31,414
--Contractuals	700,467	258,204	167,654	1,136,109	1,480,769	849,330	2,394,749	1,743,991	4,592,533
--Commodities	2,224	3,000	1,268	4,128	4,212	2,825	3,024	4,238	17,657
--Capital Outlay	0	0	51,500	481	1,266	1,421	145,422	1,938	54,668
--Other	246,250	0	0	0	9,350	25,299	41,367	33,347	280,899
TOTAL EXPENDITURES	949,334	262,462	220,422	1,151,148	1,495,597	898,208	2,622,083	1,809,636	4,977,171
BUDGETED INCOME (LOSS): *	\$405,172	\$425,861	\$437,648	(\$712,948)	(\$1,006,651)	(\$352,833)	(\$1,960,618)	\$4,210,288	(\$803,751)
Tax Increment Financing District #2: "North Industrial Corridor" Site									
<i>REVENUES:</i>									
--Property Tax Increment	\$0	\$0	\$0	\$0	\$0	\$415,625	\$147,901	\$544,493	\$415,625
--PRP Contributions	0	0	0	0	382,500	0	0	0	382,500
--Interest Earnings	0	0	0	0	5,243	25,907	27,278	23,938	31,150
TOTAL REVENUES	0	0	0	0	387,743	441,532	175,179	568,431	829,275
<i>EXPENDITURES:</i>									
--Personal Services	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
--Contractuals	0	0	0	0	131,337	134,439	386,549	255,503	265,776
--Commodities	0	0	0	0	7,190	1,252	304	569	8,442
--Capital Outlay	0	0	0	0	0	0	0	0	0
--Other	0	0	0	0	0	0	0	0	0
TOTAL EXPENDITURES	0	0	0	0	138,527	135,691	386,853	256,072	274,218
BUDGETED INCOME (LOSS):	\$0	\$0	\$0	\$0	\$249,216	\$305,841	(\$211,674)	\$312,359	\$555,057



League of Kansas Municipalities

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TO: House New Economy Committee

FROM: Sandy Jacquot, Director of Law/Legal Counsel

DATE: February 6, 2001

RE: HB 2005

Last spring, at the request of bond counsel for some of our member cities, the League of Kansas Municipalities requested an interim study on the current tax increment financing (TIF) statutes for the purpose of exploring some revisions. The statutes as they exist are very complicated and difficult to use, even for very large municipalities. In fact, probably only a handful of individuals in the state, those bond counsel who have done TIF projects for municipalities, understand fully the complexities of the law. For background, I have attached Don Moler's testimony from the summer interim to better explain the League's support. With that explanation as a backdrop, the League supports streamlining the current TIF statutes to improve upon a very important economic development tool.

HB 2005, as written today, does not accomplish the goal of the League, nor do we believe it represents the intent of the interim committee. It has definitional problems, contains inconsistencies and creates more confusion than the current statutes. I will defer to bond counsel in this area to explain some of these problems and perhaps offer some substitute language. Therefore, the League's position is that we continue to support simplification and streamlining of the TIF statutes, and would be supportive of efforts to substitute language in place of current HB 2005 language to accomplish these goals.



League of Kansas Municipalities

To: Joint Committee on Economic Development
From: Don Moler, Executive Director
Date: August 8, 2000
Subject: Tax Increment Financing

Thank you for the opportunity to appear here today to address the issue of Tax Increment Financing (TIF). The League was involved with the development of this important economic development tool back in the 1970s. During my 15 years at the League, I have seen cities use this tool to successfully jumpstart blighted areas that otherwise would have remained a stagnant part of the community. Today and tomorrow you will hear from several city officials (mostly from the larger metropolitan areas of the state) who will explain how TIF has helped their most economically depressed neighborhoods rise again. And, most importantly, you will hear how this engine of growth could be used in the less urban areas – if only the process were less daunting.

1. Vital Economic Development Tool

As cities struggle with the changing global economy, need for innovative economic development is growing. TIF is an important incentive-based tool that can help to sustain and redevelop our communities. The Legislature recognized this need in the purpose of the TIF act.

K.S.A. 12-1770 It is hereby declared to be the purpose of this act to promote, stimulate and develop the general and economic welfare of the state of Kansas and its communities and to assist in the development and redevelopment of blighted areas and deteriorating areas which are not yet blighted, but may be so in the future located within cities ...

2. TIF Benefits the State Government

The benefits of TIF do not stop at the borders of the “redevelopment district.” While the city, county and school district in which the redevelopment district lies eventually gain from the growth in the property tax base, the state typically gains an even larger windfall. When one considers the increases in various government revenues generated by more employees with more money to put back into the economy, it is not surprising that the benefits of TIF far outweigh the costs of the abated taxes. And this is exactly what cost-benefit analyses have shown over the years. The fact is the TIF law requires such a feasibility study before a redevelopment district is even created in the first place. If the costs outweigh the benefits, a project simply does not go forward.

And the beauty of TIF financing is that typically none of the other local government entities experience a decrease in revenue due to a redevelopment project. The base level of property

taxes still goes to the various taxing subdivisions. Usually, schools and counties experience increases in revenues – as the Performance Audit Report (*Tax Increment Financing in Kansas, Part II: Reviewing a Sample of Districts*) demonstrates. For example, a school district reportedly gained revenue during a TIF project due to an influx of students and a corresponding increase in base funding. Likewise, a city and county can expect revenue growth as property and sales taxes increase due to greater demand for housing and services.

3. Simplification is the Key

The League is always educating its member cities about state laws and how to interpret them. One of the most daunting tasks that my staff faces is trying to teach municipal officials about the TIF statutes. The League has a manual entitled “Economic Development Tools for Kansas Municipalities” with an entire section devoted to explaining TIF (see attachment). Just glancing at the “summary” time line on pages 12-15 of the attachment gives you an idea of the daunting task that city officials face. I would urge your committee to look at ways to simplify this valuable tool so that rocket scientists would not be needed to take advantage of the economic opportunities it can provide a community.

Blighting Factors. The *Post Audit Report* found that the Kansas TIF law is stricter than TIF laws in other states. Simplifying this Kansas law would not only make TIF easier to understand, but could put our state on a level playing field with our peer states. The report details how Kansas has a long list of factors to evaluate before TIF is allowed while other states have a much lower threshold. By reducing the Kansas threshold, TIF may appear more readily achievable in the eyes of governing body members from smaller cities. It will do much to remove the idea that this is a “big city” or urban economic development tool.

Use of TIF Proceeds. The *Post Audit Report* also pointed out that TIF proceeds in Missouri can be used for far more public purposes than in Kansas. Currently, K.S.A. 12-1773 limits what governing bodies can do with TIF monies to a short laundry list of uses. I would suggest that opening up TIF funds to be used for more creative public purposes will narrow the advantage Missouri and other states have over our own.

Intergovernmental Veto. Another impediment contained in our state TIF law is that it allows counties and school districts to veto the creation of a redevelopment district. While we value intergovernmental cooperation, the reality is that most county commissions and school boards do not view economic development/redevelopment as part of their job – or, at least, certainly not a priority. Giving them a veto unduly discourages governing bodies. And, as pointed out above, the revenue risk to counties and schools is virtually non-existent because the pre-development property tax base is still levied upon.

4. Conclusion

You will hear from a number of city officials who have faced down these statutes and lived to tell about it. Once they deciphered the statutes, they have used TIF to develop areas of their community that otherwise would have been unproductive. The Post Audit Report demonstrates

that city officials are using this economic development tool responsibly. The one city that did not follow the exact letter of this complex law quickly took action once it became aware of its noncompliance. The appendix of the Report seems to be a catalog of successes in progress, not failures.

The economic growth from a "redevelopment district" not only enriches the owners/developers of the district – it also provides increased property tax revenues and sales tax revenues that benefit all levels and subdivisions of Kansas government. Moreover, the state realizes even greater benefits due to increased sales tax revenues and a larger property tax base. Simplification of the TIF statutes will do much to put Kansas on a level playing field with other states. The League is anxious to work with your committee and the entire Legislature to streamline the TIF statutes and make them work more effectively. If we can do that, cities across the entire state will begin to see the power of this underused tool of progress.