STATE OF MINNESOTA

Office of the State Auditor

Rebecca Otto

State Auditor

TAX INCREMENT FINANCING LEGISLATIVE REPORT

TIF Reports for the Year Ended December 31, 2006

TIF Audits Concluded for the Year Ended December 31, 2007

Description of the Office of the State Auditor

The mission of the Office of the State Auditor is to oversee local government finances for Minnesota taxpayers by helping to ensure financial integrity and accountability in local governmental financial activities.

Through financial, compliance, and special audits, the State Auditor oversees and ensures that local government funds are used for the purposes intended by law and that local governments hold themselves to the highest standards of financial accountability.

The State Auditor performs approximately 160 financial and compliance audits per year and has oversight responsibilities for over 3,300 local units of government throughout the state. The office currently maintains five divisions:

Audit Practice - conducts financial and legal compliance audits of local governments;

Government Information - collects and analyzes financial information for cities, towns, counties, and special districts;

Legal/Special Investigations - provides legal analysis and counsel to the Office and responds to outside inquiries about Minnesota local government law; as well as investigates allegations of misfeasance, malfeasance, and nonfeasance in local government;

Pension - monitors investment, financial, and actuarial reporting for approximately 730 public pension funds; and

Tax Increment Financing - promotes compliance and accountability in local governments' use of tax increment financing through financial and compliance audits.

The State Auditor serves on the State Executive Council, State Board of Investment, Land Exchange Board, Public Employees Retirement Association Board, Minnesota Housing Finance Agency, and the Rural Finance Authority Board.

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TAX INCREMENT FINANCING
LEGISLATIVE REPORT

TIF Reports for the Year Ended December 31, 2006

TIF Audits Concluded For the Year Ended December 31, 2007

January 29, 2008

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Office of the State Auditor
State of Minnesota

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TAX INCREMENT FINANCING REPORT

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Scope and Methodology

In 1995, the Minnesota Legislature assigned compliance oversight responsibility for tax increment financing (TIF) to the State Auditor.[1] The role of the State Auditor is to examine and audit the use of TIF by political subdivisions, as authorized by the Minnesota Tax Increment Financing Act (TIF Act), and report its findings to the legislature.[2]

The TIF Act requires authorities to file annual reports with the Office of the State Auditor (OSA) for each of their TIF districts. This reporting requirement applies to all TIF districts regardless of when they were created. Authorities must submit these reports to the OSA on or before August 1st of each year, starting in the year in which the district is certified.[3] An authority also must publish certain statutorily required financial information about each of its TIF districts in a newspaper of general circulation on or before August 15th of each year.[4]

In addition, the OSA collaborates with the Department of Revenue (Revenue), comparing TIF data reported to both offices. The OSA compares Revenue's information received from counties against the information it received from authorities. In this way, the OSA is able to verify the accuracy of the information it receives.

As required by law, the OSA provides an annual summary of the TIF reports and audits to the Chairs of the legislative committees with jurisdiction over TIF matters. This Twelfth Annual Legislative Report was compiled by the OSA from information received from the 447 municipalities and development authorities currently authorized to exercise TIF powers in Minnesota. This report summarizes the data received from approximately 2,169 unaudited TIF reports for the year ended December 31, 2006, and provides a summary of the violations cited in the limited-scope audits concluded by the OSA in 2007. This legislative report and prior years' legislative reports can be found on the website of the Office of the State Auditor at www.auditor.state.mn.us.

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1 Minn. Stat. § 469.1771.

2 Minn. Stat. §§ 469.174 through 469.1799 inclusive, as amended.

3 Minn. Stat. § 469.175, subd. 6.

4 Minn. Stat. § 469.175, subd. 5.

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Executive Summary

Current Trends

- Approximately the same number of TIF districts were certified in the Metro Area in 2006 as were decertified, a significant change from 2005 when approximately twice as many districts were certified as were decertified.

- The number of redevelopment districts certified decreased 23% between 2005 and 2006. The number of economic development districts have been decreasing since 2003, but showed a 4% increase between 2005 and 2006. The number of housing districts certified decreased 8% between 2005 and 2006.

- In 2006, significantly more economic development districts were decertified than were certified, with 63 districts decertified and 24 districts certified. Economic development districts make up 30% of the TIF districts in Greater Minnesota and only 15% of the districts in the Metro Area.

- In calendar year 2006, $11,459,980 in tax increment revenues were returned to county auditors. The revenues were returned as a result of the oversight work of the OSA and from voluntary payments made by municipalities or authorities.

Long-Term Trends

- Small cities account for the largest increase in the number of new authorities. Twenty-five new development authorities have been created since 2002. Of the 25 new authorities, the average municipal population is approximately 1,911. If the City of West St. Paul, the largest new authority, is omitted, the average population for the remaining 24 new authorities drops to 1,205.

- A significantly reduced number of violations were cited in the five limited-scope audits concluded by the OSA in 2007 than were cited in the initial years of the OSA's auditing program. The reduction in the number of violations may be due to a better understanding by municipalities and authorities of the need to retain TIF documents and records, as well as to an improvement in TIF financial recordkeeping. The efforts of the OSA to educate authorities may also be a factor.

- From January 1, 1996 to date, $49,008,664 has been paid or returned to county auditors as a result of the oversight work of the OSA and from voluntary payments made by municipalities and authorities.

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TAX INCREMENT FINANCING LEGISLATIVE REPORT

BACKGROUND

What Is Tax Increment Financing?

Tax increment financing is a financing tool created by the legislature to promote economic development, redevelopment, and housing development in areas where it would not otherwise occur. A development authority, which could be a city, an entity created by a city, or an entity created by a county, "captures" the revenues generated by the increase in net tax capacity. New development within a designated geographic area, called a TIF district, generates an increase in tax capacity. The development authority uses the tax increment revenues to finance public improvements and other qualifying costs related to the new development.

Tax increment financing is not a property tax abatement program. The owner of the property in the TIF district continues to pay the same amount of property taxes that would have been paid. Instead of being paid to the local taxing jurisdictions for their general use, however, the portion of property taxes generated by the new development is used to pay for public improvements and qualifying costs that make the development possible. Examples of such costs include: land and building acquisition, demolition of structurally substandard buildings, removal of hazardous substances, site preparation, installation of utilities, and road improvements. The costs that may be paid from tax increment depend on the type of project created, the type of TIF district created, and the year in which the TIF district was created.

In some TIF districts, bonds are sold by the municipality or development authority at the outset of the project so that funds are available for front-end costs such as pollution clean-up. The bonds are then fully or partially paid with tax increment revenues from the TIF district. In other TIF districts, the authority or municipality advances or loans money from its general fund or any other fund under which it has legal authority to do so. The loan or advance must be authorized by resolution of the governing body before money is transferred, advanced, or spent. The terms and conditions for repayment of the loan must be provided in writing and include, at a minimum, the principal amount, the interest rate, and maximum term.[1]

Pay-as-you-go (PAYG) financing is often used as an alternative to up-front bond financing. Under this type of bond, the development costs are initially paid by the developer pursuant to the terms of a (re)development agreement. After the qualifying costs are substantiated, the developer is then reimbursed pursuant to the terms of the PAYG note if, and when, tax increment is generated by the TIF district. Generally, in PAYG financing, the developer accepts the risks of failed development. If the tax base

1 Minn. Stat. § 469.178, subd. 7.

does not increase, and tax increments are not generated as anticipated, the developer does not get reimbursed.

The TIF Act

The TIF Act governs the creation and administration of TIF districts. The TIF Act has been amended frequently since its creation in 1979. A TIF district is usually governed by the laws in effect in the year in which the request for certification of the district was made. Frequent changes in the law have created an added layer of complexity. The OSA holds annual TIF training sessions to assist TIF authorities and municipalities comply with TIF Act requirements.

Figure 1.

TIF Training Events Held in 2007

Location	Type	Date	Registered Participants
Bloomington	Seminar	March 2007	137
Detroit Lakes	Workshop	June 2007	34
Kasson	Workshop	June 2007	31
Sleepy Eye	Workshop	June 2007	21
St. Paul	Workshop	June 2007	42
Eveleth	TIF Basics	September 2007	12
Little Falls	TIF Basics	October 2007	38
Wabasso	TIF Basics	October 2007	10
Chanhassen	TIF Basics	November 2007	42
Stewartville	TIF Basics	November 2007	47

Who is Authorized to Exercise TIF Powers?

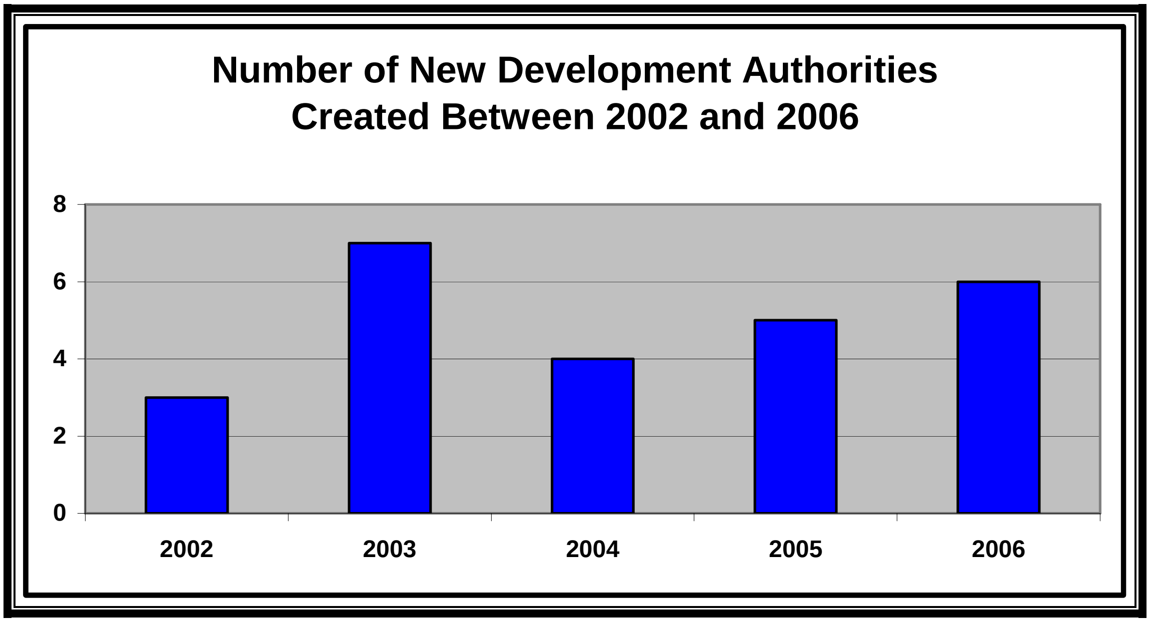
The TIF Act authorizes development authorities within municipalities to create TIF districts.[2] Authorities include cities using the municipal development districts law, housing and redevelopment authorities (HRAs), port authorities, economic development authorities (EDAs), and rural development financing authorities. Counties do not have development authority but can establish entities that do have authority, i.e., housing and redevelopment authorities and economic development authorities.

2 Minn. Stat. § 469.174, subd. 6. Counties are defined to be municipalities for certain projects.

New Development Authorities

A development authority must be in place before a TIF district can be created. The number of authorities fluctuates from year to year. In 2006, there were 447 development authorities.

Figure 2.



Since 2002, 25 new authorities have been created.[3] The increase is due to an increased use of TIF by smaller cities. Of the 25 new authorities created since 2002, the average municipal population is roughly 1,911. The City of West St. Paul was added as an authority in 2003. West St. Paul is the largest new authority to use TIF in the last five years. If we omit the population for this city from our data, the average population for the remaining 24 new authorities drops to 1,205.

Creation of TIF Districts

A development authority takes the first step in creating a TIF district by adopting a TIF plan for the district. The TIF plan provides information about the project to be funded with tax increment and authorizes the use of tax increment to pay TIF-eligible project costs.[4]

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[3] This number does not include the two county development authorities or the seven municipalities already using TIF that simply created an additional authority.

[4] Minn. Stat. § 469.175, subd. 1.

To create a new TIF district, an authority must obtain approval of the TIF plan from the governing body of the municipality in which the TIF district is located after the municipality has published a notice and held a public hearing.[5] For example, if a city's port authority proposes to create a TIF district in the city, the city council must approve the TIF plan for the district.[6] If a county's housing and redevelopment authority proposes to create a TIF district in a township in the county, the county board must approve the TIF plan.

Before a TIF district is created, the development authority must provide a copy of the proposed TIF plan and certain information about the proposed TIF district to the county auditor and the clerk of the school board, who in turn provide copies of these documents to the members of the county board of commissioners and the school board.[7] The county board and school board may comment on the proposed district, but cannot prevent the creation of the district.[8]

Returned Tax Increment

In calendar year 2006, development authorities returned $11,459,980 of tax increment to county auditors as a result of the oversight work of the OSA and from voluntary payments by authorities. From January 1, 1996 to date, $49,008,664 has been paid or returned to county auditors. This amount is then redistributed to the cities, counties, and school districts.

2006 SUMMARY DATA

Filing of Annual TIF Reports

A total of 447 development authorities had TIF districts for which they were required to file TIF reports with the State Auditor for the year ended December 31, 2006. These TIF authorities were required to file reports for 2,180 TIF districts. To date, the OSA has received reports for 2,169 TIF districts.

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[5] Minn. Stat. § 469.175, subd. 3.

[6] In many cases, the commissioners of the TIF authority include some or all of the council members.

[7] Minn. Stat. § 469.175, subd. 2.

[8] In those situations in which the county is the municipality that must approve the TIF plan, the county board may prevent creation of a TIF district.

Failure to File TIF Reports

Of the 447 development authorities required to file reports, 414 submitted complete reports by the statutory deadline. On August 21, 2007, the OSA sent letters to the remaining 33 TIF authorities addressed to the governing board of the municipality advising them that the required reports had not been filed.

Of the 33 authorities that had not filed complete reports by the statutory deadline, 11 still had not filed all of the required reports as of October 1, 2007. Pursuant to Minn. Stat. § 469.1771, subd. 2a, the OSA mailed a notice to the applicable county auditors to withhold tax increment that otherwise would have been distributed to the authorities from the identified TIF districts.[9] As of the date of this Report, four authorities have not yet completed filing their reports.

Development authorities which have not submitted annual TIF reports by the August 1st statutory deadline in at least four of the last five years are: Coleraine, Coon Rapids, La Crescent, Le Sueur EDA, Mountain Lake, Pine City, Renville, and Wells.

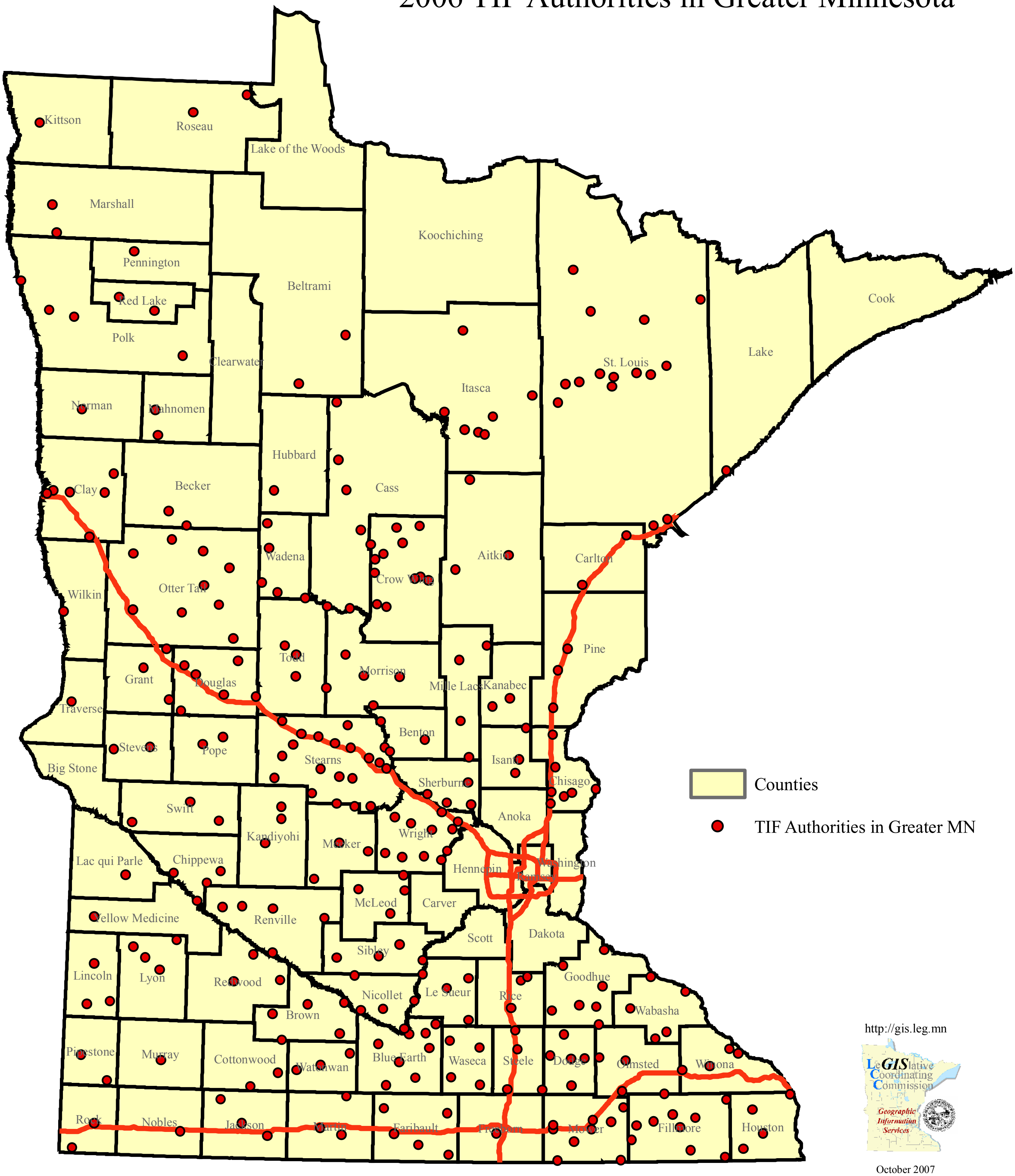
TIF Authorities by Location

Development authorities were required to file TIF reports as of December 31, 2006. Of 447 authorities, 338 were in Greater Minnesota and 109 were in the Seven-County Metropolitan Area (Metro Area). The following maps show the locations of those authorities.

[9] In the 2006 Legislative Session, the penalty of withholding tax increment for failing to file the required TIF reports was amended effective for TIF reports filed for the year ending 2006. Instead of having 25% of the tax increment withheld after the third Tuesday in November, any authority who had not filed complete TIF reports by October 1 will have 100% of the tax increment withheld from any payment made after October 1 until the authority has filed complete reporting forms.

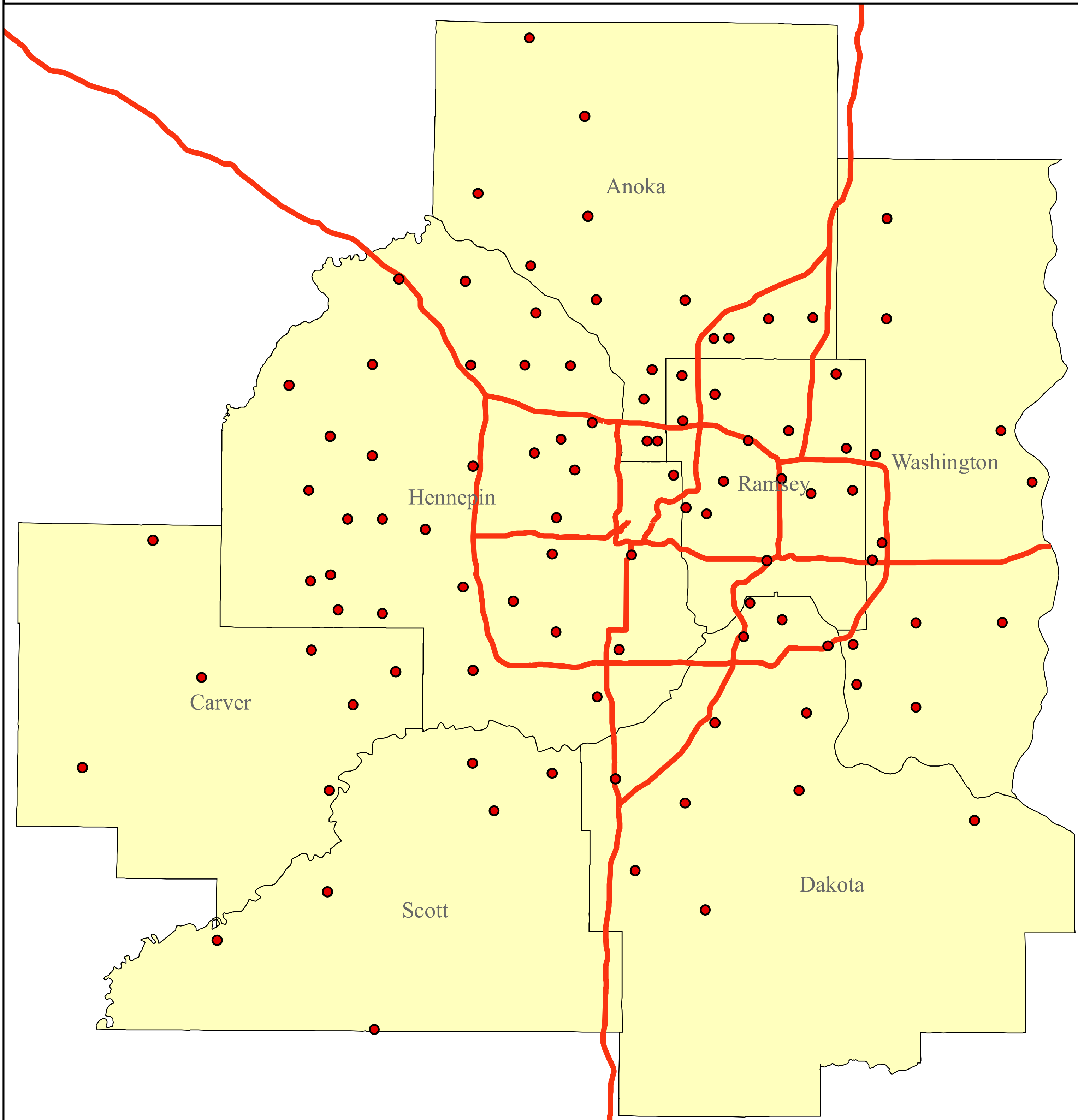
MAP 1

2006 TIF Authorities in Greater Minnesota



MAP 2

2006 TIF Authorities in Seven-County Metro Area



Counties

TIF Authorities in Seven-County Metro Area

http://gis.leg.mn

Legislative Coordinating Commission

Geographic Information Services

October 2007

Description of Maps 3 and 4

Map 3 identifies the various counties throughout the state that have created a separate authority and have utilized TIF.[10] For county development activity to be done, the county board of commissioners must establish a separate authority. Although these county authorities are separate local units of government, the county board must approve the establishment of TIF districts.

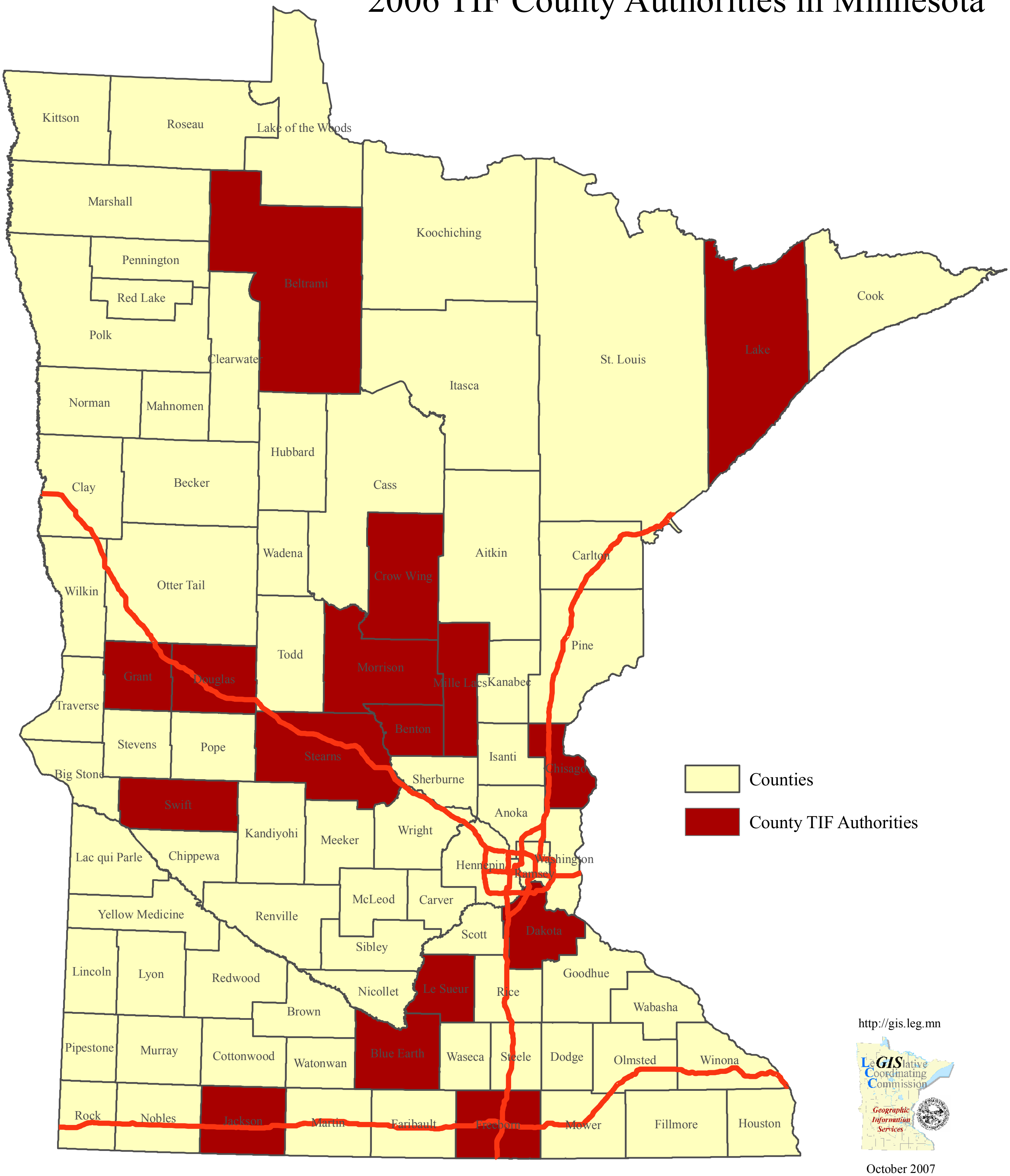
Map 4 shows the distribution of development authorities among the regional development commissions (RDCs). RDCs are authorized to transcend the boundary lines of local units of government and to work with and on their behalf to develop plans and implement programs to address economic and governmental concerns of a regional nature.[11]

[10] This map does not include multi-county or joint authorities.

[11] Minn. Stat. § 462.383, subd. 2.

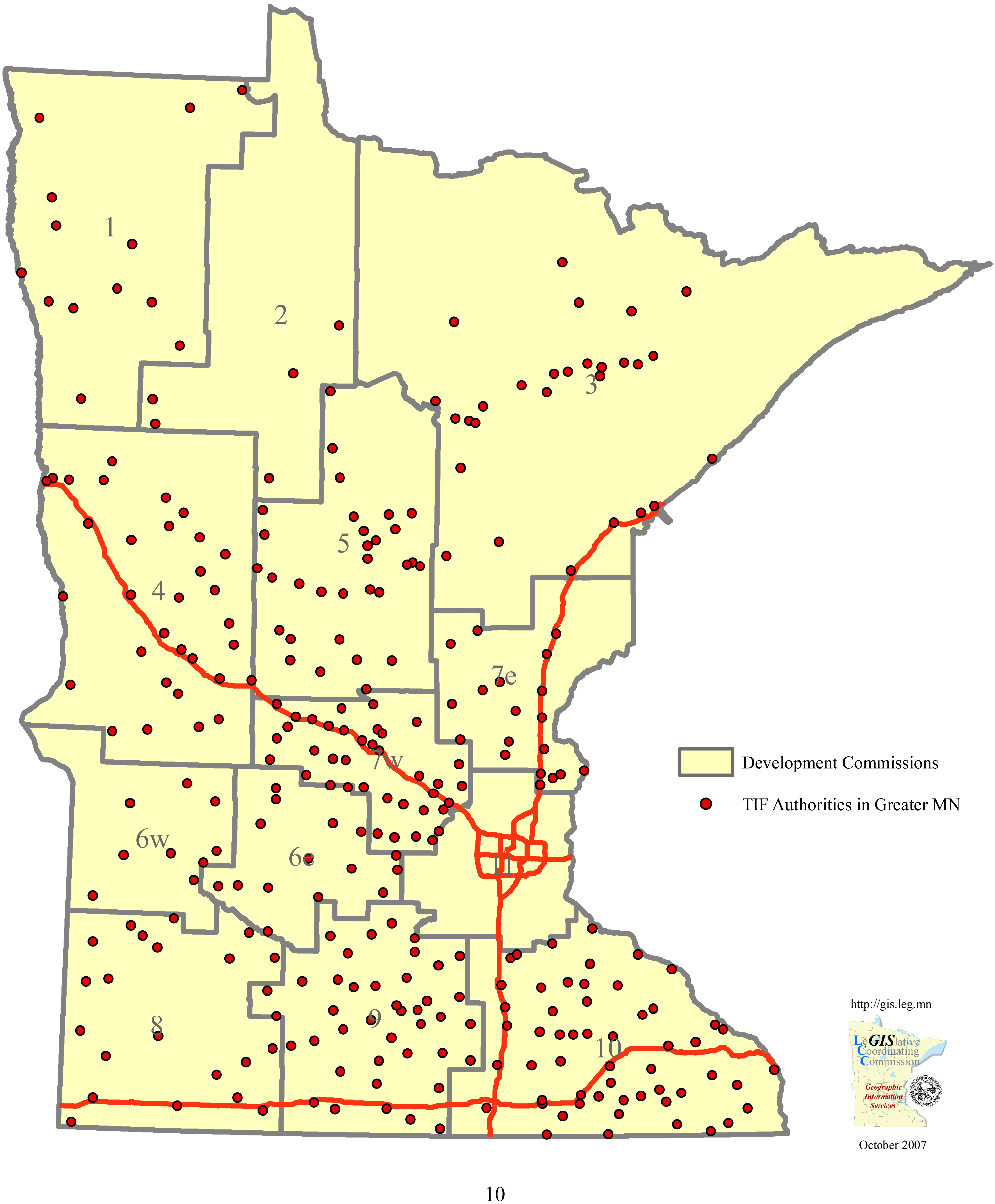
MAP 3

2006 TIF County Authorities in Minnesota



MAP 4

2006 TIF Authorities in Greater Minnesota by RDCs



Types of TIF Districts

Subject to limited exceptions, TIF revenues are used to acquire and improve the site on which new development is to occur. The TIF Act divides TIF districts into several types based on the physical condition of the site and on the type of construction that is to occur:

- Redevelopment districts
- Renovation and renewal districts
- Soils condition districts
- Housing districts
- Economic development districts

In addition to the types of districts listed above, there are districts that were created prior to the enactment of the TIF Act (called Pre-1979 districts) and districts that have been created under special laws. Each type of TIF district has different requirements for the creation of a district. Each type of district also has different maximum duration limitations and different restrictions on the use of tax increment.

Redevelopment Districts – The primary purpose of a redevelopment district is to eliminate blighting conditions. Qualifying tax increment expenditures include acquisition of sites containing substandard buildings or improvements, demolishing and removing substandard structures, eliminating hazardous substances, clearing the land, and installing utilities, sidewalks, and parking facilities. Often this is referred to as "leveling the playing field." It allows developed cities to compete for development with outlying cities with bare land. Redevelopment districts are intended to conserve the use of existing utilities, roads, and other public infrastructure and to discourage urban sprawl.

Economic Development Districts – An economic development district does not meet the requirements of any other type of district but is in the public interest because it will (i) discourage commerce, industry or manufacturing from moving to another state or city, (ii) increase employment in the state, or (iii) preserve and enhance the tax base. It is a short-term district (eight years). Tax increment revenues from economic development districts are used primarily to assist manufacturing, warehousing, storage and distribution, research and development, telemarketing, and tourism. Commercial development (retail sales) is excluded by law, except in small cities.

Housing and Qualified Housing Districts – The purpose of a housing district is to assist development of owner-occupied and rental housing for low- and moderate-income individuals and families. The requirements for qualified housing districts are stringent and tied to federal low-income tax credit guidelines, regardless of whether tax credits are utilized. Tax increment revenues can be used in the construction of low- and moderate-income housing, as well as to acquire and improve the site.

Pre-1979 Districts – TIF districts created prior to the enactment of the TIF Act are called Pre-1979 districts. Many of these TIF districts created prior to August 1, 1979, had significant amounts of debt outstanding on April 1, 1990. Tax increment from these districts can only be used to retire debt, with all Pre-1979 districts decertifying in 2009.

Renewal and Renovation Districts – The purpose of a renewal and renovation district is similar to that of a redevelopment district except the degree of blight removal may be less and the development activity is more closely related to inappropriate or obsolete land use.

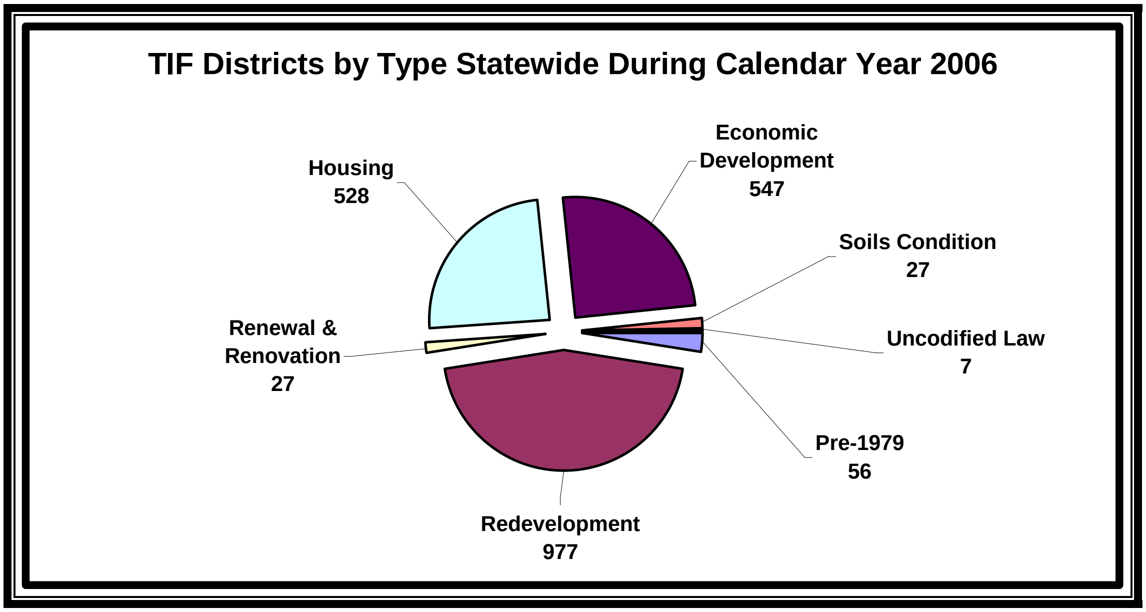
Soils Condition District – The purpose of a soils condition district is to assist in the redevelopment of property which is not developable due to the existence of hazardous substances, pollution or contaminants. The presence of these materials must require removal or remedial action for the property to be used, and the estimated cost of the proposed removal and remediation must exceed the fair market value of the land prior to curative measures.

Uncodified Law – Special law may be enacted for one or more municipalities permitting the generation of tax increment revenues from geographic areas not meeting the definition of a type of TIF district authorized under general law. Examples are housing transition districts authorized for the cities of Crystal, Fridley, St. Paul, and Minneapolis or a district with distressed rental properties in Brooklyn Park. The authorities for these unique types of districts must make findings defined in their respective uncodified law. Currently there are 7 TIF districts that meet this definition.

Number of TIF Districts

Figure 3 shows TIF districts by type on a statewide basis. Currently, ninety-five percent of TIF districts are redevelopment, economic development, and housing districts.

Figure 3.



As shown in Figure 4 and Figure 5, redevelopment districts make up the largest percentage of districts in the Metro Area and in Greater Minnesota.

Figure 4.

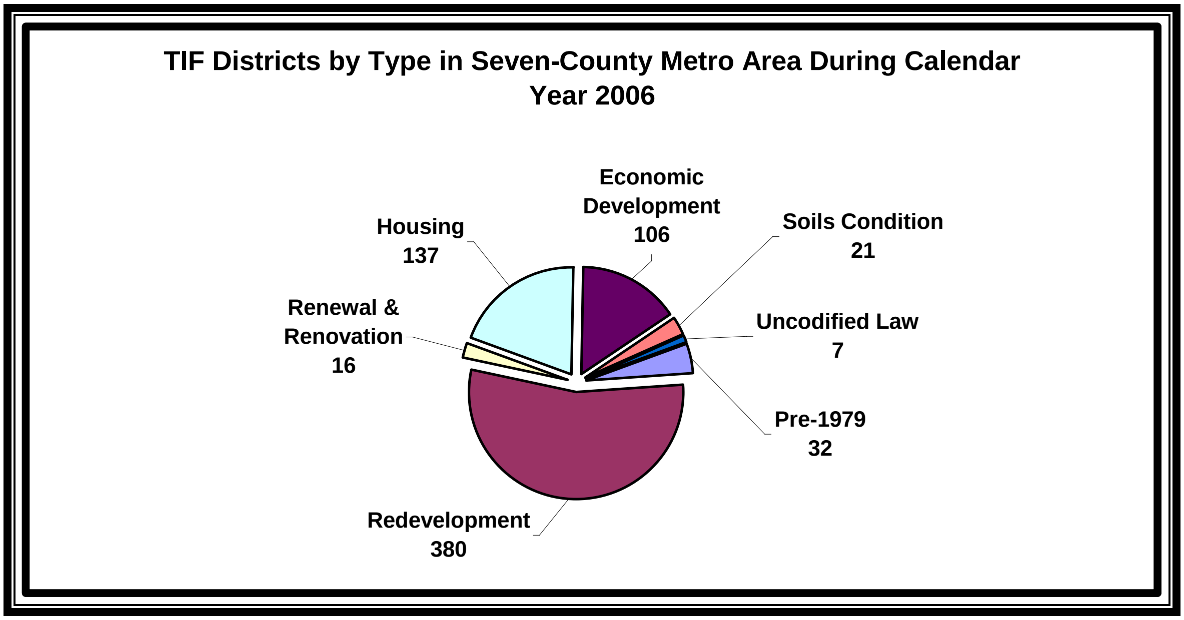
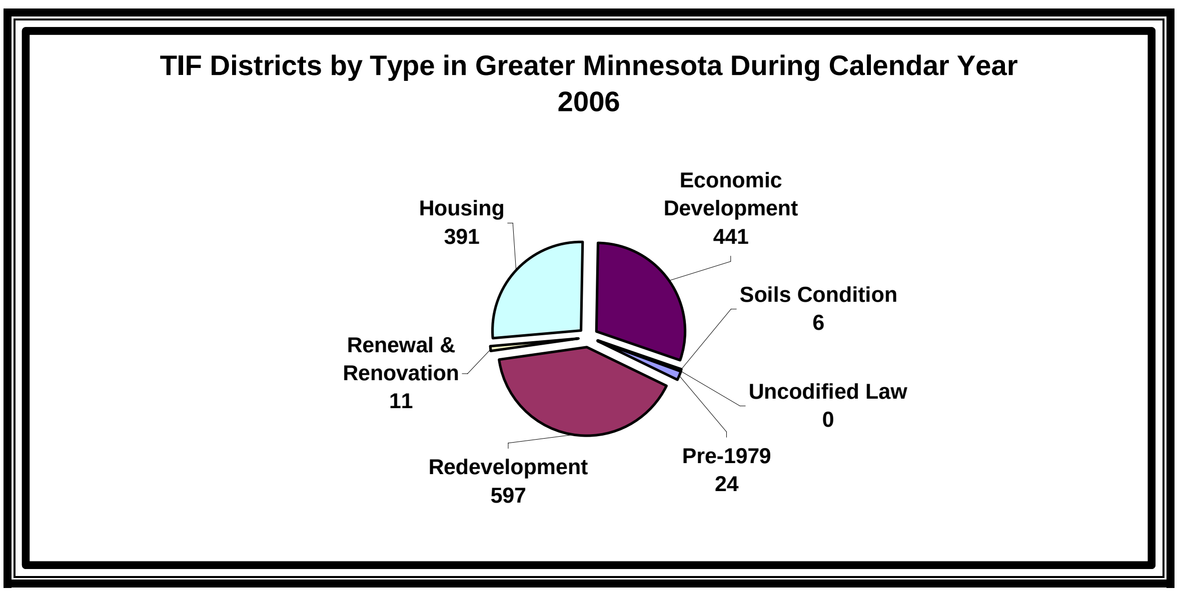


Figure 5.



Greater Minnesota, with open space and a critical need for employment, uses economic development districts more than the fully developed Metro Area does. Economic development districts focus on job production rather than clearance and preparation of a development site. The land on which the district is established may be bare land so less tax increment is generally needed for site preparation.

Figure 6 is arranged by RDCs. TIF districts are concentrated in the central and southern development regions of the state, with the largest concentration of districts located in the Metro Area.

Figure 6.

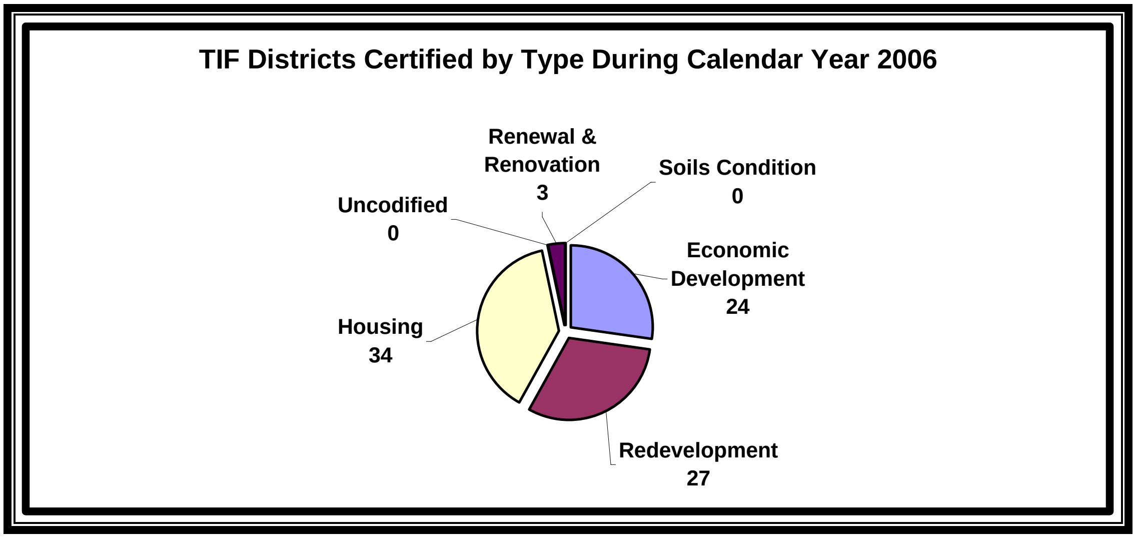
TIF District Type by Region During Calendar Year 2006

Regional Development Commission	Region	Total Districts	Pre-1979	Redevelopment	Renewal & Renovation	Housing	Economic Development	Soils Condition	Uncodified Law
Northwest RDC	1	44	2	18	0	18	6	0	0
Headwaters RDC	2	20	0	7	0	10	3	0	0
Arrowhead RDC	3	104	5	45	0	29	22	3	0
West Central Initiative Fund	4	176	2	69	0	55	50	0	0
Region 5 RDC	5	133	0	55	1	38	39	0	0
Mid-Minnesota Valley RDC	6E	73	0	26	1	16	30	0	0
Upper Minnesota Valley RDC	6W	50	2	26	0	6	16	0	0
East Central RDC	7E	86	1	38	3	21	23	0	0
Region 7W	7W	235	4	83	2	40	106	0	0
Southeast RDC	8	90	3	45	1	26	15	0	0
Region Nine RDC	9	182	2	84	3	43	50	0	0
Region 10	10	277	3	101	0	89	81	3	0
Metropolitan Council	11	699	32	380	16	137	106	21	7
Total		2,169	56	977	27	528	547	27	7

Districts Certified During Calendar Year 2006

Once a municipality approves the creation of a TIF district, the county auditor certifies the district. From the date the district is *certified*, the increased property taxes generated by the new development are sent to the TIF authority to pay qualifying development costs. Figure 7 summarizes TIF district certification by type.

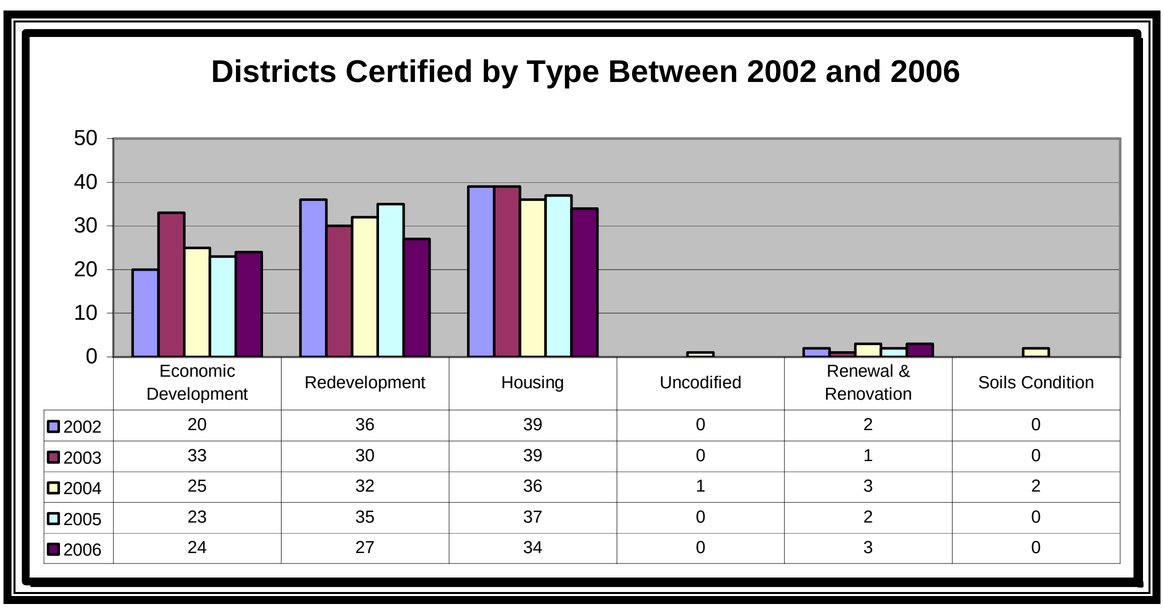
Figure 7.



Five-Year Certification Trends

Certification is examined over a five-year period by type in Figure 8. Figure 8 compares the TIF districts certified by type since 2002. The number of TIF districts certified has decreased 9% from 2005 to 2006, with a total of 88 districts certified during calendar year 2006. The number of economic development districts certified decreased by 24% between 2003 and 2004, decreased by 8% between 2004 and 2005, but increased by 4% between 2005 and 2006. There was an 8% reduction in housing districts between 2005 and 2006. The number of redevelopment districts certified decreased 23% between 2005 and 2006.

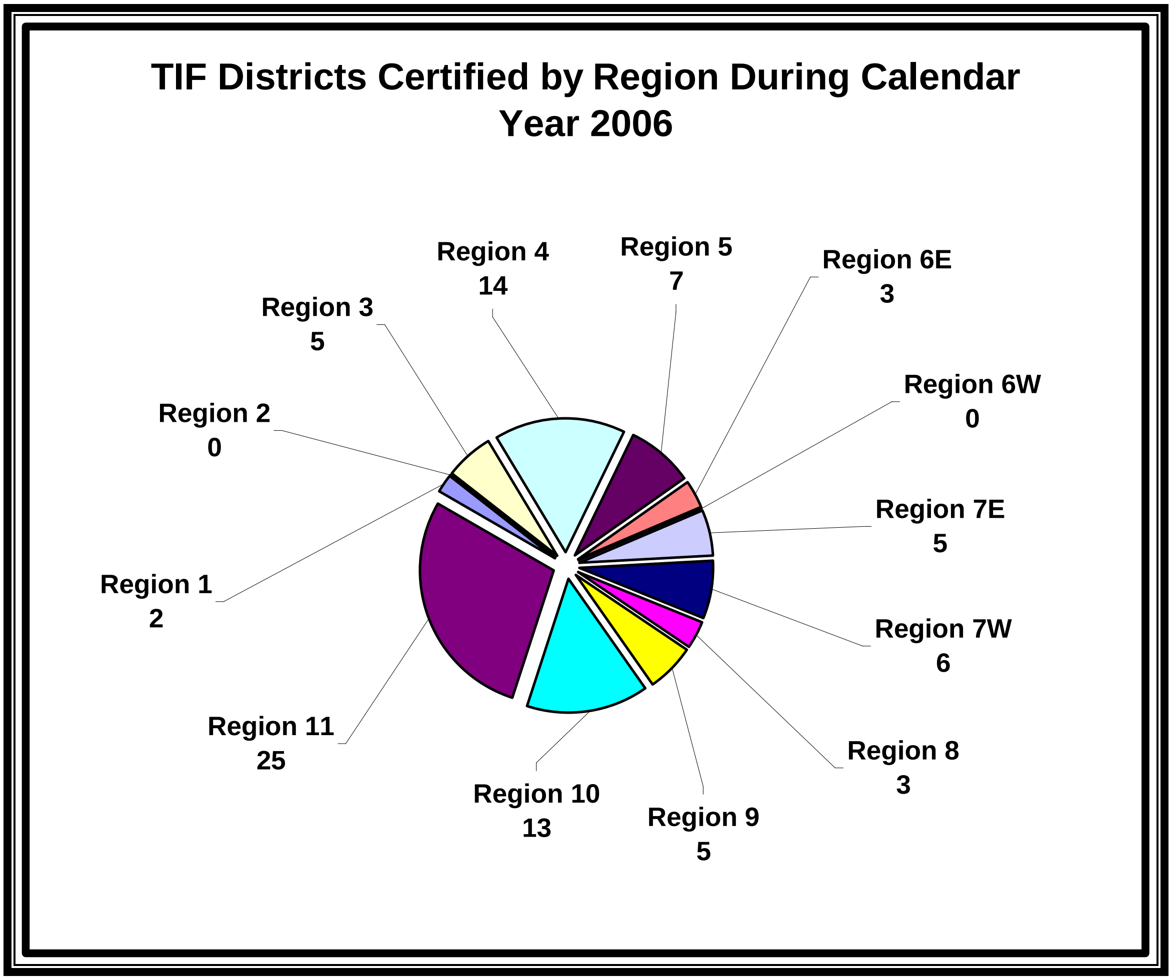
Figure 8.



	Economic Development	Redevelopment	Housing	Uncodified	Renewal & Renovation	Soils Condition
2002	20	36	39	0	2	0
2003	33	30	39	0	1	0
2004	25	32	36	1	3	2
2005	23	35	37	0	2	0
2006	24	27	34	0	3	0

Figure 9 highlights that the largest number of new TIF districts certified in 2006 occurred in Region 11, the Metro Area.

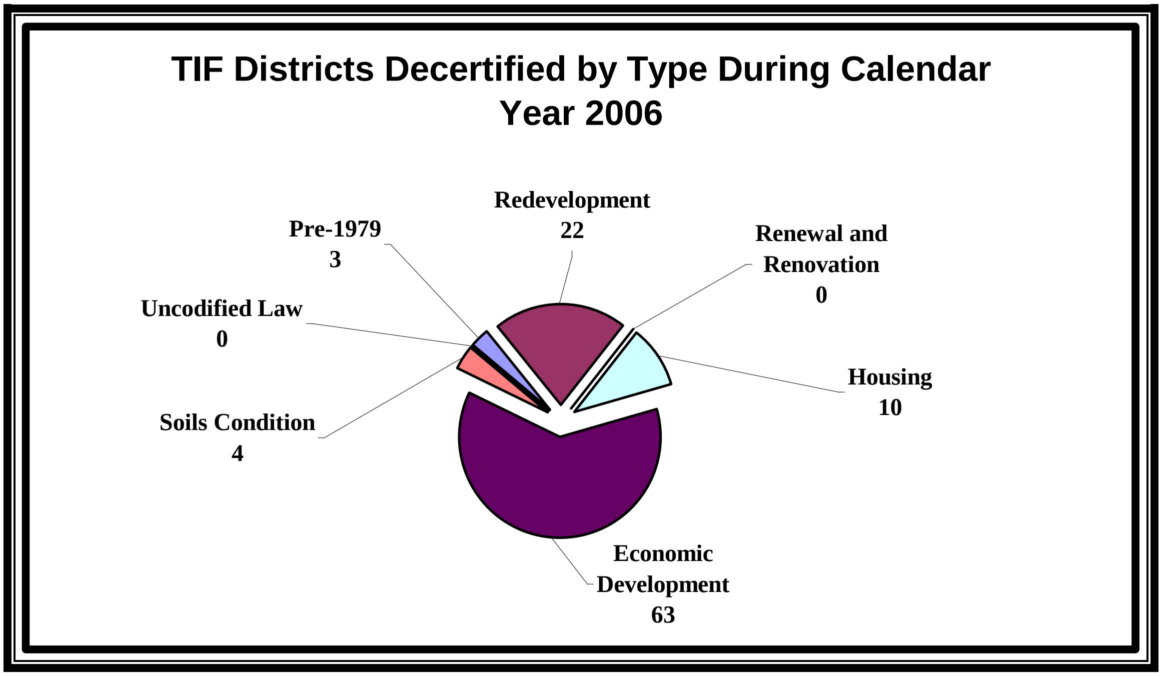
Figure 9.



Districts Decertified During Calendar Year 2006

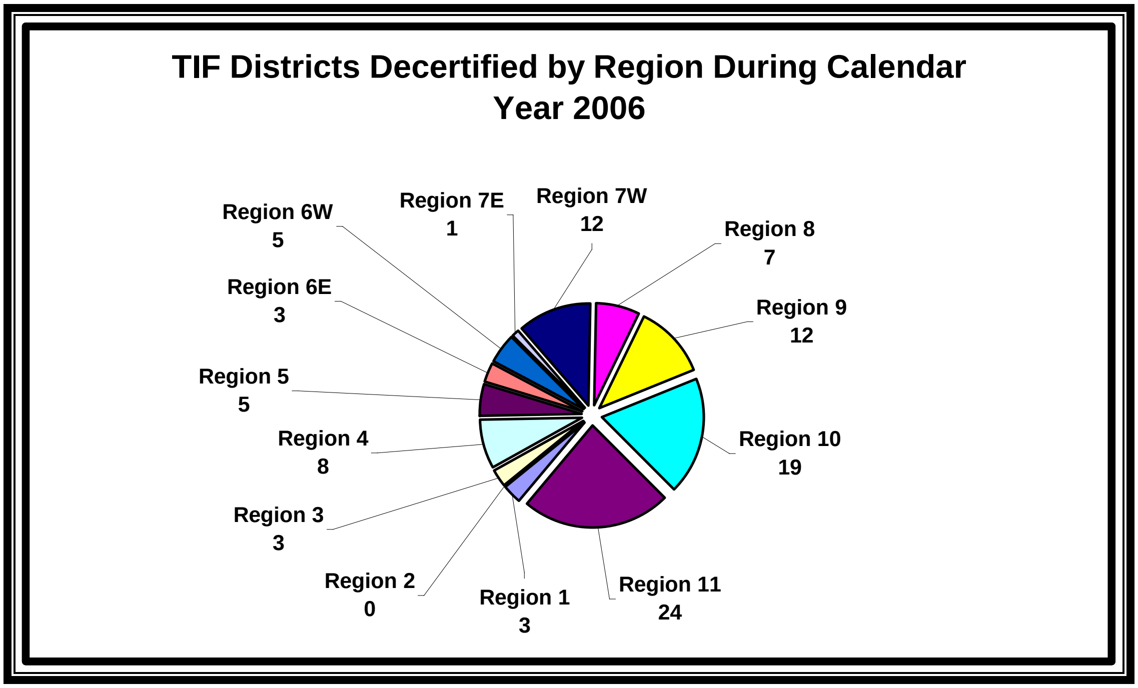
After the development costs are paid and the districts' statutory time runs out, the district is then *decertified* and all property taxes are redirected to the local government units. As Figure 10 shows, the greatest number of districts decertified in 2006 were economic development districts.

Figure 10.



When looking at decertification by region, Figure 11 shows that the TIF districts decertified in 2006 were spread relatively evenly among the various regions.

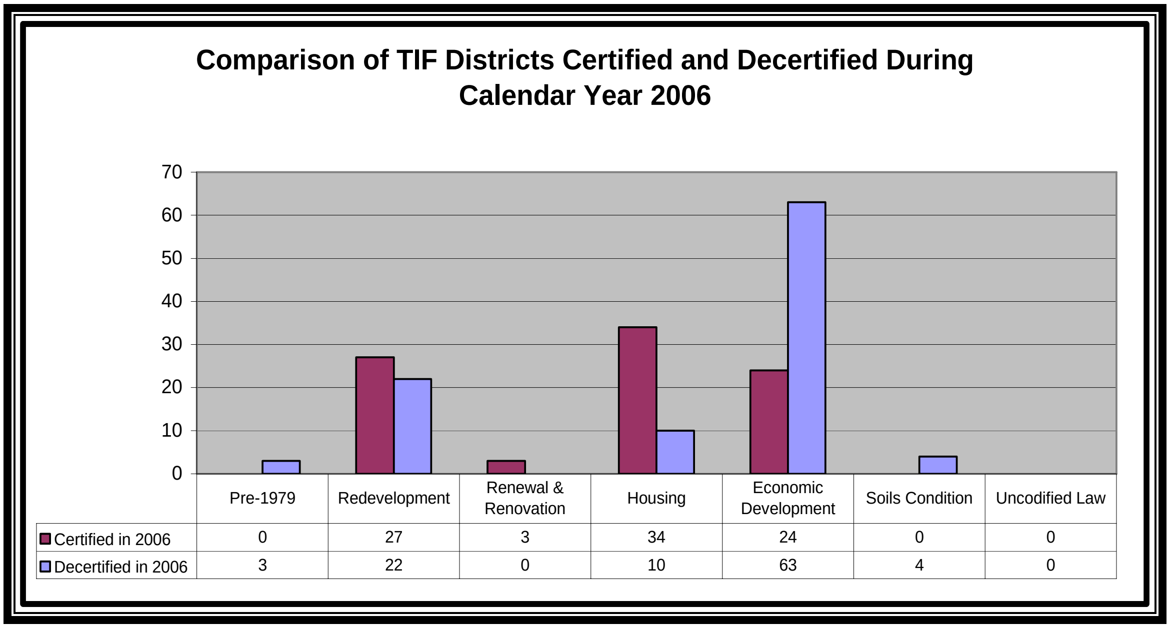
Figure 11.



Comparison of TIF Districts Certified and Decertified

Eighty-eight TIF districts were certified in Minnesota during calendar year 2006, while 102 districts were decertified. Figure 12 compares the number of districts certified and decertified in 2006 by type of TIF district.

Figure 12.



	Pre-1979	Redevelopment	Renewal & Renovation	Housing	Economic Development	Soils Condition	Uncodified Law
Certified in 2006	0	27	3	34	24	0	0
Decertified in 2006	3	22	0	10	63	4	0

The certification and decertification data with respect to housing districts are different from those for redevelopment and economic development districts. In 2006, more than three times as many housing districts were *certified* as were *decertified*. Thirty-four housing districts were certified in 2006 and only 10 housing districts were decertified.

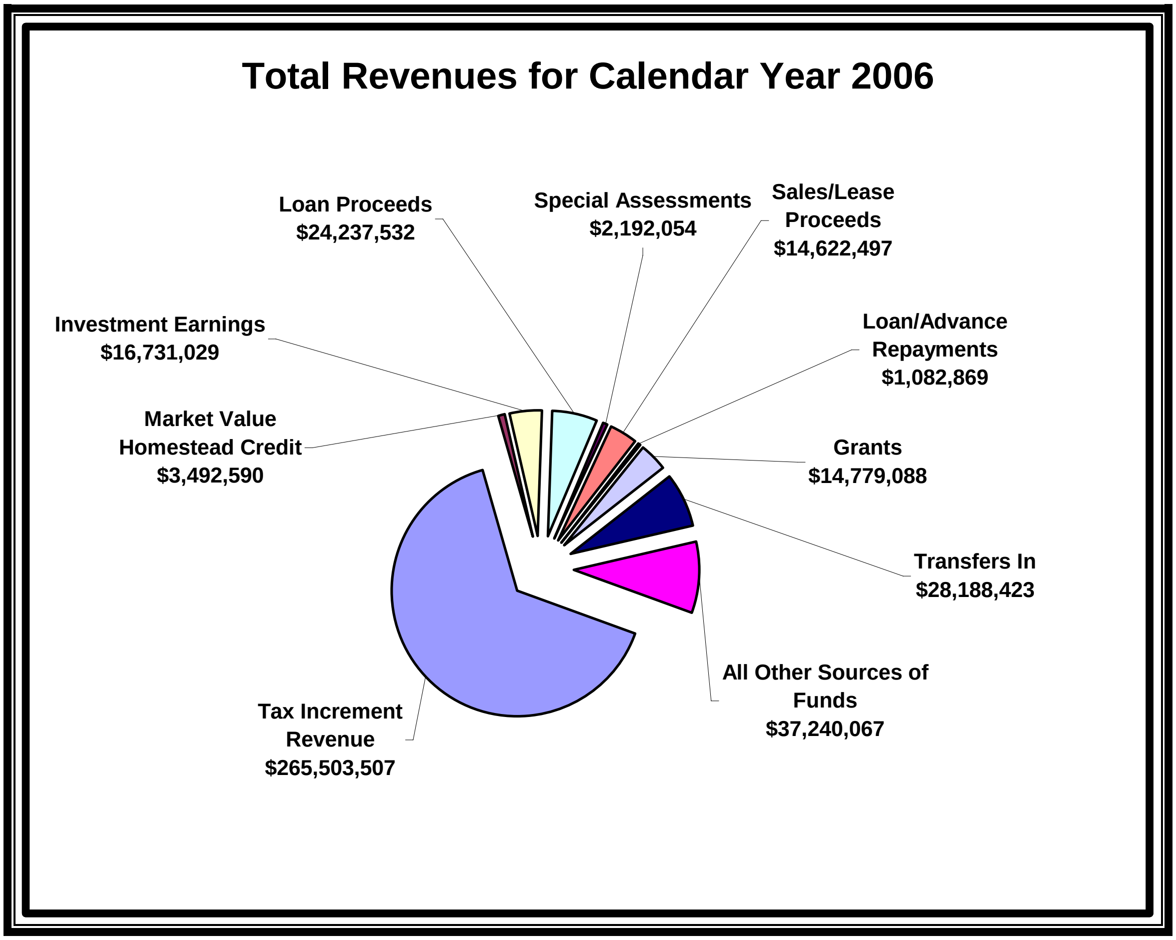
2006 REVENUES

Development activity often receives revenues from a variety of financing sources. Revenues may include (i) local, state, and federal grants, (ii) special assessments, (iii) loans, (iv) bond proceeds, (v) interest earned on invested funds, (vi) sales and lease proceeds, (vii) market value homestead credits, and (viii) tax increment revenue, among other funding sources.

The way in which revenues are reported can be confusing. The nature of generally accepted accounting principles results in some revenues of a project being accounted for twice. For example, a bond may be issued to pay for the authorized costs of a project and tax increment revenue is then used to pay the principal and interest payments on the bond and both appear in the TIF reports. To identify revenues without accounting for both bond proceeds and the expenditure of tax increment revenues for payment of bonded indebtedness, bond proceeds have been removed from Figure 13.

Three other categories listed in Figure 13, (i) loan proceeds, (ii) loan/advance repayments, and (iii) transfers-in, include forms of indebtedness for which tax increment revenues were expended for repayment resulting in revenues being accounted for twice. Because it is not possible to ascertain from the reports the extent to which tax increment revenues were expended to repay such indebtedness, these three categories were not removed from Figure 13.

Figure 13.



Revenue by Region

Figure 14 illustrates the amount of tax increment generated by region and shows that a substantial share is generated in the Metro Area. Minneapolis and St. Paul are the most fully developed and densely populated areas in the state. The Metro Area (Region 11) generates the most tax increment per district because the value of the constructed improvements built on the sites improved with tax increment revenues is likely to be substantial.

Figure 14.

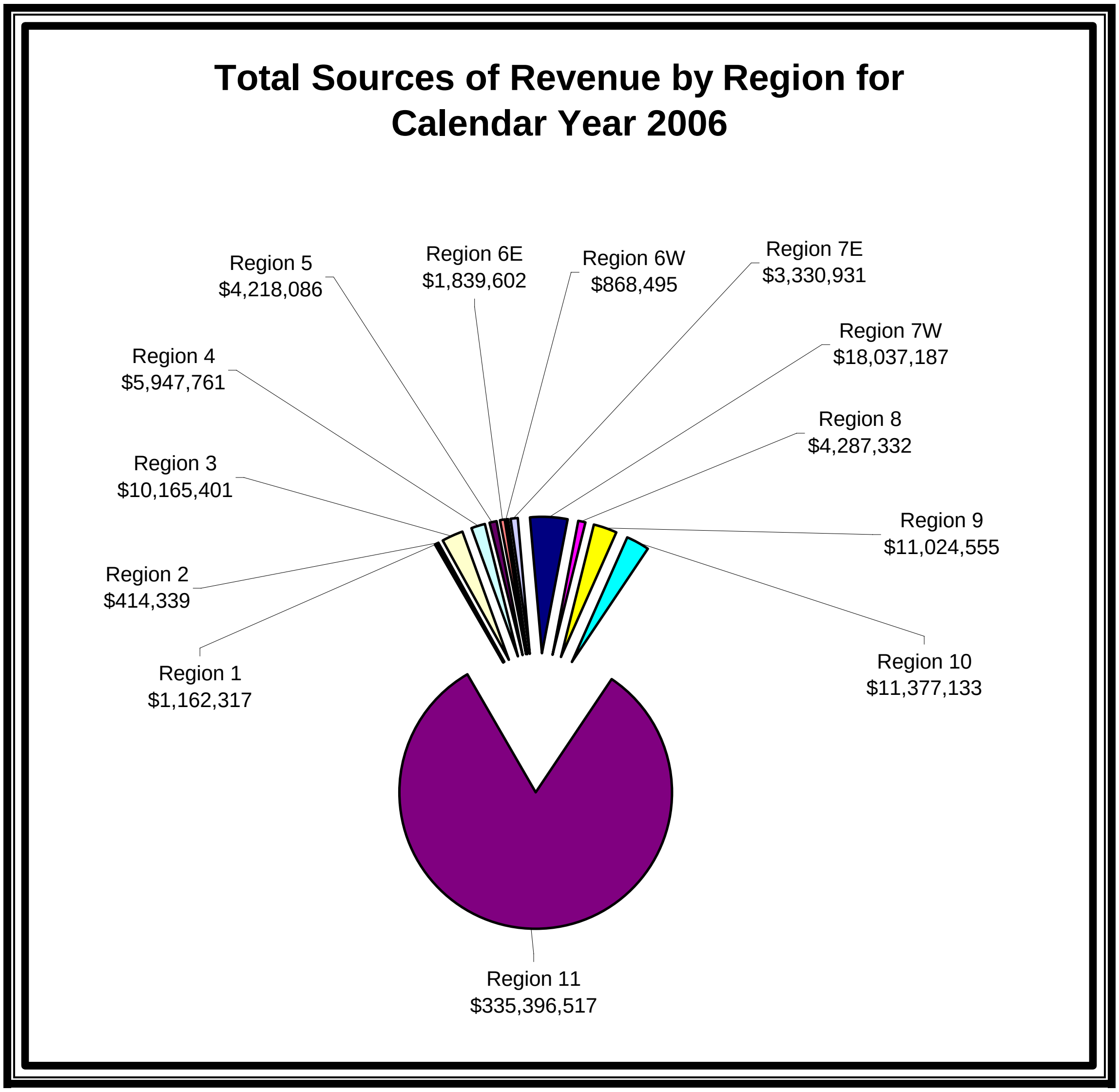
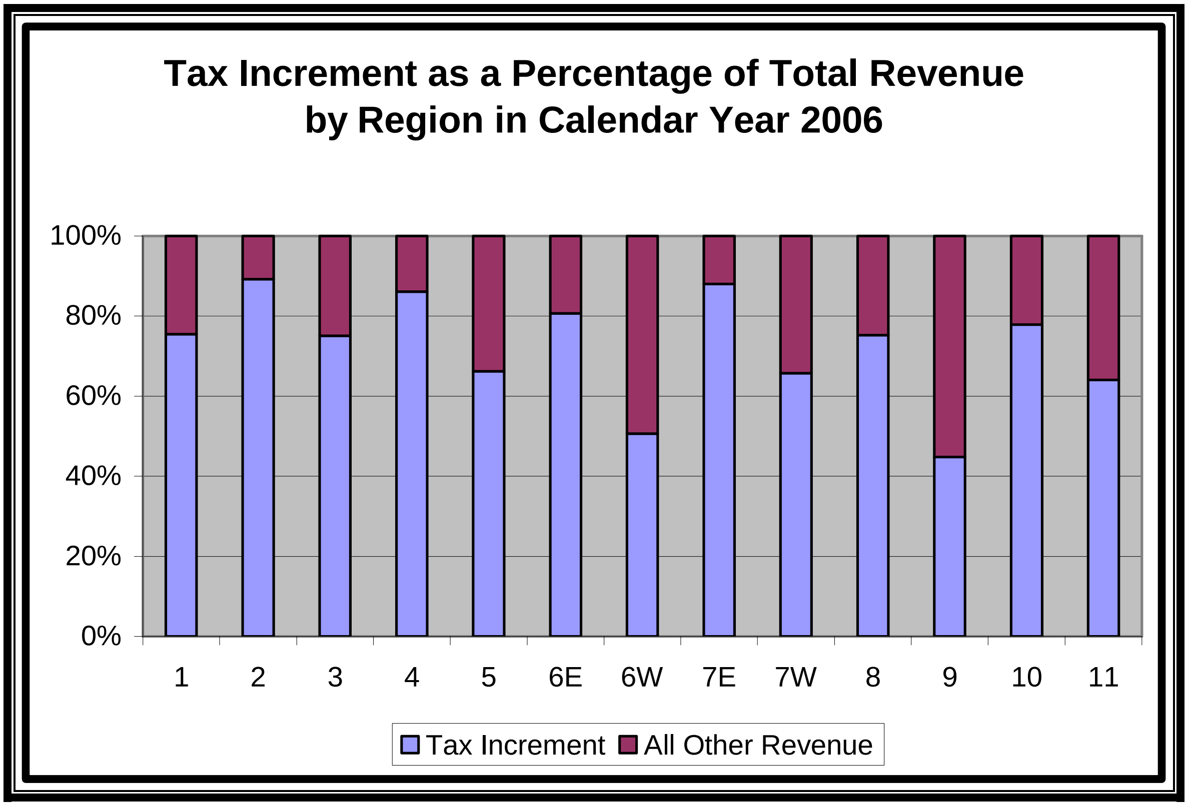


Figure 15 illustrates tax increment revenues, as a percentage of total revenues by region, generated in calendar year 2006.

Figure 15.



2006 EXPENDITURES

Expenditures for development activity must be made within limits set by state law. State and federal grant programs dictate the uses for which grant monies can be expended, and prescribe bidding procedures, public hearing and other legal requirements. Tax increment revenues must be expended as permitted in its underlying development authority and in the TIF Act.

The way in which expenditures are reported can be confusing. The nature of generally accepted accounting principles results in some costs of a project being accounted for twice. The information contained in the TIF reports includes both the authorized costs of a project and the costs associated with debt service (principal and interest). To identify expenditures without accounting for both the costs of the development activity and the costs associated with debt incurred to cover the costs of the development activity, bond principal payments have been removed from the table above and the two charts that follow. Two other categories listed in Figure 16, (i) loan principal payments and (ii) transfers-out, include substantial indebtedness for which tax increment revenues were expended for repayment. Since it is not possible to ascertain from the reports the extent to which tax increment revenues were expended to repay such indebtedness, those two categories were not removed.

Figure 16 highlights the type of expenditures made by development authorities during calendar year 2006.

Figure 16.

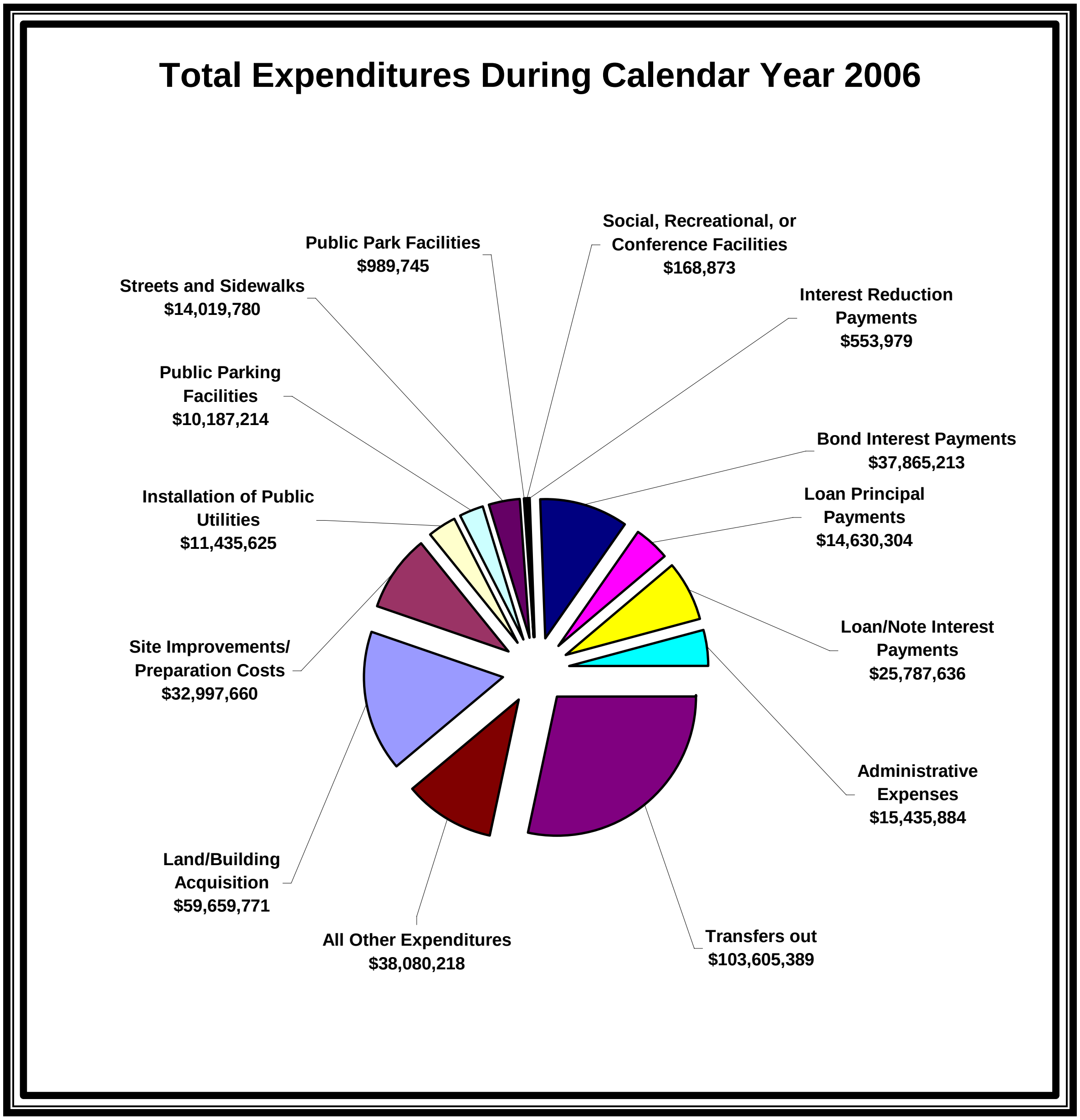
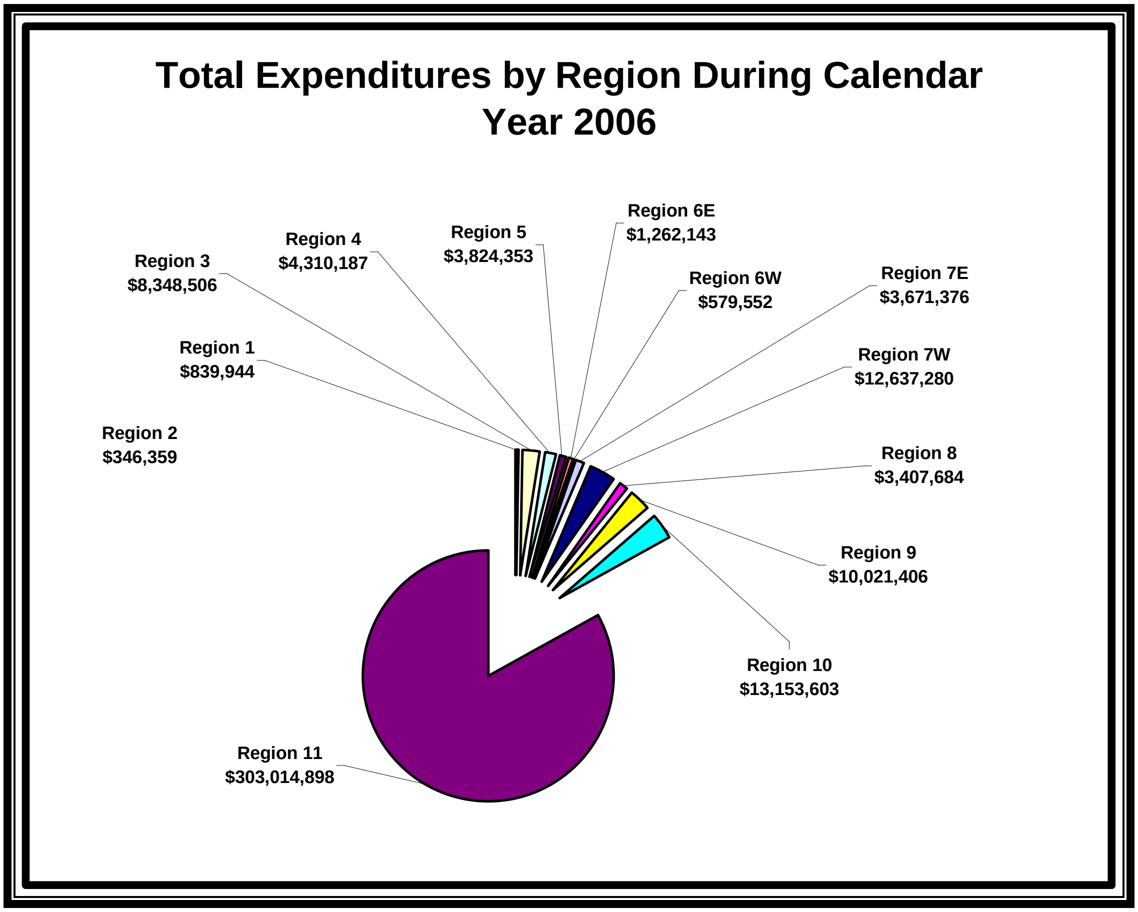


Figure 17 highlights the total expenditures by region rather than type.

Figure 17.



FINDINGS AND RESPONSES

In addition to informal reviews, the OSA conducts limited audits of development authorities. After completion of a TIF audit, if the OSA finds that an authority is not in compliance with the TIF Act, initial notice of noncompliance (Initial Notice) will be sent to the governing body of the municipality that approved the TIF district in which the violation arose. The Initial Notice provides the basis for the OSA's findings and describes the possible consequences of the noncompliance.

The governing body is required by law to respond in writing to the OSA within 60 days after receiving the Initial Notice. In its response (Response), the municipality must state whether it accepts, in whole or in part, the OSA's findings and indicate the basis for any disagreement with the findings. After consideration of the municipality's Response, the OSA submits its final notice of noncompliance (Final Notice) to the municipality. The OSA forwards information regarding unresolved findings of noncompliance to the appropriate county attorney, who may bring an action to enforce the TIF Act. All information and communications remain confidential until the Final Notice is submitted.

If the county attorney does not commence an action against the authority within one year after receiving a referral of a Final Notice from the OSA and the matter is not otherwise resolved to the OSA's satisfaction, the OSA refers the Final Notice to the Attorney General. If the Attorney General finds that the authority violated a provision of the TIF Act and the violation was substantial, the Attorney General will commence an action in the tax court to suspend the use of TIF by the authority. Before commencing the action in the tax court, however, the Attorney General must attempt to resolve the dispute using appropriate alternative dispute resolution procedures. If the Attorney General commences an action and the tax court finds that the authority violated the TIF Act and the violation was substantial, the tax court may suspend the use of TIF by the authority for a period of up to five years.[12]

Summary of Findings and Responses

State law requires the State Auditor to provide a summary of the Responses it received from the municipalities audited and copies of the Responses themselves to the Chairs of the legislative committees with jurisdiction over tax increment financing.[13] This section of the report summarizes the various TIF legal compliance audits and investigations concluded as of December 31, 2007. Audits completed and Initial Notices and Final Notices were sent to the following municipalities:

1. City of Albertville – An Initial Notice was sent on September 18, 2007. A Final Notice was sent on November 30, 2007.

2. City of Coon Rapids – An Initial Notice was sent on October 10, 2007. A Final Notice was sent on December 27, 2007.

3. City of North Branch – An Initial Notice was sent on December 21, 2006. A Final Notice was sent on March 7, 2007.

4. City of Taylors Falls – An Initial Notice was sent on September 18, 2007. A Final Notice was sent on November 30, 2007.

5. City of Windom for the Windom HRA – An Initial Notice was sent on September 18, 2007. A Final Notice was sent on November 30, 2007.

Complete copies of the Initial Notices and Final Notices and the municipalities' Responses are provided in the appendices, found in the Addendum to this report.

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12 Minn. Stat. § 469.1771, subd. 2b(c).

13 Minn. Stat. § 469.1771, subd. 1(c).

Excess Increment Expended in Violation

Windom HRA

TIF District 4 Road Hummer

In the Initial Notice, the OSA found that the HRA had $21,478 of excess tax increment in TIF District 4 Road Hummer through December 31, 2005, and had expended $18,098 in violation of the TIF Act. In its Response, the HRA indicated that it returned $18,098 to Cottonwood County (County) for redistribution. In the Final Notice, the OSA acknowledged that returning the $18,098 to the County for redistribution resolved the finding of noncompliance.

Exceeded Authorized Tax Increment Expenditures

City of Coon Rapids

TIF District 1-30 Prime Development Project

In the Initial Notice, the OSA found that the City improperly expended $1,463 over the total estimated tax increment expenditures authorized in the TIF plan. While this amount is listed as a separate TIF Act violation, the amount is included in the monetary amount listed in the finding that the City expended tax increment in excess of the administrative expense limitation defined in the TIF Act. In its Response, the City provided documentation that it returned the amount expended in excess of the administrative expense limit. After reviewing the documentation provided by the City, the OSA considers this finding resolved.

Excess Increment

City of Coon Rapids

TIF District 1-30 Prime Development Project

In the Initial Notice, the OSA found that the City received $74,366 of excess tax increment from this TIF district through December 31, 2006. In a conference call between the City and the OSA, it was agreed that the City had incorrectly reported the TIF activity on the 2006 TIF District Report. The actual amount of excess increment in this TIF district was reduced to $71,992. The City returned the excess increment to the county. The City provided the OSA with a copy of a cover letter to the county as well as a copy of the check returning the tax increment. After reviewing the documentation provided by the City, the OSA considers this finding resolved.

Exceeded Administrative Expense Limit

City of Coon Rapids

TIF District 1-30 Prime Development Project

In the Initial Notice, the OSA found that the City improperly expended $3,838 of tax increment from the TIF District through December 31, 2006, in excess of the administrative expense limitation defined in the TIF Act. In its Response, the City indicated that the amount of tax increment expended in excess of the administrative expense limitation defined in the TIF Act was returned to the county for redistribution. The City provided the OSA with a copy of a cover letter to the county as well as a copy of the check returning the tax increment. After reviewing the documentation provided by the City, the OSA considers this finding resolved.

Inadequately Documented Expenditures

City of Albertville

TIF District 7 Senior Housing

In the Initial Notice, the OSA found that, absent supporting documentation, the City improperly expended $220,304.71 in tax increment from TIF District 7 on the tax increment note through December 31, 2005. In its Response, the City stated that it had received documentation from the developer for qualifying costs, including land acquisition, in excess of $729,810.12 for this TIF district. After reviewing the documentation provided by the City, the OSA considers this finding resolved.

TIF District 9 Barthel Bus

In the Initial Notice, the OSA found that, absent supporting documentation, the City improperly expended $58,843.19 in tax increment from TIF District 9 in accordance with the contract for private development through December 31, 2005. In its Response, the City stated that it has located the engineer's estimate for the cost of the improvements and has visually verified that the required improvements have been installed. The City also stated that it is working with the developer and its contractor to obtain documentation for the payment of the improvements.

In the Final Notice, the OSA reiterated the finding that, without written documentation, the City improperly expended $58,843.19 in tax increment from TIF District 9 through December 31, 2005.

TIF District 11 Land of Lakes Stone Co.

In the Initial Notice, the OSA found that, absent supporting documentation, the City improperly expended $161,940.02 in tax increment from TIF District 11 in accordance with the contract for private development through December 31, 2005. In its Response, the City stated that it had received documentation from the contractor who completed in excess of $120,000 in improvements, as well as a copy of the recorded deed substantiating the purchase price of the property of $335,000. After reviewing the documentation provided by the City, the OSA considers this finding resolved.

Unavailable Documents

City of North Branch

Housing Dist. 99A-1 and Economic Development District 2000-1

In the Initial Notice, the OSA found that the City did not comply with Minnesota laws in supplying supporting documentation of costs incurred, and that this violation was considered sufficiently material for the matter to constitute a finding. In its Response, the City was able to provide some documentation to the OSA, but was not able to locate all of the necessary documents. In the Final Notice, the OSA reiterated the finding that the City failed to comply with Minnesota laws in the area of record retention.

City of Taylors Falls

TIF 1-2 (Housing) Nolde Dev.

In the Initial Notice, the OSA found that the City did not comply with Minnesota laws in supplying supporting documentation of costs incurred, and that this violation was considered sufficiently material for the matter to constitute a finding. In its Response, the City provided additional documents supporting administrative expenses. In the final notice of noncompliance, the OSA withdrew this finding after reviewing the additional documentation provided by the City.

Failure to Publish or Incomplete Public Hearing Notices

City of Albertville

TIF Districts 7 Senior Housing, 8 Vetsch Cabinets, 9 Barthel Bus, 10 Mold Tech and 11 Land of Lakes Stone Co

In the Initial Notice, the OSA found that the City could not demonstrate that it had complied with the publication requirements when it created TIF Districts 7, 8, 9, 10, and 11. However, the OSA also indicated that, while the failure of the City to demonstrate that it complied with the publication requirements is insufficient to invalidate the establishment of these districts, it is considered sufficiently material for the matter to constitute a finding. In its Response, the City stated that personnel working with the City at the time the notices were to be published recall that maps were generated. It is the City's belief that the public hearing notices were properly published for each district. The City also stated that it is in the process of trying to locate copies of the actual publications from the Wright County Library and the Minnesota Historical Society.

In the Final Notice, the OSA reiterated the finding that, without supporting documentation, the City could not demonstrate that it complied with the publication requirements when it created TIF Districts 7, 8, 9, 10, and 11.

Failure to Provide an Opportunity to Members of the School Board or the County Board to Meet with the TIF Authority and to Provide an Estimate of the Fiscal and Economic Implications of the TIF Districts to the School Board at Least 30 Days Prior to the Public Hearing

City of Albertville

TIF District 11 Land of Lakes Stone Co.

In the Initial Notice, the OSA found that the City could not demonstrate that it had complied with the notification requirements when it created TIF District 11. However, the OSA also indicated that, while the failure of the City to demonstrate that it had complied with the notification requirements is insufficient to invalidate the establishment of the district, it is considered sufficiently material for the matter to constitute a finding. In its Response, the City stated that it believes that it had met this requirement and that it is working with the school district to obtain a copy of the required notification.

In the Final Notice, the OSA reiterated the finding that, without supporting documentation, the City cannot demonstrate that it complied with the notification requirements when it created TIF District 11.