

2011 SENATE FINANCE AND TAXATION

SB 2050

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2050
1/5/2011
Job Number 12605

☐ Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Tax increment financing district restrictions

Minutes:

Written Testimony Attached

Chairman Cook opened hearing SB 2050 relating to tax increment financing district restrictions. He stated this did come out of the tax interim committee. This bill addresses three issues; the first being a definition of blighted area, secondly it puts a twenty year sunset on a tax increment financing district, and thirdly it creates an oversight review board.

John Walstad, Legislative Council – This draft relates only to tax increment financing districts, it doesn't do anything at all in regard to renaissance zones and it deals with three issues regarding tax increment financing districts that the interim tax committee felt was worthy of discussion by the full legislature. As the chairman said, the first one is whether raw Ag land can be incorporated within a district. The second section of the bill draft brings in two things, the first one on lines two and three, approval of a plan from a joint review board, the second thing on line seven and eight, limits the duration of tax increment financing for a development renewal area to twenty years. The third section of the bill approval from a joint review board and that joint review board is set up in section four, it brings to the table those players that I described that have some financial interest.

Chairman Cook then requested testimony in favor of SB 2050.

Dustin Gawrylow, Executive Director, North Dakota Taxpayers Association, Lobbyist #160 (See attached testimony A and A1 in favor of SB 2050)

Chairman Cook then requested testimony opposed to SB 2050.

Jerry Hjelmstad, North Dakota League of Cities - (See attached testimony B in opposition of SB 2050)

Katie Anderson, Mayor of Jamestown - (See attached testimony C in opposition of SB 2050)

Bob Stein, Senior Planner, City of Fargo - (See attached testimony E in opposition of SB 2050)

Bill Wocken, Speaking on own behalf - (See attached testimony F in opposition of SB 2050) Mr. Wocken is also concerned with the joint review board, as it adds another layer of government to a process that is very often very time specific. He would support the amendments offered by Mr. Hjelmstad.

Mike Allmendinger, General Manager for the Kilbourne Group, Real Estate Company Fargo – (No written testimony) The Kilbourne Group would not be opposed to the blighted area part of this bill, however they would be opposed to the board because of the complexity and the efficiency of getting approvals as well as the twenty year limitation. As a developer they see the renaissance zone benefits, they are a useful tool to attract tenants to downtown Fargo because they will be receiving these benefits for property taxes and income taxes. Tax increment financing districts would be beneficial to the public for the parking ramps and the public spacing infrastructure.

No further action was taken.

Chairman Cook closed hearing on SB 2050

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2050
2/14/2011
Job Number 14465

☐ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Tax increment financing district restrictions

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2050.

Chairman Cook – This had a 20 year sunset on tax increment financing districts. They would have to end in 20 years. It also had a sentence in there that made it clear that blighted area does not include predominantly open land that has been developed only for agriculture purposes. It had a requirement of all tax increment financing districts to be reviewed by a joint review board. The amendments before you address 2 of the issues. It takes out the joint review board and it simply requires that a city would file the tax increment financing district plan with the Department of Commerce Division of Community Services just like they do with renaissance zones so there is no oversight on the committee setting up a tax increment financing district, there is just one central depository for anybody to get tax increment financing district information and it removes the sunset and simply requires that every 20 years the property be reassessed so that property value line that determines what money goes to the political subdivisions and what money goes to the tax increment financing districts, that bar or assessment level is raised or lowered. We picked the 20 years because of a lot of discussion regarding the bonding that goes on with tax increment financing districts to make sure that the revenue was there to pay off the bonds. Also, if you look at section 3, this was offered on behalf of the city of Bismarck, Bill Wocken offered these amendments and it basically puts in a tool that would allow a city that has a tax increment financing district during that 20 year period, if they start accumulating excess revenue that's on and above what they need to meet the projects that they identified in the tax increment financing district that they could actually take that excess revenue and give it back to the county to be distributed amongst the political subdivisions.

Senator Dotzenrod – I'm trying to find the part that says rather than going through the joint review board that they just send a copy or a file a copy with the state.

Chairman Cook – Page 2 line 2 it removes “as obtained approval of the plan from the joint review board”. Page 2 line 23 “and has filed that plan with the Department of Commerce Division of Community Services” and then page 2 removes lines 9 through 31, page 3 removes line 1 through 31, so it basically removes the entire section 4 of the bill. So it removes all the language of the joint review board.

Senator Dotzenrod – I hadn’t noticed all the deletions right at the end of the amendments that basically take out, looks like section 4 is pretty well gone. What I didn’t see, about a 1/3 of the way down the amendments it says “and has filed that plan with the Department of Commerce Division of Community Services”. That’s what I was looking for because one of the things we noticed during the interim is that trying to find out information about the tax increment financing districts was not very easy to do.

Senator Triplett – Just for people to think about, the amendments provide the 20 taxable years. We did receive testimony from the folks in Fargo that it is not uncommon presently to use 25 years for public infrastructure assessments and Mr. Stein testifying for the city of Fargo suggested the 25 years would be a more reasonable time than 20 years.

Chairman Cook closed discussion on SB 2050.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2050
2/14/2011
Job Number 14521

☐ Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Tax increment financing district restrictions

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2050.

Senator Triplett – I'll start by moving approval of the amendments as presented.

Seconded by **Vice Chairman Miller**.

Senator Triplett – I think that the major objection to this bill was the joint review board and by removing all the references to the joint review board I think it makes it a better bill in the minds of most of the people who were here to testify.

Chairman Cook – The other concern was the sunset and we've addressed that I think in a way that is acceptable to the League of Cities. All in favor of the motion to amend signify by saying yea. (6-1-0)

Senator Triplett – I would further amend then, on the amendments that we've just added page 2 line 8 where it references to 20 taxable years that we would add the word "five" after twenty. Twenty-five years.

Seconded by **Senator Dotzenrod**.

Senator Triplett – In reviewing the testimony I think it was only the fellow from Fargo who mentioned it, but he said they do have a fair number of projects that are done on a 25 year cycle and that was fairly common so I thought it was worth trying to see if people think that's a good idea or not.

Chairman Cook – The way I read this, and our attorneys here can correct me if I'm wrong. This 20 year clock, if we amend it the way it is, is ticking right now, so if you have an assessment tax increment financing district that is in year 15, they have 5 years. Is that correct? Or does the 20 years start today for all of the tax increment financing districts that are out there?

Senator Triplett – We didn't adjust the effective date right? The effective date in the bill itself says it's effective for any action by a city governing body occurring after July 31, 2011. So I would think it would be just prospective.

Chairman Cook – You are right.

Senator Dotzenrod – The amendments that we adopted, they delete section 3 and 4 out of the bill. So we have basically the 2 original sections, sections 1 and 2 and then the third section that we've added in the amendments. If when you get to the part Senator Triplett which would take 20 to 25, if I read that right that sentence that she has put the 25 on, if part of the sentence that has 20 in it earlier in the sentence...

Chairman Cook – That they sunset in 20 years and then this is a condition where they would not have to sunset.

Senator Dotzenrod – Doesn't that apply to the longest you can go without resetting your value? You can't go longer than 20 or maybe 25 without reevaluating.

Chairman Cook – I'm not sure if 25 will work there because of the sunset 20.

Senator Triplett – You are both right. We would need to change the first 20 to 25 also to make it make sense. I would like to withdraw my first motion and reinstate it that in both cases in the bill and the amendment where the word 20 appears that we would change that to 25.

Chairman Cook – Senator Dotzenrod you will still second that?

Senator Dotzenrod – Yes.

Chairman Cook – Have the clerk take the roll. (4-3-0)

Vice Chairman Miller – I think we need to correct this effective date because the reason why the effective date was the way it was is because of this joint board. Since that is no longer part of the game anymore there is no reason why this can't apply to all current tax increment financing districts. So I would like to amend it to just make the effective date July 31, 2011 omitting the action by city governing body. I don't know if that is a sufficient amendment to make it work right though.

Chairman Cook - We have amended the bill twice and we will start with this tomorrow morning and we will see what type of amendments we can have down here.

Chairman Cook closed discussion on SB 2050.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2050
2/15/2011
Job Number 14537

☐ Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Tax increment financing district restrictions

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2050.

Chairman Cook – Senator Triplett referenced that Fargo had given testimony they need 25 years so we considered changing that to 25 years but allowing the increment level to be changed every 20 years. Correct?

Jerry Hjelmstad, North Dakota League of Cities – My understanding was that the original district would be up to a maximum of 25 years. At that point it would be reset so the values were never more than 20 years old.

Chairman Cook – Then we also were going to change the effective date so it goes into effect immediately.

Jerry Hjelmstad, North Dakota League of Cities – After July 31, 2011.

Chairman Cook – There is a tax increment financing district in Bismarck here that's been in existence for more than 25 years. So that tax increment financing district then would go back to their values that they had 20 years ago?

Jerry Hjelmstad, North Dakota League of Cities – After July 31, 2011. The base year would be reset.

Chairman Cook – Properties are going to get a tax statement in December, and they are going to write a check and pay their taxes. This tax statement that they get in December, will part of that be distributed to the counties and the school districts or do we have to wait for the next December?

Jerry Hjelmstad, North Dakota League of Cities – It is our understanding it would be any distribution that would be made after the effective date of this bill. So after August 1st when it goes into effect, any distribution of taxes that is made after that point would be based on the new base year.

Chairman Cook – And we don't have to add any language to make sure that is going to be the actual result of this?

Jerry Hjelmstad, North Dakota League of Cities – We thought the amendment would cover that.

Chairman Cook – From the amendments that we have approved already is the first correction on page 2 line 8 replacing 20 with 25 and then the effective date.

Senator Triplett – From speaking with Mr. Hjelmstad after the hearing is that the consensus is that it's okay to leave the 25 in line 8 in terms of the existing obligations that may be out there but then going forward it gets reset at least every 20 years. So this is actually a correction to the amendment that I made yesterday.

Chairman Cook – I wonder if it isn't the best way to move forward is that we reconsider our action by which we amended SB 2050 in both cases.

Vice Chairman Miller – I will move to remove all amendments and reconsider all of our actions prior on SB 2050.

Seconded by **Senator Dotzenrod**.

Chairman Cook – All in favor say yea. (7-0-0)

Chairman Cook – We now have SB 2050 as introduced.

Vice Chairman Miller – I will move the amendments that were proposed to us by the intern and the League of Cities.

Seconded by **Senator Dotzenrod**.

Chairman Cook – All in favor of the motion to amend signify by saying yea. (7-0-0)

Vice Chairman Miller – I will move a Do Pass as Amended.

Seconded by **Senator Triplett**.

Chairman Cook – Discussion? Ask the clerk to take the roll. (7-0-0)

Carried by **Chairman Cook**.

To: Senate Finance and Taxation Committee
From: Jerry Hjelmstad, North Dakota League of Cities
Date: January 5, 2011
Re: Senate Bill No. 2050

PROPOSED AMENDMENTS TO SENATE BILL NO. 2050

Page 1, line 1, remove "to create and enact section 40-58-20.2 of the North Dakota Century Code,"

Page 1, remove line 2

Page 1, line 3, remove "subsection 2 of section 40-58-01.1," and the final comma

Page 1, line 4, remove "and section 40-58-20.1"

Page 1, remove lines 7 through 21

Page 2, line 2, remove "and has obtained approval of that plan from a joint review board under"

Page 2, line 3, remove "section 40-58-20.2" and after "area" insert "and has filed that plan with the department of commerce division of community services"

Page 2, line 7, replace "increment financing" with "increments computed"

Page 2, line 8, after "years" insert "without the original taxable values being reset by the governing body of the municipality so that the taxable values used as the original values are never more than twenty taxable years old"

Page 2, remove lines 9 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 10

Renumber accordingly

Date: 2-14-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2050

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Triplett Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue		X			
Dave Oehlke	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal Vote

Date: 2-14-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2050

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Triplett Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman		X	Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard		X			
David Hogue		X			
Dave Oehlke	X				

Total (Yes) 4 No 3

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal vote to change 20 years
to 25 years.

Date: 2-15-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2050

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal vote to reconsider all previous amendments.

Date: 2-15-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2050

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal vote to adopt new amendments

February 15, 2011

JB
2-16-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2050

Page 1, line 1, replace "section 40-58-20.2" with "a new subsection to section 40-58-20 "

Page 1, line 2, remove "establishment of a joint review board for approval of"

Page 1, line 2, after the semicolon insert "and"

Page 1, line 3, replace the first comma with "and"

Page 1, line 3, remove the second comma

Page 1, line 4, remove "and section 40-58-20.1"

Page 1, line 5, remove "; and to provide an effective date"

Page 2, line 2, remove "and has obtained approval of that plan from a joint review board under"

Page 2, line 3, remove "section 40-58-20.2"

Page 2, line 3, after "area" insert "and has filed that plan with the department of commerce division of community services"

Page 2, line 7, replace "increment financing" with "increments computed"

Page 2, line 8, replace "twenty" with "twenty-five"

Page 2, line 8, after "years" insert "without the original taxable values being reset by the governing body of the municipality so that the taxable values used as the original values are never more than twenty taxable years old"

Page 2, after line 8, insert:

"SECTION 3. A new subsection to section 48-50-20 of the North Dakota Century Code is created and enacted as follows:

The governing body of a municipality with an active tax increment financing district may at any time identify funds on hand that are in excess of the costs it determines necessary to complete the activities included in the last approved urban renewal plan for that district. The governing body may cause the identified surplus to be transferred to the county treasurer to be distributed to the state and all political subdivisions having power to tax property in the area, in amounts proportionate to the most recent five-year average of the property tax levy within the district."

Page 2, remove lines 9 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 12

Renumber accordingly

Date: 2-15-11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2050

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Cook

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2050: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2050 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section 40-58-20.2" with "a new subsection to section 40-58-20 "

Page 1, line 2, remove "establishment of a joint review board for approval of"

Page 1, line 2, after the semicolon insert "and"

Page 1, line 3, replace the first comma with "and"

Page 1, line 3, remove the second comma

Page 1, line 4, remove "and section 40-58-20.1"

Page 1, line 5, remove "; and to provide an effective date"

Page 2, line 2, remove "and has obtained approval of that plan from a joint review board under"

Page 2, line 3, remove "section 40-58-20.2"

Page 2, line 3, after "area" insert "and has filed that plan with the department of commerce division of community services"

Page 2, line 7, replace "increment financing" with "increments computed"

Page 2, line 8, replace "twenty" with "twenty-five"

Page 2, line 8, after "years" insert "without the original taxable values being reset by the governing body of the municipality so that the taxable values used as the original values are never more than twenty taxable years old"

Page 2, after line 8, insert:

"SECTION 3. A new subsection to section 48-50-20 of the North Dakota Century Code is created and enacted as follows:

The governing body of a municipality with an active tax increment financing district may at any time identify funds on hand that are in excess of the costs it determines necessary to complete the activities included in the last approved urban renewal plan for that district. The governing body may cause the identified surplus to be transferred to the county treasurer to be distributed to the state and all political subdivisions having power to tax property in the area, in amounts proportionate to the most recent five-year average of the property tax levy within the district."

Page 2, remove lines 9 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 12

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

SB 2050

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2050
March 7, 2011
#15012

☐ Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A bill relating to tax increment financing districts; relating to tax increment financing by cities.

Minutes:

See attached testimony #1, #2a and b

John Walstad, Legislative Counsel: Introduced bill. This came from the interim tax committee where I served as counsel. As introduced it was considerably different than what is in front of you now. The one constant is the first section of the bill which relates to a question that has been addressed with different answers in different parts of the state. That question is whether agricultural land is to be included in the definition of blighted area which makes property eligible for inclusion in a tax increment financing district. The bill provides that agriculture property is not blighted and is not to be included in a TIF district. The bill initially had some provisions as introduced that are not in this version. One of the provisions was a limitation that a TIF district was limited to a 20 year life span. The other was a provision to establish a TIF district approval would have to be obtained from a joint review board and that board was to consist of one representative from each taxing district in which the affected property is to be located. That would stack the deck against cities and require the city to convince other taxing districts that this would be a beneficial thing for all concerned. Those provisions were taken out in the Senate. The provisions that you see in section 2 and 3 of this bill were substituted. In section 2 one of the provisions was that a TIF plan has to be filed with the Department of Commerce Division of Community Services. The reason for that is that there was really no ready access to statewide information on tax increment financing other than requesting from the League of Cities information on that. This would provide a central information source. The second change in section 2 of the bill is when a tax increment district is established the taxable valuation of the property included is frozen, whatever the value is at that point remains the value of that property for purposes of tax by the city or county or other taxing districts affected. If a TIF district extends for an indefinite period of time that is all the revenue that district is going to get from that property. This provision requires that those values are to be reset at some point with the idea that those values are never more than 20 taxable years old. This doesn't mean they are up to date but if a TIF district goes on for 30 years those values will get bumped up at some point so the school and county get a little more tax revenue from it. The increment value or the actual value minus the taxable value frozen, the value from that portion of the value of the property goes to into the TIF district fund. The third section of the bill provides that if a city

with a TIF district accumulates a substantial balance of funds on hand and concludes that there is more on hand than is necessary to complete the TIF project that is envisioned, that city may identify a portion of those funds to be returned to the taxing districts that would have had taxing authority over that property, the school, county, or city. In that case those funds are to be distributed in proportion to a five year average of the property tax levies by those districts that would have taxing authority over that property.

Chairman Wesley R. Belter: Was there any discussion on the Senate side to require them to transfer these funds?

John Walstad: I wasn't there for the discussion but I'm sure that was considered. As you recognize the word "may" is really a key to that whole provision.

Chairman Wesley R. Belter: In section 2, why the 20 year look back? I would think you would want a more current valuation number?

John Walstad: I wasn't in the meeting. All I did was the amendment. I think you've identified an issue for consideration.

Representative Steven L. Zaiser: Would there be any criteria by which they would identify what is and is not a surplus of funds?

John Walstad: I think the only criteria contained in the language is that the city governing body takes a look at how much funding it will need to finish off the TIF project that is envisioned and then look at what the balance of funds on hand is and then how much of that balance could be released for distribution among taxing districts.

Jerry Hjelmstad, ND League of Cities: Support. We provided information to the interim tax committee on tax increment financing districts. At that time there were 27 cities that had formed 89 tax increment financing districts and three of those districts had been completed at that point so the full amount of those properties were back on the tax rolls. There were 27 cities with TIF districts and we only have a dozen cities that are over 5,000 in population so you can see that these districts are used in our smaller and medium sized cities as well as our larger cities. One of the concerns that came up during the interim was a lack of central source of information so the information on the bottom of page 1 and the top of page 2 requiring these reports be filed with the Department of Commerce was in response to that concern. Another concern was the time frame that would go by before the other taxing districts within the jurisdiction would be able to share in the increased revenues from the development that takes place and that is the reason for the new language on page 2 lines 5-9. One concern that was brought to our attention last week was that one of the cities would like to provide some clarification to provide that the new language on the bill does not impair existing agreements that are already in place. If they have financing agreements in place they do not want those impaired by any new language in the bill and that amendment will be presented to you later today. We would respectfully request that you give consideration to add to this bill.

Vice Chairman Craig Headland: I'm trying to recall some of the conversations back in the interim committee and I'm thinking about Bismarck and if memory serves me they have a

TIF district that somewhat works on a perpetual basis and I'm wondering how this language impacts that?

Jerry Hjelmstad: The language in section 2 requires they reset the original taxable value. One of the districts is basically at zero because the property was tax exempt at the time the district was created. It would be reset at a value no more than 20 years old. It would be reset at a value including the development that had taken place so it would substantially increase the tax base that would be going to the other districts in the city.

Vice Chairman Craig Headland: Somewhere along the line there was a value put on that property and it still isn't at zero and won't always remain at zero.

Jerry Hjelmstad: As soon as the taxable value increased in that property the taxes were collected, it's just that the increment went into the fund to pay for the financing of the project. At this point it would be reset so that those taxes would be distributed to the other taxing entities at a value that was no more than 20 years old. Being that district has been in place for more than 30 years it would be a substantial increase in the value of that money going to the other districts.

Vice Chairman Craig Headland: Is that TIF district, with the language in section 3, going to share that revenue with the other taxing districts?

Jerry Hjelmstad: That particular amendment was requested by the city of Bismarck and they are here today to discuss that but that was the idea behind it that they would be able to have any surplus identified and distributed to the other taxing districts without having to close down the district totally and restart it.

Representative Dwight Wrangham: In section 2, lines 5-9, a district that was formed 30 years ago would have to change the taxing value to one not more than 20 years old. Would the proposed amendment affect that?

Jerry Hjelmstad: It would not affect the city of Bismarck because they don't have any outstanding financial agreements so theirs would be reset. It could impact those that would have a 25 year district set up and has gone a little beyond that and they have a financing agreement in place.

Bill Wocken, City Administrator for the City of Bismarck: Support. Please refer to attached testimony #1.

Vice Chairman Craig Headland: What is the significance of the 20 year look back? If you're going to reset the value why not set it in more of a recent look back?

Bill Wocken: The 20 year period was chosen because of the indebtedness issue. When you try to bond out expenses in a district you'll have to have a certain amount of income in order to make the bond saleable. It was felt that 20 years would give smaller cities the opportunity to market their bonds. In larger cities it might be done with less than that although not measurably less. In speaking with bond counsel they thought that 20 years

would give the smaller cities an opportunity to participate. Something less than that they were quite skeptical. We discussed different time periods in the Senate at the hearing.

Vice Chairman Craig Headland: So if they are issuing bonds at the beginning and the district is now 25 years old, won't those bonds already have been paid off?

Bill Wocken: Not necessarily. The change in the way schools are funded the change that made in the taxing entity's picture might come into play on some of these properties or else you may have declining values of properties. It was felt from those that had experience that 20 years was the right number to pick.

Representative Dwight Wrangham: Given that this can have a huge impact on school districts, counties, and so forth in a negative financial way for years and years, the joint review board which was in the bill to begin with, did the city of Bismarck support that portion of the bill?

Bill Wocken: No, we did not. We felt that the mechanism there was cumbersome and unworkable.

Representative Dwight Wrangham: If we were to come up with another amendment which would rather than being so cumbersome as to have a joint review board to review it that there would have to be a vote of the local school board and of the county in order to be forced to participate in the TIF district, would you support that amendment?

Bill Wocken: I would need to present those ideas to my board and have them react to them. In the past we have consulted with the other taxing entities on certain items, certain times, and certain projects and explained that the level of effort that is necessary to get a district going will produce an increase of taxes. They are being held harmless at the present level of taxation. That argument has been understood in the past. I can't tell you what my board would say relative to a vote by the taxing entities.

Representative Dwight Wrangham: I understand with the interim meeting in Bismarck the TIF district is much different than in many other cities. Many other cities establish TIF projects which would include a block or one particular building or other different things. In Bismarck they have designated quite a large area including quite a number of personal residences. Given that and the blighted area which is part of the requirement to become a TIF district is apparently being recognized as being fact. Can you tell me how the city of Bismarck ever decided that all that area was blighted and what definition they used?

Bill Wocken: We did a survey of the area that is included in the tax increment district initially and we have done a few updates since that period of time. One of those occurred when the renaissance zones were put into place and we came to the conclusion that the urban renewal plan as it exists still meets the purpose of the act.

Representative Dwight Wrangham: What did you look at to say it was blighted? Did it need paint, were the walls falling down, what criteria was used to make it a blighted area?

Bill Wocken: I can't tell you the exact items that were included in the survey. There was a survey made of the properties and the state of repair was noted, also, code violations and other things that are particular to individual parcels. I can't tell you what all the items were but I could get that if you wish.

Representative Dwight Wrangham: Is there an active agency who is working in bringing everything up to code within that extended residential area within that TIF district?

Bill Wocken: Our building inspection department which is a division of the community development department is responsible for taking care of the code violations. In the downtown area the community development department has a separate planner who's job it is to take a look at downtown conditions and review any applications for improvements. We are also in the process of redoing our ordinances and some of the changes would also have that same name.

Representative Dwight Wrangham: Do they put a special emphasis then on properties that are within the TIF district?

Bill Wocken: The zoning ordinance would have a special emphasis on any properties that are zoned in a particular fashion. The code enforcement would have an emphasis on items that are found to be in violation of the codes. They have a bit different emphasis but they come together to affect the same thing, trying to keep the property in the district up to standard and trying to find ways to get those properties that are not at standard up to that point.

Representative Steven L. Zaiser: How would you define a surplus?

Bill Wocken: The city of Bismarck did suggest that particular amendment and the reason it was suggested is because now we have an all or nothing proposition with a district. If we have some activities completed we know we have more money than we will probably need to complete the remainder of the activities we either keep the district open and keep the balance or close the district and lose all the balance and the opportunity to complete the projects that are incomplete or that have not been started. We suggested that mechanism. I think we would try to estimate the number of dollars that are necessary to complete the activities that are in the urban renewal plan and take a look at what it would be if we would consider access to those needs and bring up those amounts.

Representative Steven L. Zaiser: Would you be willing to work with me on an amendment to that respect?

Bill Wocken: I would be happy to work with anyone on this committee to improve this bill.

Bob Stein, Senior Planner with the City of Fargo: Opposition. Please refer to attached testimony #2a and b.

Vice Chairman Craig Headland: Can you give us an example of what you are talking about other than that repayment of bond?

Bob Stein: One example would be the pay as you go is what I refer to it as. You do not sell bonds you have a developer's agreement and the developer goes out and borrows the money. It is not a bond sale to finance the project. The increment then goes back to the developer to meet that obligation.

Vice Chairman Craig Headland: Some of those agreements are set up in a term of longer than 20 years? Or are you making these agreements halfway through the TIF districts existence?

Bob Stein: I believe we have a total of three outstanding TIF districts. I'm not sure how many we have totally within the city, I think it is less than 10 or about 10 and there would be three of them that would be affected by this. One of them was established in 1983 and then it was extended in order to build a parking structure at the request of several of the properties in the district itself. That district is ongoing and will be retired in 2015. If the taxable value is reset back 20 years the increment shrinks and meeting that obligation becomes more difficult. We also have, as part of the funding for that particular project, annual contributions by adjoining property owners. The agreement we had with them was for the term of the bond. They have been in good faith they accepted that thinking that at 2015 that would be retired. Something like this would reset the value and decrease the increment and extend it beyond 2015 which would have an impact again on something other than bonded obligation.

Vice Chairman Craig Headland: In section 3 what do you think of amending it further to say "the governing body shall share surplus revenues with the other taxing districts"?

Bob Stein: I represent an elected body so I couldn't really say. I would comment however that each TIF is different and I think the circumstances that go along during the evolution and eventual retirement of the TIFs are different as well. So to say "shall" may not always take into account all of the possibilities that may come along. I think the local government indifference to the tax collecting entities should be aware of that and make those decisions. My personal opinion I think it would be a bit restrictive and it would not remain responsive to unforeseen happenings.

Representative Glen Froseth: What percent of a project does the bond indebtedness is paid for by the taxes being in a TIF district?

Bob Stein: I believe that changes from project to project.

Representative Glen Froseth: On average.

Bob Stein: I'm not prepared to offer a percentage but I can give you an example from the one project I referred to earlier and it would probably by 60% is paid by the bonded indebtedness I believe. That is a situation where there is a parking structure so you have operating revenues that can also be used and as I referred to the nearby properties agreed to an assessment should there be a gap. I couldn't tell you if that is typical or not, I really don't know.

Representative Steven L. Zaiser: I am supportive of TIFs as catalysts for development in blighted areas but I have a concern and that is the continued and extended tax burden that is put on some of the fixed income people in the older parts of town. New houses get new development tax breaks but it's those people in Fargo that have lived there for a long time that seem to carry the burden. What do you think of putting some sort of sunset on the time frame of the TIF districts?

Bob Stein: I would say that the day of having the long extended TIF in Fargo is long gone. The average TIF is anywhere between eight and fifteen years. Another thing we have done is try to focus the TIFs more. For example, a single property TIF, the downtown Fargo one, was a single parcel and a very critical piece of land that was very difficult to develop and had a lot of problems. Rather than encompassing more properties and making it a larger TIF which would have been a farther reaching affect on the rest of the taxpayers, it is a single parcel TIF.

Representative Steven L. Zaiser: The districts in Fargo have been too big and it has impacted too many property owners.

Chairman Wesley R. Belter: No further testimony. Closed hearing on SB 2050.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2050
March 14, 2011
#15407

☐ Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A bill relating to tax increment financing districts; relating to tax increment financing by cities.

Minutes:

No attachments.

Vice Chairman Craig Headland: Where did the amendment come from, does anybody remember?

Representative Lonny B. Winrich: The League of Cities.

Chairman Wesley R. Belter: I asked Representative Zaiser if he was going to move the amendment but I just asked him to hold it for a second. This came from where?

Representative Lonny B. Winrich: I think the amendment would meet the objective. (Inaudible) The notes that I have indicate that...

Chairman Wesley R. Belter: I'm not going to act on this today. It was brought to my attention that they thought the language on line 19 and 20 does not lock up the, what I think is a problem, the cities calling agricultural property a blighted area and that there is room to maneuver around that language. So I want them to clarify that for sure.

Representative Roscoe Streyle: I have a problem with 25 years which is too long.

Representative Dwight Wrangham: On page 2 I have a note that on line 15 where it says "the governing body may" it was suggested that we change that to "shall."

Chairman Wesley R. Belter: Representative Wrangham, I will leave that to your research. I will check on lines 19 and 20.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2050
March 21, 2011
#15727

☐ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to tax increment financing districts; relating to tax increment financing by cities.

Minutes:

See attached amendments.

Representative Roscoe Streyle: Distributed and explained amendments. Please refer to attached amendments. **I move the amendment.**

Representative Mark S. Owens: Seconded.

Vice Chairman Craig Headland: Any discussion on the amendment? No discussion. A voice vote was taken to adopt the amendments. **MOTION CARRIED.**

Representative Lonny B. Winrich: In testimony according to my notes a representative from the League of Cities suggested that the bill be amended so as not to impair any current agreements. Is that included in this amendment?

Representative Roscoe Streyle: On page 2, line 8 is what Walstad put together and said that this wouldn't impair anything, it would leave everyone alone. Twenty years was the max.

Vice Chairman Craig Headland: What are your wishes?

Representative Roscoe Streyle: I would move a **DO PASS AS AMENDED.**

Representative Glen Froseth: Seconded.

A roll call vote was taken: YES 12 NO 1 ABSENT 1
MOTION CARRIED.

Representative Roscoe Streyle will carry SB 2050.

✓ 12
3/21/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2050

Page 1, line 20, remove "predominantly open"

Page 1, line 20, replace "area that has been developed only for" with "assessed as"

Page 1, line 20, replace "purposes" with "property"

Page 2, line 6, replace "twenty-five" with "twenty"

Page 2, line 8, replace "so that" with "to taxable values that are not more than twenty taxable years old, unless principal and interest payments on indebtedness incurred before July 1, 2011, would become impossible to pay from the tax increment fund when due. Tax increments computed for a development or renewal area under this section or section 40-58-20.1 for properties that were not obligated before July 1, 2011, for making principal and interest payments on indebtedness must be reset so"

Page 2, line 9, replace "twenty" with "ten"

Page 2, line 15, replace "may" with "shall"

Renumber accordingly

Date: 3-21-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2050

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
03003
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Streyle Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trottier					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

VOICE VOTE

MOTION CARRIED

Date: 3-21-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2050

House Finance and Taxation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Streyle Seconded By Rep. Froseth

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich		✓
Bette Grande	✓		Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	✓				
Dwight Wrangham	✓				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Streyle

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2050, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2050 was placed on the Sixth order on the calendar.

Page 1, line 20, remove "predominantly open"

Page 1, line 20, replace "area that has been developed only for" with "assessed as"

Page 1, line 20, replace "purposes" with "property"

Page 2, line 6, replace "twenty-five" with "twenty"

Page 2, line 8, replace "so that" with "to taxable values that are not more than twenty taxable years old, unless principal and interest payments on indebtedness incurred before July 1, 2011, would become impossible to pay from the tax increment fund when due. Tax increments computed for a development or renewal area under this section or section 40-58-20.1 for properties that were not obligated before July 1, 2011, for making principal and interest payments on indebtedness must be reset so"

Page 2, line 9, replace "twenty" with "ten"

Page 2, line 15, replace "may" with "shall"

Renumber accordingly

2011 SENATE FINANCE AND TAXATION

CONFERENCE COMMITTEE

SB 2050

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2050
4/6/2011
Job Number 16398

☒ Conference Committee

A. B. H. Miller

Explanation or reason for introduction of bill/resolution:

Tax increment financing district restrictions

Minutes:

Conference Committee

Chairman Cook opened discussion on SB 2050.

Chairman Cook – I see the House made major changes to the point in which it is reevaluated. Maybe I should just have you explain what it is you did and you're thought on that.

Representative Wrangham – On the first page the definition of blighted area there was just a predominately open area and things the committee felt there might be some areas that could be hard to define. The length of a renewal project, a TIF district, it was felt that 25 years might be just a little bit long so we elected to go to 20 years for the length of that. Then it was called to our attention also that there may be some TIF districts out there that are currently bonded for more than 20 years and so consequently that could create some problems if they are already bonded for a longer length of time. The next several lines 11-14 are kind of a lot of words but basically what the committee intention there is is that if something is already obligated that this 20 year restriction doesn't apply. So if there is a project out there that is now bonded out for 30 years at this time, that project could remain as it is today for the full 30 years, however anything after July 1, 2011 would be subject to 20 years. On line 16 the point at which the tax increment financing would be reset, if we can use that phrase, was 20 years and it was felt that in order to reassess the amount of money that was going to the other entities especially, the school district that should probably be reset every ten years. The other change we made on line 22 it's up to them if they are going to identify them but if they do identify them and they are there, we felt then that the governing body shall cause those funds to be distributed. That was our thinking.

Chairman Cook – Explain how this amendment would affect that TIF district. So your saying that TIF districts been in place for some time so that the effective date of this bill, July 1, 2011 they would have to reset their values to a point to what the values were on July 1, 2001?

Representative Wrangham – I believe that is the case.

Chairman Cook – Are those values known?

Bill Wocken, City Administrator, City of Bismarck – The values that we have on individual properties in the district can be determined for any particular year, yes.

Senator Dotzenrod – I'm not exactly sure how the bonds that have been sold are affected by values that are reset. If it's a bond that's set to be paid off in 20 years, is there an effect on the schedule of repayment of the bonds if there is a resetting of the taxable values or is that only for purposes of establishing the payments that are used for the other subdivisions. On line 16, does that have any effect on the structure of the payments and repayments on these bonds?

Representative Wrangham – I'm not positive on how this will affect those funds which are already in existence unless someone else is more comfortable giving a definitive answer I would ask to do a little research before I answer that.

Representative Streyle – From my understanding when I had this amendment drafted the previous section above it that would exclude anything that's currently right now so I don't see how that would affect any new obligations going forward. That is the way I understood it from Legislative Council but I could get clarification on that.

Representative Kelsh – I've had correspondence with some of the folks back in my hometown of Fargo who have been doing the leg work on establishing a TIF district for a project that has not actually gotten the TIF established yet but have been basing their work on the fact that they are going to have 25 years. I'm a little uncomfortable shortening this in such a short time before July 1st because the TIF may not be established by then.

Chairman Cook – I think the way this is worded is that 2011 it would go back to 2001 and then 2012 it would go back to 2002.

Senator Oehlke – Is that accurate?

Representative Wrangham – I believe that is the wording that is what it says. I would like to ask Representative Streyle if that was the intent when he had the amendments drafted.

Representative Streyle – I guess when I had it drafted I felt 25 was too long and I believe the original bill was 20 for the maximum length and then that middle section with all words like I said before was to leave any obligation or bond that is in place now, leave them alone, from these changes and then the 10 years, that's the way I understood it, the values couldn't be more than 10 years. I can speak with John Walstad and get clarification if that is exactly what it would do. They are 5 years apart right now in the original bill that you guys passed. Now they are 10 years apart, the difference between the 2 numbers.

Senator Oehlke – So your opinion is that it would be a rolling 10 years so every year it would be moved up a year?

Representative Streyle – I believe that's right.

Chairman Cook – If my memory is correct I'm trying to look back through the packet here, we had it at 20 years at one time and then amended it to 25 based on the concerns that some raised, in your committee also, we changed it to 25 and when you changed it to 20 you gave then the escape clause with that extra language. I don't know if 20 or 25 is too much of a difference between the 2. That escape clause might be a better way to do it.

Representative Kelsh – Would you allow me to ask a question of one of Mr. Olson?

Chairman Cook – I would at this time.

Representative Kelsh – What is the position, am I correct in my interpretation that the 20 years makes it very difficult to get some of the projects that are being planned right now off the ground and what is the cities interpretation of that?

John Olson, City of Fargo – I do have a statement from Jim Gilmore and I think his obvious position is that it is too short.

Representative Streyle – What my thought was there is that ag property is not blight and should never be included as blight and having according to legal council this would tighten it down and make it perfectly clear that ag property is not blight and that was the intent and I thought the other language was a little too broad and maybe a portion of a section of land or something could be considered blight so that was the intent on that.

Chairman Cook – One of the issues that raised the question or the need I think in the interim to amend the definition of blighted area was in a couple of cities that has 3 TIF districts in it, they use them for housing development where they went out to agricultural land and brought it in and declared a TIF district. I don't think that ever was the intent of the original TIF bill. I looked at this as some sort of an urban renewal type of a tool to improve blighted areas that already had a lot of infrastructure in there and I think that's what led to the discussions. I still have a concern that this would, if the intent is to adjust the definition of blighted area so that doesn't happen, I would still have a concern that we are doing it.

Chairman Cook closed discussion on SB 2050.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2050
4/11/2011
Job Number 16458

☒ Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Tax increment financing district restrictions

Minutes:

Conference Committee

Chairman Cook opened discussion on SB 2050.

Chairman Cook – We had a question during our first conference regarding the actual consequence of the language in the reset. Representative Streyle I think you were going to check on that.

Representative Streyle – The first part of it, the 20 years would apply to historical projects and if, basically the language here says, if the cash flow analysis, meaning the income in expense goes negative then they can stay in their current, say it's a 25 year, if it doesn't then it has to reset to 20 years.

Chairman Cook – It has to reset after 20 years, and does it reset every year thereafter?

Representative Streyle – Yes. Then the 10 years, that would be for new projects and then it would shift, say the new project was in 2012 for example it would go back to 2002 and then it would shift each year thereafter.

Chairman Cook – Would it be clearer if we were to take this section 2 and divide it in to 2 sections, one for projects that TIF districts that existed prior to a date when this law goes into effect and another for TIF districts that are created after the effective date of this bill?

Representative Streyle – That would make a lot more sense because this language is not as clear. In sections it might make more sense.

Chairman Cook – If we were to sit here and discuss what type of TIF district policy would we want moving forward for those that are created after the effective date of this bill, what do you think that would look like? 20 years, 25 years, and at what point should it reset?

Representative Streyle – My feel is that 10 or so would be acceptable. I think 20-25 years is too long, personally but that's my take on it.

Senator Dotzenrod – When we had our last meeting I think one of the questions was what happens to these bonds if we reset values and it appears maybe we're going to set up in this set of a statute sort of a test that says that if they have a situation where the bonds no longer work then we won't do the 10 year reevaluation. I think that is what its saying. Do I understand that correctly?

Chairman Cook asked Jerry Hjelmstad, North Dakota League of Cities to the podium.

Chairman Cook – When a city creates a TIF district and they are going to issue bonds to cover some infrastructure they are putting in what do they look at as far as the revenue sources or the guaranteed revenue sources to pay back those bonds? Do they look at what the developer is going to increase the value at, do they look at that money only or do they also consider possible increase in the valuation thereby offering more dollars available for bond repayment? Do you know what they look at?

Jerry Hjelmstad, North Dakota League of Cities – I'm not 100% sure on that but my understanding is that they would be looking at the initial increase in value based on the improvement that was made because the other would be pretty difficult to estimate I would think.

Chairman Cook – Their only risk then is if property values were to start deflating I would assume.

Jerry Hjelmstad, North Dakota League of Cities – If the values would go down or if there would be any change in the revenues that are generated because of the decreases in mill levies that type of thing.

Chairman Cook – I think the question is, as we look forward, whether we set it at 20 or 25 the buyer of the bonds is going to look at whether the revenue is there and I would not think, that is why I ask the question, they are not calculating a need for that property to inflate in value as that property does inflate in value I would say there is excess dollars that go into the TIF fund to pay off the bonds. That's how I would look at it. I would also like to remind all of us that what brought this issue to the table is the fact that they are currently perpetual and the challenges that presented as it came through the interim committee we elected to keep them perpetual as long as we had a reset. If you take a reset off maybe you should look at having a sunset.

Representative Wrangham – The bill as amended out of the House for TIF districts going forward it was 10 years for the reset and that's a discussion we are obviously going to have to have as we move along. The other thing that I think was somewhat of a question last time, I know it was a little fuzzy in my mind, I actually thought that when the 10 year reset came in to play then whatever it was based at, at that time would continue on for another 10 years. I wasn't positive so I did do some checking and I found that the way it's presently written it would be rebased every year 10, 11, 12, so that is something I think we need to consider whether we want to do that or have it in 10 year increments.

Representative Kelsh – I just want to clarify that your suggestion was to have 20 years on the reset or 20 years on the length of time of the TIF district?

Chairman Cook – 20 years on the initial length of time of the TIF district and then after 20 years you would reset to the current property values. And, just a thought to throw out there, but for TIF districts created after the effective date of this bill, give them 20 years, reset it after 20 years to the current property value at that time, and give them another 10 years at that value and then end it. So there would be no TIF districts created after the effective date of this bill could go longer than 30 years.

Representative Kelsh – The provision in here that says if your cash flow on a TIF district is negative the 10 year reset doesn't apply, is that still part of this going forward?

Chairman Cook – I would not have that as part of it going forward. I think that is something that's put in here to deal with our existing TIF districts out there. I would think that if we put this law clear going forward that as they create TIF districts and they sell bonds they know what the rules are and there would be no need for that language.

Representative Streyle – So you're saying we should have a section 1 that deals with current stuff, and section 2 will be all new stuff and separate it out so we can deal with it section by section?

Chairman Cook – Section 1 would be the section on the blighted area, section 2 would be current TIF districts, Section 3 would be new TIF districts created after the effective date, and section 4 would be what is section 3 right now.

Representative Streyle – I think that would be a smart approach.

Senator Oehlke – If a TIF district ends may a community 1 or 2 or 5 years later just start that same TIF district over again?

Chairman Cook – I'd say the answer to that question is yes they can unless you put something in there that says they couldn't.

Representative Wrangham – They would have to determine that it was blighted again wouldn't they?

Chairman Cook – If we were to take that approach then what would we do with the current TIF districts? Does the language we have in the bill today cover the existing TIF districts or is there a need for making it clear in whatever this bill says when we go home that there is a time certain when the current ones will come to an end?

Representative Streyle – I like the 20 years and then current one. I don't really support 25 and then kicking it out another 10 for 35, but I think 20 is reasonable and that clause is debatable.

Chairman Cook – The current bill when it resets, it resets it at a property value that's 10 years old and then continues to reset it every year. Is that what we want or do we want to set it at a current value or a value that's different or what?

Senator Dotzenrod – When we had the hearing on this we had a list that showed all the TIF districts that have been used around the state and where they are at and they have been used a lot on certain areas. It seemed like the real concern was the situation in Bismarck where there was a large balance that had accumulated. We had like \$16 million. I think all the others in the state, the dozen or so, were under \$1 million but we had this situation in Bismarck that really, I think, created the environment where we've got this bill. The solution it seemed to me for what was going on in Bismarck is to have an expiration date so that when they are allowed under current law to amend and it seemed like, I'm not sure why we ended up with such a large amount of money there, but, it does seem like current projects, the ones we have now, there ought to be a time when they run out. I don't really have a problem with 25. You'd almost have to talk to the people doing the projects to find out if that does any harm. I think in general the TIF districts have been a tool that have been used responsibly around the state and people have done some good things with those TIF districts but when you have a situation where you get the TIF district established and then it continues to be amended and then you don't get the money spent and it accumulates and I think that is where you run in to trouble. So, if we were going to go at section 1 that dealt with the existing TIF districts it would seem to be that I wouldn't really change them that much from what they are except I would want them to have a date when they would end.

Chairman Cook – In defense of Bismarck I would like to remind everybody that the current section 3 of the bill is a section that would put in there that would allow a city with a TIF district with a large surplus to distribute some of that money to the political subdivisions, something they had inquired about doing but they needed this to be enabled to do it. Also I would agree that TIF districts work very well through most places.

Representative Streyle – I think you made most of my points.

Chairman Cook – Can I suggest then that I will have amendments drafted to create, just to put into the bill so we can look at it as far as the idea I put on the table as far as moving forward and I would welcome anybody to come forward with any type of amendments you think would better improve the current section we have here that would deal strictly with the current TIF districts.

Chairman Cook closed discussion on SB 2050.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2050
4/13/2011
Job Number 16540

☒ Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Tax increment financing district restrictions

Minutes:

Conference Committee

Senator Cook opened discussion on SB 2050.

Senator Cook – The last conference committee we discussed breaking that section 2 into 2 sections, one for those prior to July 31, 2011 and one for those after July 31, 2011. This is just some proposed language to look at; it's not in actual bill form. I think this reflects what we are talking about for those TIF districts that were created after July 31, 2011. You will see that it has followed the plan with the Department of Commerce and then you can read on as far as how the taxable values are reset and a time frame in which they are reset.

Representative Wrangham – Just on first look at this, the numbers are changed considerably from what the House sent over. I guess I'm not clear in dividing this into 2 sections, I thought we were going to have 1 section that dealt with districts that were before this legislation and another after. How does this do that?

Senator Cook – This deals with those that are created after July 31, 2011. It does not deal with those existing ones that we already have. This is just a proposal for the part of this that would deal with those that are created after July 31, 2011 moving forward.

Representative Wrangham – So we still have another section to deal with?

Senator Cook – Yes we still have another section to deal with.

Senator Dotzenrod – I'd like a little clarification, it says tax increments computed for development or renewal area approved after July of 2011 under this section may be used for up to 20 taxable years. We've got a 20 year project, and then it says after the 20th taxable year of the original taxable values must be reset to current values by the governing body. It seems to me that after the 20th year the project is over but it says here after the 20th taxable year the original value must be reset.

Senator Cook – So assume that there were some obligations left out there they would be given an extra 10 years before it would have to end. On the 21st year then, the taxable values would be reset to the current value. We could make a policy change there that says after the 21st year the taxable values are set to a value that was 5 years prior to that or 10 prior to that.

Senator Dotzenrod – The term in reference to the after the 20th taxable year, does that sort of envision the fact that they have amended it, that as they've gotten in to it that the project has changed some so they have to go beyond the 20 years that they originally thought?

Senator Cook – It could.

Senator Dotzenrod – You've got a 30 year absolute maximum.

Senator Cook – You have a 30 year absolute maximum.

Senator Oehlke – I think the way this reads where it says the taxable values as reset in the 21st taxable year may be used as a basis to determine tax increments. So then that gives that community flexibility to make that determination on their own if they want to use the new values or something in between. Or, does "may" mean you have to do it?

Senator Cook – We'll have to get Mr. Walstad down here to clarify that.

Senator Dotzenrod – The line above that says "must" be reset, to current taxable values.

Representative Wrangham – There was a lot of discussion in the interim study where this came from about reporting as a requirement of the TIF districts so that the Commerce Department would have information that we as a Legislature can get from time to time as needed to review this. In fact it was in the original bill that came out of the interim committee and I understand that those provisions have been taken out of the bill. They were probably a little too egregious; to demanding as far as requirements for reporting from a TIF district so I have prepared amendments .03007. Just kind of relaxed it a little and I realize this is going to take some studying so I passed it out for informational purposes at this time, but I think it's very important that we at least have some continued conversation about some sort of reporting.

Senator Cook – I remember when we took that out in the Senate. I think what we were looking for is a place where someone could go and get the information and that is why we put it in to the Commerce Department. Did the House Finance and Tax Committee when they heard this bill have any discussions at all about the reporting requirements of the original bill?

Representative Wrangham – Not that I recall. In fact being involved in the interim committee and realizing that we were feeling strongly about that, I had thought that it was included in another bill that we passed out which dealt basically with renaissance zones and what they needed to report and I thought we just lumped it all into one in that bill. In

further research since we last met I looked at that and it doesn't appear that TIF districts were included in that reporting.

Representative Streyle – Would you like someone to prepare something similar to what you did for the existing TIF's?

Senator Cook – I think that would be wise.

Representative Streyle – Also in section 1 of the current bill the definition, I know we touched on that a little bit, was there any talk about further amending that, using some of your old language also?

Senator Cook – I think before we finish this conference committee I certainly think we need to have that discussion. If you have some ideas there I would suggest that we start working toward that.

Senator Dotzenrod – When we put the language into the bill that says “and has filed that plan with the Department of Commerce Division of Community Services” I thought that left enough room so that we would have some compliance and there would be some information there. One of the things that surprised me during the interim committee was that when we tried to get information about these tax increment districts around the state there was no place to go to get that. I think we got sort of a volunteer effort by the League of Cities to go around and collect this information for us. By requiring the plan be filed, we would have a depository and you could go then into this single agency and get a good picture of what is going on across the state because it would all be there and they would probably set up some way of having a filing system or an organization. It does seem like we are getting very specific in these particulars that we are going to spell out in section 4 that Representative Wrangham had proposed. I want to be sure we aren't posing a burden here.

Representative Wrangham – We don't want to put on too much reporting requirements that they become duplicated or onerous to the point where they are going to cost taxpayers money. Another important part of this amendment is calling for public meeting at which time the other entities that are affected by the TIF district would be invited and encouraged. Originally I had thought of maybe putting in there that it had to include this meeting. Had to include, I think the original language said there had to be a member of the school board there on this committee that would discuss this thing and that might have gotten a little onerous. What I'm asking for here, my intent anyway is that they have a public hearing and invite the members from the board of those entities to come and they would explain to them at that time what the affects of the TIF district are expected to be and what they are. I think this is all information that, in defense of TIF districts, if once this information is all collected and available it's going to be able to show that they have a productive one that does some good things it will be easier for them to perpetuate.

Senator Cook closed discussion on SB 2050.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2050
4/15/2011
Job Number 16626

☒ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Tax increment financing district restrictions

Minutes:

Conference Committee

Senator Cook opened discussion on SB 2050.

Senator Cook – I would like to ask Jerry Hjelmstad to the podium and speak to the amendments that Representative Wrangham offered yesterday regarding reporting.

Jerry Hjelmstad, North Dakota League of Cities – Section 4 of the amendments that Representative Wrangham introduced relate to the public hearing and the notice requirement for the public hearing. There currently is, earlier in this chapter a public hearing notice requirement for a TIF district. What this does is provides for an individual notice or invitation to the taxing districts and we would hope that if the committee decides to go with this amendment that you would narrow it down to taxing districts that would have to be notified to the county, the school district, and the park district instead of all the other taxing districts that may be out there. The other part of section 4 provides for what information would have to be provided at the hearing. The anticipated cost, the anticipated revenue, and the anticipated date when the plan will be completed we feel that is all information that would be provided at the hearing anyway. We had a question on the breakdown on subdivision 1 with a, b, c, and d whether they need that detail in the law because the type of anticipated cost that would be for each project they are going to vary depending on what type of project it is. Section 5, providing for the financing reports, annual report to the Department of Commerce, of course the bill as it stands now does provide for filing the TIF district plan with the Department of Commerce, that is new language in the bill. This could require an annual report. The information that is required in the annual report is information that could be provided by all the districts.

Senator Cook – Is there any information here that Representative Wrangham is asking for that the public cannot obtain today??

Jerry Hjelmstad, North Dakota League of Cities – They would be able to obtain all the information from the auditor or whoever is filing the information for the TIF district.

Representative Kelsh – On section 4, item 1b, the cost of demolition removal, are those costs determined by an estimate or are they determined by getting bids once the TIF has been established?

Jerry Hjelmstad, North Dakota League of Cities – My understanding is that all these costs would be estimated costs at this point.

Senator Cook – When we look at the benefit of filing a report with the Department of Commerce just so we have a central depository. Is there any benefit do you think in the interest of the public knowing what's involved there just requiring that that report contains some if not all of this information? So that if someone wanted to find out this information they could go to the Department of Commerce.

Jerry Hjelmstad, North Dakota League of Cities – Probably for the larger cities they would not have a problem with doing this. It would be a burden on the smaller cities where the auditors basically have the job of doing all the work on it.

Jerry Hjelmstad, North Dakota League of Cities – In discussing with some of the committee members there is an interest in a definite end date on the TIF districts and I drafted amendments that would provide for a definite end date.

Jerry Hjelmstad, North Dakota League of Cities – Handed out his proposed amendments and briefly talked about them.

Representative Streyle – In looking over this sheet it doesn't look like any of these outside of a few have been more than 15-20 years. So a 30 year max might be excessive, 20 year with a 5 year bump for a total of 25 years, what's they committees thoughts on that?

Senator Dotzenrod – One of the communications we got was I think Kilborn, they were developing a parking area in the downtown area and he was looking for 25 years. Part of his argument was that the return that they've got on something like that isn't as great as something like a hotel or some development of other real estate. That is, they expected this to be sort of a service and it would pay for itself over time but he was asking us in that email if we could go to 25 years because he was pretty certain he wasn't going to get the return back, this wasn't going to be as profitable as a hotel or something like that.

Senator Cook – I think one of the biggest factors in the length of a TIF district is to what degree is it used just to allow for a particular project, a particular location to redevelop its property vs. to what degree is it used for infrastructure.

Representative Wrangham – I agree that some of these tools have been very affective and we have created many such tools, TIF districts being only one of them. I believe if you read chapter 40-58-20 and look through the entire chapter which I have done a great length, I come back to the finding that TIF districts were intended for repairing blighted areas or slum areas, I don't believe TIF districts were intended as an economic development tool. We have put some tools out there for economic development and have been used very well, but I think that is where we run in to some problems.

Representative Streyle – For the blighted area definition I wouldn't mind personally using the Senate language and then leaving ours in as far as a predominately open developer for agricultural purposes or assessed agriculture. My personal fear is that you just reassess it as something else.

Senator Cook closed discussion on SB 2050.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2050
4/16/2011
Job Number 16687

☒ Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Tax increment financing district restrictions

Minutes:

Conference Committee

Chairman Cook opened discussion on SB 2050.

Representative Streyle went through a proposed amendment.

Jerry Hjelmstad, North Dakota League of Cities – I see at the top that the definition of blighted property will now include residential property and I think if it's actually blighted property in a TIF district to dealing with blighted property it could include both residential and commercial so if they are trying to deal with blighted property I don't think you can totally keep residential property out of the blighted definition. That would prevent them from doing any renewal area that's mixed, commercial and residential.

Senator Cook – How about predominately as residential property?

Jerry Hjelmstad, North Dakota League of Cities – If it was vacant property that's assessed as residential, it's an open area that's assessed as residential then I guess I understand that but if it's actually blighted residential area as part of what the urban renewal is designed to deal with its blighted area so.

Senator Cook – I think what we are trying to do is to disallow what a couple cities, and one in particular has done and that's go out and take farm land. We understand in a downtown area when they do a TIF district that a lot of the projects could be part residential and part commercial.

Representative Streyle – My intent was to not allow outskirts of city which is ag land, calling it blight, using a TIF district and doing a residential development. That was the main intent. I don't think in researching and reading the original TIF bill, I don't think that was ever the intent to use it to develop a subdivision or something. I believe there are not many cities that include homes in it. I believe Bismarck does include a bunch of housing units which I would argue wasn't the intent either to include a whole block and say that that's blight and then use that tax money for commercial development.

Senator Cook – Would the League of Cities have a position on our effort to restrict this as we have said we want to restrict it and that is reaching out in to the outskirts of town?

Jerry Hjelmstad, North Dakota League of Cities – I guess there would be open areas. This is residential or something of that sort. I haven't had a chance to look at it too closely except I see they have reduced the terms which we would like 25 instead of 20. It's been expressed to us that that is one of the most important features of it.

Senator Cook – What about the language that we would have for existing TIF districts? Is it the same issue, the 20 vs. 25?

Jerry Hjelmstad, North Dakota League of Cities – I think the issue there is more along the, continue for 10 years.

Senator Cook – How about the reporting?

Jerry Hjelmstad, North Dakota League of Cities – We support the idea of giving notice to the county, school district and park district and we support the idea of providing a copy of the plan to the Department of Commerce and some of this other information would be available in the audit report that the city files with the state auditor's office. We would not favor section 5 but section 4 as far as notice to the major taxing entities, counties, school districts, and park districts, we would support that.

Senator Cook – So section 5 you would rather that come out of there?

Jerry Hjelmstad, North Dakota League of Cities – We are not in favor of adding another report.

Representative Streyle – This report here that you provided I think is pretty straight forward, pretty simple. It tells you balance owed, how much is on hand, it kind of gives a clear picture on what's going on. Would you support something similar to that filed?

Jerry Hjelmstad, North Dakota League of Cities – Our concern is that the information is currently available and it's another burden for the smaller and medium sized cities to file a report. It is information that is available at this time.

Senator Cook asked if anyone would object to recessing for a bit to give Jerry Hjelmstad, North Dakota League of Cities time to review the amendments so he could speak to them.

Representative Kelsh asked Marcy Dickerson, Tax Department to come forward to answer questions.

Representative Kelsh asked Marcy how she left about the definition of a blighted area.

Marcy Dickerson, Tax Department – In my own opinion existing residential property can be blighted property. I've seen some stuff that I would consider blighted property but I want to bring to your attention that vacant land is not to be assessed as residential. If it's on the outskirts of the city, until there are actual residents on that land it has to be assessed as

commercial. If it's not agricultural it goes to commercial. By law property is not residential unless it is being used as a residence.

Senator Cook – Current law has allowed, through their city attorneys interpretation of the law, in some cases to go out and bring in an area of agricultural land and create a TIF district to help finance the infrastructure. That's what current law has allowed to happen. What would you suggest that we change this language to say to make sure that it's clear that the committee's intent here is that that could not happen?

Marcy Dickerson, Tax Department – I think the language excluding agricultural property pretty much takes care of it. It would not prevent them from annexing land that does meet the criteria for being converted to commercial property. If the law meets the 4 out of 7 criteria that are in the statute it is suppose to be changed from being assessed as agricultural to commercial. In that case if they assessed it properly it would not be agricultural property and this prohibition would not prevent use of a TIF district for development of that land.

Senator Cook – So bring it in, assess it as commercial, create a TIF district and then build houses on it and change it to residential.

Marcy Dickerson, Tax Department – Yes that could be done as I read this.

Senator Cook – How would you change it?

Marcy Dickerson, Tax Department – I would have to understand exactly what it is you want to accomplish. You don't want that land to be brought in, it's classification changed and then developed by using a TIF district. Well, you would have to put in some kind of language about maybe a time frame, land that has not been assessed other than agricultural for X amount of years or something. If they are going to develop it I guess they can conceivably develop it without a TIF district if that's what they had in mind.

Senator Cook closed discussion.

Senator Cook called discussion back to order.

Representative Streyle suggested having a report with balance owed, balance on hand, and possibly the years left as well.

Senator Cook asked how everyone felt about that. All agreed that would be fine.

Further discussion followed on the definition of a blighted area.

Senator Cook closed discussion on SB 2050.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee

Lewis and Clark Room, State Capitol

SB 2050

4/18/2011

Job Number 16738

☒ Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Tax increment financing district restrictions

Minutes:

Conference Committee

Senator Cook opened discussion on SB 2050.

The proposed amendments dated April 18, 2011 were reviewed and agreed upon by all members.

Representative Wrangham moved that the House recede from its amendments and amend further with these proposed amendments.

Seconded by **Representative Streyle**.

Senator Cook – Ask the clerk to take the roll. (6-0-0)

April 18, 2011

JB
4-19-11
lot 2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2050

That the House recede from its amendments as printed on page 899 of the Senate Journal and page 1071 of the House Journal and that Engrossed Senate Bill No. 2050 be amended as follows:

Page 1, line 1, after "40-58-20" insert "and sections 40-58-20.2 and 40-58-20.3"

Page 1, replace line 20 with "any land that has been assessed as agricultural property within the last ten years unless it was located within the interior boundaries of a city for at least ten years."

Page 2, line 5, remove "Tax increments computed for a development or renewal area under this"

Page 2, replace lines 6 through 9 with:

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

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

Page 2, line 15, replace "may" with "shall"

Page 2, after line 18, insert:

"**SECTION 4.** Section 40-58-20.2 of the North Dakota Century Code is created and enacted as follows:

40-58-20.2. Tax increment financing proposal - Public hearing - Invitation to representatives of affected taxing districts.

Before approval of a development or renewal plan for any development or renewal area under section 40-58-20, the governing body of the municipality shall conduct a public hearing on the proposal. The governing body shall provide invitations

2 of 2
to participate in the public hearing to the governing body of each county, school district, and park district within the development or renewal area. At a minimum, the governing body of the municipality shall provide the following information at the public hearing:

1. The anticipated costs of development of property to be reimbursed by tax incentives.
2. The anticipated annual revenue from tax increments which will be received to complete the development or renewal plan.
3. The anticipated date when the plan will be completed, the costs will be fully paid, and the tax increments will be released.
4. The estimate of the dollars annually attributable to the levies from each taxing entity which will be credited to the tax increment fund.

SECTION 5. Section 40-58-20.3 of the North Dakota Century Code is created and enacted as follows:

40-58-20.3. Tax increment financing reports.

For each development or renewal plan for any development or renewal area under section 40-58-20 in existence at the end of a calendar year, the governing body of the municipality shall file an annual report with the department of commerce, by the following July thirty-first, which is in a format prescribed by the department. The report must include:

1. The total of outstanding indebtedness.
2. The balance of funds on hand.
3. The name of the tax increment financing district."

Renumber accordingly

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Finance and Taxation

Bill/Resolution No. SB 2050 as (re) engrossed

Date: 4-18-11

Roll Call Vote #: 1

Action Taken

- ☐ SENATE accede to House amendments
☐ SENATE accede to House amendments and further amend
☐ HOUSE recede from House amendments
☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 899

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) SB 2050 was placed on the Seventh order of business on the calendar

Motion Made by: Rep Wrantham Seconded by: Rep Streyle

Senators				Yes	No	Representatives				Yes	No
Senator Cook	xxx	xxx	xxx	X		Rep Wrantham	xxx	xxx	xxx	X	
Senator Behlke	xxx	xxx	xxx	X		Rep Streyle	xxx	xxx	xxx	X	
Senator Dotzenrodt	xxx	xxx	xxx	X		Rep S. Kelsh	xxx	xxx	xxx	X	

Vote Count: Yes 6 No 0 Absent 0

Senate Carrier Senator Cook House Carrier Rep Wrantham

LC Number 11.0230.03009 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2050, as engrossed: Your conference committee (Sens. Cook, Oehlke, Dotzenrod and Reps. Wrangham, Streyle, S. Kelsh) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 899, adopt amendments as follows, and place SB 2050 on the Seventh order:

That the House recede from its amendments as printed on page 899 of the Senate Journal and page 1071 of the House Journal and that Engrossed Senate Bill No. 2050 be amended as follows:

Page 1, line 1, after "40-58-20" insert "and sections 40-58-20.2 and 40-58-20.3"

Page 1, replace line 20 with "any land that has been assessed as agricultural property within the last ten years unless it was located within the interior boundaries of a city for at least ten years."

Page 2, line 5, remove "Tax increments computed for a development or renewal area under this"

Page 2, replace lines 6 through 9 with:

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

Page 2, line 15, replace "may" with "shall"

Page 2, after line 18, insert:

"SECTION 4. Section 40-58-20.2 of the North Dakota Century Code is created and enacted as follows:

40-58-20.2. Tax increment financing proposal - Public hearing - Invitation to representatives of affected taxing districts.

Before approval of a development or renewal plan for any development or renewal area under section 40-58-20, the governing body of the municipality shall conduct a public hearing on the proposal. The governing body shall provide invitations to participate in the public hearing to the governing body of each county, school district, and park district within the development or renewal area. At a minimum, the governing body of the municipality shall provide the following information at the public hearing:

1. The anticipated costs of development of property to be reimbursed by tax incentives.
2. The anticipated annual revenue from tax increments which will be received to complete the development or renewal plan.
3. The anticipated date when the plan will be completed, the costs will be fully paid, and the tax increments will be released.
4. The estimate of the dollars annually attributable to the levies from each taxing entity which will be credited to the tax increment fund.

SECTION 5. Section 40-58-20.3 of the North Dakota Century Code is created and enacted as follows:

40-58-20.3. Tax increment financing reports.

For each development or renewal plan for any development or renewal area under section 40-58-20 in existence at the end of a calendar year, the governing body of the municipality shall file an annual report with the department of commerce, by the following July thirty-first, which is in a format prescribed by the department. The report must include:

1. The total of outstanding indebtedness.
2. The balance of funds on hand.
3. The name of the tax increment financing district."

Renumber accordingly

Engrossed SB 2050 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2050



Subject: Reforms to "Tax Increment Financing"

Bill: SB2050

Testimony Provided By: Dustin Gawrylow

Lobbyist #160

Presented To: Senate Finance and Tax Committee

January 5th, 2011

In the 1970's, the Housing and Community Development Act of 1974 led to the enactment of state statutes providing for "Urban Renewal". One of the "tools" provided in North Dakota Urban Renewal law is designed to assist in financing the costs of remediating slums and blight in cities using tax increment financing (TIF). While this seems well intentioned and perfectly acceptable on the surface, like any policy that gives other levels of government new tools, TIF has been abused.

Case In Point: In Bismarck, the initial area of redevelopment under "Urban Renewal" was the block now occupied by the Radisson Hotel.

When using TIF, the county auditor freezes the taxable valuation of a property in a TIF district and in subsequent years directs the taxes paid on the increased value of the property (increment) to a TIF account that is used to pay the costs associated with redevelopment of the property.

Under state law, when the project costs are fully paid, the city is required to report that fact to the county auditor so the property could then be properly taxed for the benefit of the Bismarck School District, Bismarck Park District, Burleigh County,

The North Dakota Taxpayers' Association is a membership-funded advocacy group designed to get taxpayers a voice in legislative matters. NDTA is 100% in-state funded, and counts over 500 North Dakotans as current members. NDTA is the only organization with a full time lobbyist dedicated to advocating on behalf of the taxpayer.

North Dakota Taxpayers' Association

NDTaxpayers.com • 1720 Burnt Boat Drive Suite 102 • Bismarck, ND 58503 • (701) 751-2530

and the City. And any money left in the account is to be sent back to taxing jurisdictions.

In the case of the Radisson, the "increment" value of the property has generated no tax revenue for any political subdivision other than the City who uses the money to fund projects in the Bismarck TIF district.

In addition, the City has subsequently expanded the TIF district to include all of downtown Bismarck while unlawfully taxing the entire TIF district at a "base level" originally established in 1979 for all political subdivisions with the "increment" going into a TIF fund. The fund has more than \$15 million which the city now uses to favor politically connected developers, lawyers, economic development directors and other implementers.

Today, many in downtown Bismarck are under the impression that the \$15 million is somehow extra taxation that they would not have otherwise paid. The reality is that, this \$15 million if not for the perpetual TIF fund, would have gone to the school district, park district and county. In other words, by not using the TIF funds to develop the downtown area, bringing up the tax base along the way, the TIF fund has short changed local education fund. Furthermore, it has marginally increased the property taxes of every other taxpayer in the city.

While another organization has taken this specific issue to court, the position of the Taxpayers Association is that limits must be placed on local government's ability to both manage TIF districts and manage the revenue funds already collected under TIF law.

SB2050 is a good first step in this process, NDTA supports this bill as written, but encourages this committee and the legislature to look at further reforms as well.

Cities have to be made aware that the TIF fund laws were not designed to allow them to create slush funds for certain areas of town. They were designed for a specific purpose, on a specific piece of property, for a specific time period.

In an ideal world, all property taxpayers would pay the same rate on all property. Instead of skimming revenue that should be directed to all political subdivisions, zone-based special development would operate just as all special assessments do -- with the neighborhood seeing the most benefit paying the bulk of the bill.

The ultimate solution is to abolish the TIF process altogether and require that the funds be dedicated to mill levy reduction and capital expenditures. In the case of Bismarck, we know from events of the last few months that could mean anything up to and including buying a strip mall and telling the public there are no immediate plans to change its purpose.

Chairman Cook, members of the committee: the time is now to reform Tax Increment Financing before it becomes a sticking point in real overall property tax reform.

Attachments:

1. Tax Foundation article on Tax Increment Financing
2. Wikipedia article on Tax Increment Financing
3. (Two) Bismarck Tribune News articles on the Bismarck TIF lawsuit

Additional Resource

- **STUDY BY THE UNIVERSITY OF SOUTHERN CALIFORNIA LAW SCHOOL (Competing for the Next Hundred Million Americans: The Uses and Abuses of Tax Increment Financing)**



August 18, 2006

The Economic Shell Game of 'Tax Increment Financing'

by Andrew Chamberlain

The Des Moines Register has been running an excellent series of articles on the growing use of "tax increment financing" (TIF) by state and local governments.

TIF has been around for decades, but it's become ubiquitous in recent years. Here's how it works: Lawmakers issue debt, using the proceeds to subsidize economic development—including malls, parking garages and street landscaping—on the theory that development projects will increase future property tax revenue by enough to repay the debt with a profit.

Sounds like a great deal, right? The only problem is that state and local governments almost never keep score on the costs and benefits of projects, which often end up a net loser for taxpayers.

One of the better Register pieces asks the question, "Do TIFs really attract new businesses?" Not surprisingly, they answer in the negative:

While tax increment financing has helped booming suburban cities expand their tax bases and pay for costly infrastructure needed to lure businesses, there is little evidence to suggest such local incentives actually influence where new businesses locate, researchers say.

"In fact there is a growing amount of research indicating the vast majority of businesses would have located in the winning jurisdiction nonetheless," an April 2006 study released by Iowa State University found.

Peter Fisher and Alan Peters, two University of Iowa researchers, studied special incentives given in economic development zones in 13 states. The two found little evidence that economic development grants or tax incentives did much good.

"We figured, if they were working, the zones given the larger incentives would do better than those given trivial ones. That wasn't the case," Fisher said. "Often growth in the area was determined by other factors: crime, access to rail, the labor market. Even when they were successful, it didn't mean residents in the zone were helped. That's because the employers would draw workers from the whole metropolitan area."

Almost 6 percent of Iowa's total property tax base is being used to finance TIF-related projects. In spite of that substantial investment, little empirical evidence exists suggesting the financial tool alone is fueling population growth.

[Read the full piece here.](#)

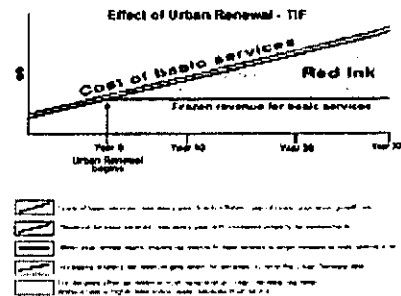
Tax increment financing

From Wikipedia, the free encyclopedia

Tax Increment Financing, or **TIF**, is a public financing method which has been used as a subsidy for redevelopment and community improvement projects in many countries including the United States for more than 50 years. Similar or related approaches are used elsewhere in the world, such as Value capture.

Contents

- 1 Theory
- 2 Criticism
 - 2.1 Examples
 - 2.1.1 Chicago
 - 2.1.2 Albuquerque
 - 2.1.3 Alameda, California
- 3 Applications and administration
- 4 See also
- 5 References
- 6 External links



graph showing TIF results.
Click to enlarge

Theory

TIF is a method to use future gains in taxes to finance current improvements (which theoretically will create the conditions for those future gains). When a development or public project is carried out, there is often an increase in the value of surrounding real estate, and perhaps new investment (new or rehabilitated buildings, for example).

This increased site value and investment sometimes generates increased tax revenues. The increased tax revenues are the "tax increment." Tax Increment Financing dedicates tax increments within a certain defined district to finance debt issued to pay for the project. TIF is designed to channel funding toward improvements in distressed or underdeveloped areas where development might not otherwise occur. TIF creates funding for "public" projects that may otherwise be unaffordable to localities, by borrowing against future property tax revenues.^[1]

Currently, thousands of TIF districts operate nationwide in the US, from small and mid-sized cities, to the State of California, which invented tax increment financing in 1952. California maintains over four hundred TIF districts with an aggregate of over \$10 billion per year in revenues, over \$28 billion of long-term debt, and over \$674 billion of assessed land valuation (2008 figures).^[2]

49 states and the District of Columbia have enabled legislation for tax increment financing. Arizona is now the only state without a tax increment financing law. While some states, such as California and Illinois, have used TIF for decades, many others have only recently passed or amended state laws that allow them to use this tool.^[3]

Since the 1970s, a reduction in federal funding for redevelopment-related activities including spending increases, restrictions on municipal bonds which are tax-exempt bonds and an administrative transference of urban policy to local, lower-level governments, has led many cities to consider tax increment financing. State-imposed caps on municipal property tax collections and limits on the amounts and types of city expenditures have also caused local governments to adopt funding strategies like this as a kind of loophole through the restrictions.

Criticism

TIF districts are not without criticism. Although tax increment financing is one mechanism for local governments that does not directly rely on federal funds, many question whether TIF districts actually serve their resident populations. As investment in an area increases, it is not uncommon for real-estate values to rise and for gentrification to occur. An organization called Municipal Officials for Redevelopment Reform (MORR) holds regular conferences on redevelopment abuse.^[4]

Further claims made by TIF opponents:

- Although generally sold to legislatures as a tool to redevelop blighted areas, some districts are drawn up where development would happen anyway such as prime areas at the edges of cities. California has had to pass legislation designed to curb this abuse.^{[5][6]}
- The designation as blighted can allow governmental condemnation of property through eminent domain. The famous *Kelo v. City of New London* Supreme Court case, where homes were condemned for a private development was about actions within a TIF district.
- Normal inflationary increases in property values are captured with districts, representing money that would have gone to the public coffers even without the financed improvements.

- Districts are drawn too large, capturing value, again, that would have been increased anyway.
- The process leads to favoritism for politically connected developers, lawyers, economic development directors and other implementers.
- Funding often goes toward what have been traditionally private improvements from which developers profit. When the public "invests" in these improvements it is the developers that still receive the return.
- Approval of districts can sometimes capture one entity's future taxes without its *official* input, i.e. a school districts taxes will be frozen on action of a city.
- Capturing the full tax increment and directing it to repay the development bonds ignores the fact that the incremental increase in property value likely requires an increase in the provision of public services, which will now have to be funded from elsewhere (often from subsidies from less economically thriving areas). For example, the use of tax increment financing to create a large residential development means that public services from schools to public safety will need to be expanded, yet if the full tax increment is captured to repay the development bonds, other money will have to be used.^[7]
- TIF can be seen as a kind of reverse value capture with private developers capturing what should be public tax dollars.

Examples

Chicago

The city of Chicago, in Cook County, Illinois, has a significant number of TIF districts and has become a prime location for examining the benefits and disadvantages of TIF districts. The city runs 131 districts with tax receipts totaling upwards of \$500 million for 2006.^[8] Lori Healey, appointed commissioner of the city's Planning and Development department in 2005 was instrumental in the process of approving TIF districts as first deputy commissioner.

The Chicago Reader, a Chicago alternative newspaper published weekly, has published articles regarding tax increment financing districts in and around Chicago. Written by staff writer Ben Joravsky, the articles are critical of tax increment financing districts as implemented in Chicago.^[9]

Cook County Clerk David Orr, in order to bring transparency to Chicago and Cook County tax increment financing districts, began to feature information regarding Chicago area districts on his office's website.^[10] The information featured includes City of Chicago TIF revenue by year, maps of Chicago and Cook County suburban municipalities' TIF districts.

The Neighborhood Capital Budget Group of Chicago, Illinois, a non-profit organization, advocated for area resident participation in capital programs. The group also researched and analyzed the expansion of Chicago's TIF districts. Though the organization closed on February 1, 2007, their research will be available on their website for six months.^[11]

Albuquerque

Currently, the largest TIF project in America is located in Albuquerque, New Mexico: the \$500 million Mesa del Sol development. Mesa del Sol is controversial in that the proposed development would be built upon a "green field" that presently generates little tax revenue and any increase in tax revenue would be diverted into a tax increment financing fund. This "increment" thus would leave governmental bodies without funding from the developed area that is necessary for the governmental bodies' operation.

Alameda, California

In 2009, SunCal Companies, an Irvine, California based developer, introduced a ballot initiative that embodied a redevelopment plan for the former Naval Air Station Alameda and a financial plan based in part on roughly \$200 million worth of tax increment financing to pay for public amenities. SunCal structured the initiative so that the provision of public amenities was contingent on receiving tax increment financing, and on the creation of a community facilities (Mello-Roos) district, which would levy a special (extra) tax on property owners within the development.^[12] Since Alameda City Council did not extend the Exclusive Negotiation Agreement with Suncal, this project will not move forward. In California, Community Redevelopment Law governs the use of tax increment financing by public agencies.^[13]

Applications and administration

Cities use TIF to finance public infrastructure, land acquisition, demolition, utilities and planning costs, and other improvements including sewer expansion and repair, curb and sidewalk work, storm drainage, traffic control, street construction and expansion, street lighting, water supply, landscaping, park improvements, environmental remediation, bridge construction and repair, and parking structures.

State enabling legislation gives local governments the authority to designate tax increment financing districts. The district usually lasts 20 years, or enough time to pay back the bonds issued to fund the improvements. While arrangements vary, it is common to have a city government assuming the administrative role, making decisions about how and where the tool is applied.^[14]

Most jurisdictions only allow bonds to be floated based upon a portion (usually capped at 50%) of the assumed increase in tax revenues. So, for example, if a \$5,000,000 annual tax increment is expected in a development, which would cover the financing costs of a \$50,000,000 bond, only a \$25,000,000 bond would be typically allowed. Providing that the project is moderately successful, this would mean that a good portion of the expected annual tax revenues (in this case over \$2,000,000) would be dedicated to other public purposes other than paying off the bond.

See also

- Public finance
- Value capture

References

- [^] Various, (2001). Tax Increment Financing and Economic Development, Uses, Structures and Impact. Edited by Craig L. Johnson and Joyce Y. Man. State University of New York Press.
- [^] California State Controller's Annual Report on Redevelopment Agencies, 2007-2008 (http://www.sco.ca.gov/Files-ARD-Local/LocRep/redevelop_fy0708redev_reports.pdf)
- [^] Arkansas (2000), Washington (2001), New Jersey 2002, Delaware 2003, Louisiana 2003, North Carolina 2005, and New Mexico 2006.
- [^] "Redevelopment.com website" (<http://www.redevelopment.com/>) . <http://www.redevelopment.com/>. Retrieved 2009-12-04.
- [^] "Redevelopment: The unknown government" (<http://www.coalitionforredevelopmentreform.org/references/morrreport.php>) . Coalition for Redevelopment Reform. <http://www.coalitionforredevelopmentreform.org/references/morrreport.php>. Retrieved 2009-12-04.
- [^] "Subsidizing Redevelopment in California" (http://www.ppic.org/content/pubs/report/R_298MDR.pdf) . Public Policy Institute of California. http://www.ppic.org/content/pubs/report/R_298MDR.pdf. Retrieved 2009-12-04.
- [^] See Richard Dye and David Merriman, "The Effects of Tax-Increment Financing on Economic Development," 47 *Journal of Urban Economics*, no. 2 (2000) pp. 306-328
- [^] "City of Chicago TIF Revenue Totals by Year 1986-2006" (http://www.cookctyclerk.com/pdf/Chicago_TIF_revenue.pdf) (PDF). Cook County

- Clerk's Office. http://www.cookctyclerk.com/pdf/Chicago_TIF_revenue.pdf. Retrieved 2008-05-29.
9. ^ "articles by Reader staff writer Ben Joravsky on Chicago's TIF (tax increment financing) districts" (<http://www.chicagoreader.com/tifarchive/>) . Chicago Reader. <http://www.chicagoreader.com/tifarchive/>. Retrieved 2008-05-29.
 10. ^ "TIFs 101: A taxpayer's primer for understanding TIFs" (<http://www.cookctyclerk.com/sub/TIF.asp>) . Cook County Clerk's Office. <http://www.cookctyclerk.com/sub/TIF.asp>. Retrieved 2008-05-29.
 11. ^ "Research" (<http://www.ncbg.org/research.htm>) . Neighborhood Capital Budget Group of Chicago, Illinois. <http://www.ncbg.org/research.htm>. Retrieved 2008-05-29.
 12. ^ "Alameda Point Development Initiative Election Report Executive Summary Part I" (http://www.ci.alameda.ca.us/news/pdf/0905_latest_report.pdf) (PDF). City of Alameda. http://www.ci.alameda.ca.us/news/pdf/0905_latest_report.pdf. Retrieved 2009-12-04.
 13. ^ "California Community Redevelopment Law" (<http://www.hcd.ca.gov/hpd/rda/rdalaw.html>) . <http://www.hcd.ca.gov/hpd/rda/rdalaw.html>. Retrieved 2009-12-05.
 14. ^ "Growth Within Bounds: Report of the Commission on Local Governance for the 21st Century" (<http://www.opr.ca.gov/planning/docs/79515.pdf>) (PDF). State of California. <http://www.opr.ca.gov/planning/docs/79515.pdf>. Retrieved 2009-12-04.

External links

- *Subsidizing Redevelopment in California* (1998). by Michael Dardia, Written for the Public Policy Institute of California (<http://www.ppic.org/main/publication.asp?i=70>)
- Nathan A. Benefield's academic paper titled *The Effects of Tax Increment Financing on Home Values in the City of Chicago* (2003). Benefield's paper was prepared for presentation at the annual meeting of the Midwest Political Science Association. (<http://publishing.yudu.com/Freedom/Acvui/TaxIncrementFinancin/>)
- Swenson & Eathington's *Do Tax Increment Finance Districts in Iowa Spur Regional Economic and Demographic Growth?* (2002) (http://www.econ.iastate.edu/research/webpapers/paper_4094_N0138.pdf)
- Weber's paper titled *Making Tax Increment Financing (TIF) Work for Workforce Development: The Case of Chicago* (1999) (<http://www.uic.edu/cuppa/gci/pdf/TIF.pdf>)
- An abstract of Weber's *Equity and Entrepreneurialism: The Impact of Tax Increment Financing on School Finance* (2003). (<http://uar.sagepub.com/cgi/content/abstract/38/5/619>)
- An abstract of Weber, et al.'s *Does Tax Increment Financing Raise Urban Industrial Property Values?* (2003) ([http://taylorandfrancis.metapress.com/4omkl055n0gkpu55zvrirvvu\)/app/home/contribution.asp?referrer=parent&backto=issue,6,12;journal,38,265;linkingpublicationresults,1:10040](http://taylorandfrancis.metapress.com/4omkl055n0gkpu55zvrirvvu)/app/home/contribution.asp?referrer=parent&backto=issue,6,12;journal,38,265;linkingpublicationresults,1:10040))
- An abstract of Robinson's *Hunger Discipline and Social Parasites: The Political Economy of the Living Wage* (2004). (<http://uar.sagepub.com/cgi/content/abstract/40/2/246>)

- An abstract of Man's *Fiscal Pressure, Tax Competition and the Adoption of Tax Increment Financing* (1999). (<http://taylorandfrancis.metapress.com/link.asp?id=pt1puwu8jtbc37uk>)
- Hubbell & Eaton's *Tax Increment Financing in the State of Missouri* (University of Missouri-Kansas City, 1997) (<http://cei.haag.umkc.edu/cei/EconRep/June97/>)
- Wood & Hughes' report for Center on Wisconsin Strategy (at University of Wisconsin–Madison) titled *From Stumps to Dumps: Wisconsin's Anti-Environmental Subsidies* (2001) (<http://www.cows.org/pdf/rp-stumps.pdf>)
- Matthew Mayrl's report for Center on Wisconsin Strategy (at University of Wisconsin–Madison) titled *Refocusing Wisconsin's TIF System On Urban Redevelopment: Three Reforms* (2005) (http://www.cows.org/pdf/econdev/tif/rp-tif_2005.pdf) and the Executive Summary (http://www.cows.org/pdf/ex-tif_2005.pdf)

Retrieved from "http://en.wikipedia.org/wiki/Tax_increment_financing"

Categories: [Public finance](#) | [Taxation](#) | [Government](#)

- This page was last modified on 30 December 2010 at 18:47.
- Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. See Terms of Use for details.
Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.

 BismarckTribune.com

Lawsuit filed against the City of Bismarck over TIF funds

Leann.Eckroth@bismarcktribune.com | Posted: Tuesday, April 6, 2010 12:17 am

A Bismarck businessman, backed by the non-profit North Dakota Policy Council, is suing the city of Bismarck over its Tax Increment Financing District policy.

They argue the policy and its \$15 million balance violate the state constitution.

Erling "Curly" Haugland, who also is the president of the NDPC, filed a complaint in South Central District Court.

Haugland and the group want the city policy changed so that TIF money is awarded on a per project basis.

The lawsuit says the true value of all property tax revenue should be shared among all tax entities and the boundaries of the blanket TIF District be eliminated.

A statement issued by the group said it is filing the lawsuit, but Haugland is the sole party listed on it.

Bismarck's TIF District freezes property values for tax entities outside the boundaries at a 1979 floor level. Any true tax values above that are spent only on property improvements within the the TIF District.

The TIF district consists mostly of the mid-business section of town stretching from west Bismarck to 12th Street.

NDPC members said tax money outside the TIF District is spent according to the mill distribution of schools, county, city and parks. They argue that money spent within the TIF District should go to the others.

"This mechanism has provided a pool of funds for the city council to circumvent the wishes of the voter and fund quiet rail without voter approval," Haugland said.

Supporters of the lawsuit say funding a \$1.5 million quiet rail project and an \$8 million parking ramp must be done legally, not with TIF money.

Haugland argues that the state urban renewal area law allows a city to improve slum or blighted areas. He doesn't believe any of the property within Bismarck's TIF district qualifies.

Haugland said the lawsuit is not driven by quiet rail infrastructure and the parking ramp, but he said those projects do not follow state law. They are neither blighted property nor will they be taxable property once completed, he said.

Haugland also contends that money held within the TIF that is not shared with the remaining tax entities must be made up by taxpayers not within TIF district boundaries.

"The way the city is talking about funding the quiet rail and the parking ramp is not legal," said Brett Narloch, executive director of the NDPC. "We are asking for the city to stop using the TIF funding because it is illegal."

He said the group will accept the projects if a legal funding method is found.

"A lot of people who may have certain grievances against such things like tax increment financing might not be financially hurt enough to put their name in the news, file a lawsuit themselves, fund the entire thing by themselves. Groups like ours are around to help fund those things," Narloch said.

Haugland said he believes the city's previous request for a North Dakota attorney general's opinion over the legality of its urban renewal process will not proceed now that the lawsuit has been filed.

"There are an awful lot of taxpayers affected just as I am that just can't speak on issues like this," Haugland said.

City Administrator Bill Wocken said the city is aware the lawsuit has been filed. "We will not be able to react until we are able to fully review the document," he said Monday.

"I know Curly (Haugland) has strong feelings about economic development tools that are used in state law," said Bismarck City Commissioner Connie Sprynczynatyk.

She said she has not had a chance to view the document or consult with city attorney Charlie Whitman about its contents.

Whitman and Mayor John Warford were unavailable for comment.

NDPC members expect a ruling from a district judge could take nine months more.

 BismarckTribune.com

Sorting out TIF's legal requirements

Tribune editorial | Posted: Sunday, April 11, 2010 2:00 am

The city of Bismarck plans to partially finance three quiet-rail crossings and a parking ramp in downtown with the \$15-million balance in its tax increment financing fund. The capital in the fund represents part of the property tax payments from property owners, mostly businesses, from the same part of the community.

That strategy has been challenged by a lawsuit filed on behalf of Erling "Curly" Haugland, and supported by the North Dakota Policy Council. The suit contends the city illegally collected the TIF funds and has failed to follow the proper process in now attempting to spend those funds on quiet-rail crossings and a parking lot.

The city attorney disagrees.

However, Haugland's suit raises reasonable and debatable questions, in particular, about how the city established its TIF fund.

TIF programs are not something most people deal with. The idea is to encourage the improvement of "blighted" property by providing a financing incentive or alternative. It's an economic renewal program that takes into account of the value of "blighted" property and redevelops it, paying for the work with the property tax revenue from the increased value of the property.

For example, if the property tax bill on a blighted property was \$2,000, and after the improvements the property tax bill was \$3,000, then the difference, \$1,000, would go to pay for improvements instead of being distributed to the city, parks, schools and county as tax revenues.

Typically in North Dakota, once the value of the blighted property has been determined, the costs of the improvements are estimated, the city then sells bonds for that amount, and the property tax revenues over and above what would be generated by the blighted property go to paying off the bonds. This process is fairly clearly described in the law.

Bismarck does TIF differently. It marked the value of the downtown property in 1979 and then began accumulating all the increased property tax revenue since then in a fund, which has now reached \$15 million. The city has done this instead of using those funds to pay bonds for specific improvements. Now the city wants to use about \$8 million for a new parking ramp and \$1.5 million for quiet rail.

Although Bismarck's use of TIF accomplishes the same thing as other North Dakota cities -- in a counter intuitive sort of way -- that will be the question that the lawsuit will have to answer. The city had some uneasiness about the situation prior to Haugland's lawsuit, in that it had asked the North Dakota Attorney General for his opinion on Bismarck's TIF fund.

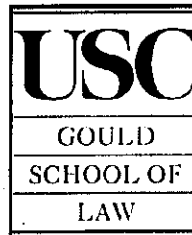
Haugland's lawsuit raises a number of other procedural issues related to Bismarck's use of TIF funds, but how Bismarck established and managed its TIF fund is the big one.

Although the actions that set up this issue go back more than 30 years, how the lawsuit is settled will help determine the city's role in economic development in the future.

**Competing for the Next Hundred Million Americans:
The Uses and Abuses of Tax Increment Financing**

George Lefcoe

**USC Center in Law, Economics and Organization
Research Paper No. C10-14
USC Legal Studies Research Paper No. 10-16**



**CENTER IN LAW, ECONOMICS
AND ORGANIZATION
RESEARCH PAPER SERIES and LEGAL
STUDIES RESEARCH PAPER SERIES**

University of Southern California Law School
Los Angeles, CA 90089-0071

Competing for the Next Hundred Million Americans: The Uses and Abuses of Tax Increment Financing

By George Lefcoe¹

Demographers predict that the US population will grow by one hundred million in 2050. Newcomers will settle in suburbia, particularly to the fast growing big cities of the south and west, cities in the resurgent heartland of the country, exurbia and 'superstar cities.'

Communities eager to appeal to these newcomers will use tax increment financing for public improvements such as stadiums, museums, plazas and promenades. These public improvements are often integrated into signature private redevelopment projects carefully designed to achieve environmental and planning objectives by being pedestrian-friendly, high density, and mixed use, accessible not only by automobile but public transit as well.

After illustrating the beneficial use of tax increment financing, I describe six major criticisms often leveled against tax increment financing (TIF). (1) TIF helps outer suburbs lure jobs from center cities and inner suburbs; (2) TIF should be confined to seriously blighted areas and is not; (3) TIF is often used to subsidize the increased supply of retail development in markets where demand is static, achieving little except the displacement of sales from other locations; (4) cities sponsoring tax increment projects unfairly and inefficiently drain property tax revenues from other taxing entities including schools and counties; (5) There are few serious obstacles preventing local governments from sponsoring TIF projects in places that would have attracted private development anyway, or bestowing subsidies greater than necessary upon firms agreeing to locate in marginal areas; and (6) Many local governments don't bother to analyze whether TIF projects are net tax revenue producers or assess periodically whether actual yields match initial projections.

I. INTRODUCTION: THE RESORT-LIKE WALKABLE URBAN PLACES WHERE THE NEXT HUNDRED MILLION AMERICANS ARE LIKELY TO LIVE.

A. OVERVIEW: THE EVOLVING URBAN FORM

Demographers are predicting that the US population will grow by more than 100 million in the next four decades.² Joel Kotkin in *The Next Hundred Million: America in 2050*,³

¹ Florine and Ervin Yoder Professor of Real estate Law, Gould School of Law, University of Southern California. Prepared originally as the basis for the Richard Babcock Memorial Lecture at the 2010 ALI-ABA Land Use Conference, the author gratefully acknowledges the enormous contribution to this paper of Frank Schnidman, the director and organizer of that conference, Gus B. Bauman, Robert H. Freilich, Daniel M. Klerman, and USC law students Parag L. Amin, Nicholas Christen, and Kaleb E. Keller, research assistants, summer 2010.

² See, e.g., Jeffrey S. Passel and D'Vera Cohn, U.S. Population Projections, 2005-2050 (Pew Research Center, February 11, 2008), Fig. 1. <http://pewhispanic.org/files/reports/85.pdf>

estimates how this increased population will distribute among four categories of destinations: (1) "superstar" cities, (2) suburbia, (3) exurbia, and (4) the resurgent heartland. He forecasts that fifty to seventy million of the one hundred million will locate in suburbia, mostly in the south and west.⁴ Kotkin predicts that 'superstar cities' will enjoy "massive opportunities to provide for as many as fifteen to twenty million new urban dwellers by 2050."⁵ The others will move to exurbia—very low density settlements beyond the boundaries of suburbia—and the growing cities in the country's heartland from the Mississippi River to the Rocky Mountains.-- Des Moines, Fargo, Sioux Falls, and Omaha,⁶ prominently among them.

For most people, especially families with school age children, what matters most in their location decisions are affordable housing, tolerable population densities, abundant business and job opportunities, decent public schools, and safe neighborhoods. The 'plain vanilla' suburbs will be their destination.⁷ Think San Fernando Valley in Los Angeles, or Queens in New York City. But a new variable has been added to the familiar factors that nurture or retard growth, plainly visible in 'superstar' cities.

Superstar cities was the title of a research paper published in 2006 by Wharton Professor Joseph Gyourko and associates. Leading the ranks of superstar cities are New York, Boston, San Francisco, Washington, D.C., Los Angeles.⁸ Seattle, Portland and Austin.⁹ . . . the affluent, particularly those with inherited wealth, as well as nomadic groups like college students and recent immigrants."¹⁰

³ Joel Kotkin, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* (2010).

⁴ Christopher B. Leinberger, *THE OPTION OF URBANISM* (Island Press, 2008), p. 4 and 7 at fn 1.

⁵ Joel Kotkin, *THE NEXT HUNDRED MILLION: AMERICA IN 2050*, p. 18 (2010).

⁶ See Martin Shukert, *A Synthesis of Visions: Planning, Politics, and Controversy Redeveloping Downtown Omaha*, Issue 1 Real Estate Rev. J. ART. 3 (2010): "During the last 30 years, downtown Omaha, Nebraska has experienced a true renaissance, changing from a traditional district with a declining office and retail base into a vital mixed use center. The Missouri Riverfront and adjacent areas, largely abandoned and ignored in 1980, have been transformed by a 110-acre redevelopment project anchored by the six-building, 650,000 square foot corporate headquarters campus of ConAgra Foods, a major city park, and the central dispatching center of the Union Pacific Railroad. Subsequent riverfront development includes the Qwest Center, with a 17,000-seat arena and 200,000 square foot exhibition hall and convention center; the adjacent 450-room Omaha Hilton and six other new hotels; the 25,000-seat ballpark that will be the permanent home to the NCAA College World Series beginning in 2011; a major corporate facility and continuing education center for the Gallup Organization; and new residential, retail, and entertainment development. The Bob Kerrey Pedestrian Bridge spans the Missouri River, linking the Omaha and Council Bluffs, Iowa trail systems and becoming the centerpiece of a 200-mile long pathway system that will connect four states. Elsewhere in downtown, Omaha's largest bank developed the 42-story, one million square foot First National Tower and adjacent data processing center; the city's daily newspaper, Omaha World-Herald built new publishing facilities; and the Union Pacific Railroad built a new corporate headquarters building. Downtown has added over 3500 new housing units since 1980 and completed many other projects, while at the same time preserving and considerably expanding the iconic mixed use Old Market Historic District. Downtown has become a neighborhood and regional destination, a place of both employment and residence, and, for most, a focus of considerable pride."

⁷ JOEL KOTKIN, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* 62-63 (2010)

⁸ Joel Kotkin, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* 18 (2010).

⁹ Joel Kotkin, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* 18 (2010).

¹⁰ Joel Kotkin, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* 18 (2010).

Terry Nichols Clark calls superstar cities "entertainment machines" for the privileged¹¹ and characterizes them as career launching pads for advantaged populations of young professionals in finance, design, media, advertising, and similar callings.¹² "A new image of urban America is in the making," said William H. Frey, a demographer at Brookings. "What used to be white flight to the suburbs is turning into 'bright flight' to cities that have become magnets for aspiring young adults who see access to knowledge-based jobs, public transportation and a new city ambiance¹³ to appeal to what social thinker Richard Florida calls the 'creative class'."¹⁴

Land use strategist and real estate developer Christopher Leinberger labels the type of development that will act as a magnet in attracting the next 100 million Americans as "walkable urbanism" where "schools, shopping, parks, friends, and even employment within walking distance or transit of one's home."¹⁵ These places will be modeled on the Main Streets of earlier decades, the retail cores that were drained of trade from the 1960s to the 1990s by the drivable, ubiquitous regional shopping malls that have come to anchor so much of suburbia, low density buildings centered on acres of asphalt-covered surface parking lots separating the structure from the nearest road.

Kotkin agrees, and sees these new settlements taking shape much differently than the bedroom suburbs that were developed after World War II with single-use, wall-to-wall production housing tracts, completely dependent on the automobile. Kotkin anticipates that suburbs will be carefully redeveloped to "sustain their economic and social viability."¹⁶ "These suburbs of tomorrow will have a diversity of housing types, thriving town centers, and growing cultural and religious institutions. They will provide more opportunities to walk, ride bikes, and work at nearby companies."¹⁷ Suburban residents are looking for congenial and comfortable places where they can get out of their cars and enjoy a stroll through tree lined streets enlivened by carefully designed boutiques and cafes, a place more like a pre-industrial town or urban village than the enclosed regional shopping malls that have come to anchor so much of suburbia. Leinberger and Kotkin warn that "if the lifestyle choice of walkable urbanism is not offered, many businesses and households will settle elsewhere."¹⁸ As an example, Leinberger points to Washington, D.C., that had two walkable urban places in the 1980s (Georgetown and Old Town Alexandria). In 2007 there were seventeen, with five more emerging.¹⁹

¹¹ Terry Nichols Clark, *Urban Amenities: Lakes, Opera, and Juice Bars: Do They Drive Development?*, in *THE CITY AS AN ENTERTAINMENT MACHINE* 103, 108 (Terry Nichols Clark ed., 2004).

¹² Terry Nichols Clark, *Urban Amenities: Lakes, Opera, and Juice Bars: Do They Drive Development?*, in *THE CITY AS AN ENTERTAINMENT MACHINE* 103, 105 (Terry Nichols Clark ed., 2004).

¹³ *White Flight? Suburbs Lose Young Whites to Cities*, KSTP TV News, May 9, 2010, available at <http://kstp.com/news/stories/sl551054.shtml>.

¹⁴ Joel Kotkin, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* 59 (2010).

¹⁵ Christopher B. Leinberger, *THE OPTION OF URBANISM* (Island Press, 2008), p. 3 and 7.

¹⁶ JOEL KOTKIN, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* 95 (2010).

¹⁷ JOEL KOTKIN, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* 95 (2010).

¹⁸ Christopher B. Leinberger, *THE OPTION OF URBANISM* (Island Press, 2008), p.8.

¹⁹ As examples, he names Ballston, Clarendon, Crystal City, Reston Town Center, and Rosslyn in Virginia, and Bethesda, Silver Spring, Rockville, and National Harbor in Maryland." Christopher B. Leinberger, *Walkable Urbanism*, 69 *URBAN LAND* 113 (September/October 2010).

In older suburbs fortunate enough to have been built around pedestrian-friendly walking streets, like Georgetown and Old Town Alexandria, local governments are revitalizing long-neglected historic Main Streets.²⁰ Kotkin mentions Fullerton, California, twenty-two miles south of Los Angeles in Orange County, a farming community until the 1950s when “suburbanization enveloped it.”²¹ Newly built shopping malls emptied the old central district of patronage, and downtown retail died. In the 1990s, Fullerton restored its downtown, preserving over 70 historic buildings. By the 2000s, downtown Fullerton emerged as the “acknowledged social and cultural center for the city’s 126,000 residents” and “a magnet for people from surrounding communities.”²² Fullerton achieved its downtown revival through two decades of active redevelopment utilizing TIF.²³

Even in suburbs lacking the “good bones” of a historic center, failed regional malls designed to be accessed exclusively by automobile can be redeveloped for accessibility by automobile, public transit and walking. Leinberger describes the emergence of Belmar, in Lakewood, Colorado, a middle-income suburb of Denver. The failed Villa Italia mall was recycled into a “twenty-two-block grid of streets and sidewalks,” one million square feet of retail, including a multiplex theater and a Whole Foods.²⁴

The Virginia Beach Town Center is another example of a drivable suburb developing a walkable urban core. Virginia Beach never had a traditional downtown like nearby Norfolk, or Richmond. The city, once little more than a thriving beach resort, grew rapidly in the 1980s and 1990s. It began as a random assemblage of housing tracts, strip commercial developments, and shopping malls. Located in the southeastern corner of

²⁰ Joel Kotkin, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* 193 (2010). This was also true in Georgetown and Old Town Alexandria. Both were “eighteenth-century colonial towns.” Christopher B. Leinberger, *THE OPTION OF URBANISM* (Island Press, 2008), p. 103.

²¹ JOEL KOTKIN, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* 62-63 (2010).

²² JOEL KOTKIN, *THE NEXT HUNDRED MILLION: AMERICA IN 2050* 96 (2010).

²³ Its Redevelopment Agency website offers: “(a) Loans: Rehabilitation Loans, Retail Business Improvement Loans, and lender partnerships with the Small Business Finance Corporation.(b) Land Acquisition: Land assembly and land and lease write downs;(3) Partial Financing: The Agency is anxious to consider participation in financing projects which will generate significant new revenue; and (d) Off-Site Improvements: Including street, utilities, parking, and other infrastructure improvements.” Redevelopment Agency, City of Fullerton, http://www.ci.fullerton.ca.us/depts/eco_dev/redevelopmentagency.asp (last visited July 29, 2010).

²⁴ Christopher B. Leinberger, *THE OPTION OF URBANISM* (Island Press, 2008), p.125-126.

Virginia, the small town merged in 1963 with Princess Anne county, to form what has since become Virginia's largest city with a population of over 425,000.²⁵

Business and civic leaders in Virginia Beach worked for years to create a walkable central business district by transforming a sparsely developed 17 block area anchored by the lackluster Pembroke Mall, badly in need of renovation by the 1990s.²⁶ The result is a \$500 million multi-phased mixed-use development featuring a 23 story Class A office tower, The Westin Hotel & Residences (the tallest building in Virginia),²⁷ multi-level upscale retail, and an array of cafes and restaurants.²⁸

Government funds were spent on public works—a plaza and fountain, streetscape improvements (pavers, benches, landscaping and street lights), curb and gutter, utilities (sanitary sewer, water, storm sewer, gas and electric), a plaza where civic celebrations and political rallies could be staged, and the Sandler Center for the Performing Arts, a 1200- seat theater-and-concert venue, and ample parking in multi-story garages.²⁹

Parking structures are an important feature of pedestrian-friendly urban design, though sometimes not financially feasible for private developers competing with traditional regional malls. In suburban downtowns like Virginia Beach, free parking is the norm. (Check out the Virginia Beach Town Center web site which boasts '3,200 free parking spaces'.)³⁰ Without the parking garages, the Town Center project would be

FIVE MOST POPULOUS CITIES IN VIRGINIA					
1990		2000			
City	Population	City	Population		
Virginia Beach	393,069	Virginia Beach	425,257		
Norfolk	261,229	Norfolk	234,403		
Richmond	203,056	Chesapeake	199,184		
Newport News	170,045	Richmond	197,790		
Chesapeake	151,976	Newport News	180,130		

Sources: U.S. Census Bureau for 1990 and 2000 figures.

²⁵ CITY OF VA. BEACH DEV. AUTH., OFFICIAL STATEMENT: SERIES 2002A & 2002B BONDS A-10 (2002).

²⁶ CITY OF VA. BEACH DEV. AUTH., OFFICIAL STATEMENT: SERIES 2002A & 2002B BONDS 11 (2002). By the early 1990s, the Pembroke area was badly in need of renovation with its aging parking lots, shopping mall and big box retailers. CDFA, TIF across America: Five case studies. [http://www.cdfa.net/cdfa/cdfaweb.nsf/\(baad5956b2928b086256efa005c5f78/09bb875ff7a9b74c862571c3006ac51e/\\$FILE/The%20Diversity%20of%20TIF.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/(baad5956b2928b086256efa005c5f78/09bb875ff7a9b74c862571c3006ac51e/$FILE/The%20Diversity%20of%20TIF.pdf)

²⁷ Armada Hoffer <http://www.armadahoffer.com/>. The Tallest Building in Virginia, the Westin Hotel and Residences, Virginia Beach (Last Accessed August 5, 2010).

²⁸ See generally Armada Hoffer, <http://www.armadahoffer.com> (last visited July 29, 2010) (developer's website providing information about the City of Virginia Beach project).

²⁹ Armada Hoffer: Project Portfolio, http://www.armadahoffer.com/portfolio_publicprivate.html (Last Accessed August 5, 2010).

³⁰ "Situated centrally within the city of Virginia Beach, The Town Center is a quick stop off Interstate 264, and an easy drive for Hampton Roads residents and visitors. With more than 3,200 FREE parking spaces located in covered garages, surface parking lots and on-street, Town Center guests can always park within a

indistinguishable from a regional mall distanced from adjoining sidewalks by acres of asphalt parking lots. The Virginia Beach Town Center project needed assistance from the local government to finance construction of the parking structures.³¹

Walkable urban places cost more to build out than drivable suburbia, typically 20 to 40 percent more. Leinberger explains why. Besides parking structures, walkable urbanism tends to take the form of multi-story, high density and, sometimes, high rise development, and this often means the use of re-enforced concrete. Even low rise buildings cost more in properly planned walkable 'main streets' because the buildings in such places are meant to be seen by people strolling by, and not glimpsed from an automobile windscreen at 35+ mph, and so better finishes are expected, included and appreciated.³²

B. THE USE OF TIF TO SUPPORT WALKABLE URBANISM

Communities across the country, including Virginia Beach³³ and Lakewood,³⁴ use tax increment financing to achieve walkable urbanism. All states except Arizona authorize its use.³⁵ TIF enables local governments to raise capital for public works in order to jump start tax-base-enhancing private development.³⁶ Vermont's enabling legislation recites the rationale: "to stimulate development or redevelopment within the district, provide for employment opportunities, improve and broaden the tax base, or enhance the general economic vitality of the municipality, the region, or the state."³⁷

short distance of the shops, restaurants and offices." The Town Center Of Virginia Beach: Directions & Parking, <http://www.vabeachtowncenter.com/directions-parking> (last visited July 29, 2010).

³¹ To avoid getting stuck with empty parking structures if the project wasn't built as planned, the city contracted for the developer to build the parking structures in tandem with the phases of private development, and then be reimbursed by selling the structures to the city Virginia Beach Town Center Term Sheet Phase III (Dec. 7, 2004), available at <http://www.gfoa.org/downloads/VirginiaBeachTownCenterTermSheet.pdf>.

³² Christopher B. Leinberger, *THE OPTION OF URBANISM* (Island Press, 2008), p.161.

³³ DEP'T OF FIN., CITY OF VA. BEACH, REPORT ON THE TAX INCREMENT FINANCING DISTRICTS AND SPECIAL SERVICE DISTRICTS IN THE CITY OF VIRGINIA BEACH 11 (2009). Local officials take pride in the revenue the project has brought the city. Assessed property values in the Town Center climbed steadily from \$150,000,000 in 1998 to over \$800,000,000 in 2009. Besides producing over \$5,000,000 a year in property taxes, the project area also generates \$5,700,000 in other business taxes (hotel, meal and admission taxes, business property and license fees, and sales taxes). DEP'T OF FIN., CITY OF VA. BEACH, REPORT ON THE TAX INCREMENT FINANCING DISTRICTS AND SPECIAL SERVICE DISTRICTS IN THE CITY OF VIRGINIA BEACH 13, 16 (2009).

³⁴ Christopher B. Leinberger, *THE OPTION OF URBANISM* (Island Press, 2008), p. 126.

³⁵ In Arizona the legislature can create special assessment districts in which TIF can be used, but TIF is still subject to voter approval. Program presentation on Rio Nuevo Tax Increment Financing District Arizona State Legislature (Feb. 9, 2009); See also Ariz. Const. Art. VII, § 13. See COUNCIL OF DEV. FIN. AGENCIES, 2008 TIF STATE-BY-STATE REPORT (2008) (listing enabling TIF statutes in 49 states and District of Columbia).

³⁶ See generally William M. Leavitt, John C. Morris, & John R. Lombard, *Developing Infrastructure Through the Use of Tax Increment Financing: The Case of the Virginia Beach Town Center Project*, 13 Pub. Works Mgmt. and Pol'y 93 (2008).

³⁷ VT. STAT. ANN. tit. 24, § 1893.

Essentially, tax increment deals are negotiated between a local public agency, often the community redevelopment or economic development arm of a city, and a private real estate developer or end user of real estate, such as a major retailer. Either the private developer or the public agency could initiate the process upon becoming convinced that a forceful boost from the public sector at a particular location could encourage developers to consider building offices, housing, retail, industrial or research space at the previously overlooked site.

The developer or end user promises to construct a defined project at an identified site that city officials wish to encourage. That project adds new value to the city's property tax rolls out of which the public agency promises to finance 15 to 25 percent of the total project cost by paying for 'public goods' needed to complement the new development—roads, parking structures, plazas and parks.³⁸ The public works are built now and paid for later out of borrowed funds secured by the anticipated tax increment.³⁹ TIF is only justifiable for projects offering public benefits distinct from the financial interests of the project's private developers.⁴⁰ Otherwise, there is no reason for local governments to pick up the tab for any of the project's infrastructure expenses which private project developers would ordinarily finance on their own.

TIF is a win-win-win situation for the city, the private developer and the taxpayers. City officials can claim credit for the new private development, an increased tax base, and the public improvements. The private developer obtains public improvements that enhance the value of the project, and that the developer might have had to finance privately, along with wholehearted city support for its project, which can prove useful in expediting the requisite land use approvals. Taxpayers benefit from the new public works, and private development being added to the tax rolls.

Advantages of TIF Over Other Forms of Public Finance. TIF offers distinct advantages over other means by which local governments can finance capital improvements to attract new private development: (a) tax abatements, (b) general obligation bonds and (c) special assessment financing.⁴¹

(a) Tax abatements. Local governments can grant tax abatements to induce firms to build new taxable facilities. Tax abatements are not contingent on the tax base increasing. Until after all taxes have been collected and rebates claimed, local governments will not really

³⁸ POLSKY & ASSOCIATES, TAX INCREMENT FINANCE IN CHICAGO: A REVIEW OF PROJECTS APPROVED BETWEEN 2000 AND 2008 3 (2010), <http://www.polskylaw.com/chicagotifstudy/cover.html>. (These percentages apply to private developments. In providing funds for public or education improvements, the percentage was 58%).

³⁹ Bond Prospectus, *The Shops at White Oak Village Community Development Authority* (Virginia), CUSIP: 964238 AA7, at 37 (2007).

⁴⁰ Rachel Webber and Laura Goddeeris, Tax Increment Financing: Planning and Processing Issues p. 56 (Lincoln Institute of Land Policy Working Paper, 2007), p 32.

⁴¹ JONATHAN MILTOMORE, PUB. INTEREST INST., TAX INCREMENT FINANCING: GETTING IT RIGHT, 7 (2008), <http://www.limitedgovernment.org/publications/pubs/studies/ps-08-6.pdf>. In Iowa, general obligation bonds require 60% electorate approval. IOWA CODE § 331.442 (2010).

know how much a tax rebate or subsidy eroded the tax base.⁴² Local governments granting rebates or subsidies based on tax increments owe nothing unless the anticipated tax increments actually materialize.

(b) General obligation bonds. TIF financing is easier to arrange than general obligation financing, the way that most local governments finance capital improvements, because in most states it escapes constitutional debt limits and majority or supermajority voter approval.⁴³

(c) Special assessment financing. A special assessment is more akin to a user fee than a tax because it is based on the benefit conferred upon the taxpayer.⁴⁴ The special assessment will be levied in addition to the regular ad valorem tax. Affected property owners have to approve the formation of a special assessment district and, during the formation process, are entitled to challenge the local government's determination of how much each owner must pay for the benefits to be received.⁴⁵ By contrast, property owners in a TIF continue paying exactly the same general real property taxes as they did before, no different from property owners outside the district, and have no right to block its formation or challenge whether they are being taxed disproportionate to the benefits received.⁴⁶

What Next? After an example from Portland, Oregon, of how TIF figures in the creation of walkable urban places, we analyze six criticisms often raised in opposition to TIF, along with accompanying vignettes from Los Angeles, Chicago, Houston, and the Minneapolis region.

⁴² NAT'L EDUC. ASSN., PROTECTING PUBLIC EDUCATION FROM TAX GIVEAWAYS TO CORPORATIONS 9-12 (Jan. 2003), available at <http://www.goodjobsfirst.org/pdf/edu.pdf>.

⁴³ Phillip J.F. Geheb, *Tax Increment Financing Bonds as 'Debt' under State Constitutional Debt Limitations*, 41 Urb. Law. 725, 732-33 (2009). JONATHAN MILTIMORE, PUB. INTEREST INST., TAX INCREMENT FINANCING: GETTING IT RIGHT, 7 (2008), <http://www.limitedgovernment.org/publications/pubs/studies/ps-08-6.pdf>. In Iowa, *See, e.g.*, ALA. CODE § 11-99-8(c) (2010) ("Tax increment obligations may be authorized by resolution of the local governing body without the necessity of a referendum or any approval by the electorate."). *See e.g. on general obligations bonds*, ALA. CONST. art. XII, § 225 (limits indebtedness); ARIZ CONST. art. 9 § 8 (limits indebtedness and also requires majority of voters); GA. CONST. ART. 9, § 5, ¶ 1 (limits indebtedness); IOWA CODE § 331.442 (2010) (general obligation bonds require 60% electorate approval); OKLA. CONST. ART. 10, § 26 (a) (limits indebtedness and requires supermajority of voters); WASH. CONST. ART. 8, § 6 (limits indebtedness and requires supermajority of voters).

⁴⁴ Special assessments aren't deductible from federal income tax because the property owner receives a benefit proportionate to the levy. 26 U.S.C. § 164 (c)(1) (2010) ("No deduction shall be allowed for the following taxes: (1) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not prevent the deduction of so much of such taxes as is properly allocable to maintenance or interest charges.")

⁴⁵ *See e.g.*, CAL. CONST. ART. 13D §§ 4(d)-(e); FLA. STAT. § 170.08 (2010); 65 ILL. COMP. STAT. 5/9-2-55 (2010); IOWA CODE § 384.50 (2010).

⁴⁶ Sometimes, TIF developers form special assessment districts in order to offer a supplemental revenue source to comfort bond investors if public funding runs short. R. Lisle Baker, *Using Special Assessments as a Tool for Smart Growth: Louisville's New Metro Government as a Potential Example*, 45 BRANDEIS L.J. 1, 52 (2006).

C. TIF in the PORTLAND, OREGON, PEARL DISTRICT

Tax increment financing is a means to an end in Portland, Oregon, a city with one of the country's most ambitious efforts at sustainable development. City officials are determined to maintain downtown as the core regional business center. The region aggressively promotes alternatives to the automobile—buses, light rail, biking, and walking—with the goal of reducing greenhouse gas emissions by curbing vehicle miles traveled per capita. Diminished reliance on the automobile is a core tenet of Oregon land use and transportation policy, coordinated by the Department of Land Conservation and Development (DLCD).⁴⁷

Of Portland's many TIF funded redevelopment areas,⁴⁸ the Pearl District (aka the River District Urban Renewal Area) is the biggest jewel in the crown. The Pearl District before redevelopment was an abandoned rail yard, manufacturing and warehouse hub. By 1994 the area was in decay, despite its prime location just north of downtown, near a freeway and the Willamette River. Today, the former rail yard has been transformed into a thriving, carefully designed, pleasant urban neighborhood vaguely reminiscent of Tribeca or Soho in New York City—at a much reduced scale, of course. Visit the Pearl District and you will see beautifully designed mid-rise housing, boutique retail and a variety of restaurants, prime office space and an assortment of employment centers, on small blocks with intersecting street grids.

To achieve its broad civic betterment objectives, the redevelopment agency paid for public works, including a Classical Chinese Garden, new roads and parking facilities, and 2,000-3,000 units of subsidized affordable housing.

This thriving district has drawn thousands of enthusiastic new residents and visitors, exactly as the Portland Redevelopment Commission had hoped. It has also quadrupled the property tax base, adding a billion dollars in assessed property values to the tax rolls in less than a decade.⁴⁹

"Buying the Urban Form You Want." At the outset of project planning, the two private housing redevelopers in the Pearl District would have preferred more office and retail space, and less housing, than public officials desired. They would also have preferred to build housing at moderate residential densities in the 20 to 30 unit per acre range, townhomes like those that grace Washington, D.C.'s Georgetown. The applicable zoning code prescribed a minimum buildable density of fifteen housing units per acre, far short

⁴⁷ In 1991 the DLCD adopted its Transportation Planning Rule calling for staged reductions in vehicle miles traveled and parking spaces. See generally, Martha J. Bianco & Sy Adler, *The Politics of Implementation: Oregon's Statewide Transportation Rule—What's Been Accomplished and How* (Center for Urban Studies, Portland State University, Discussion Paper 98-8, Nov. 1998), available at <http://www.upa.pdx.edu/CUS/publications/docs/DP98-8.pdf>.

⁴⁸ The Portland Development Commission. <http://www.pdc.us/> (follow "urban renewal areas" scroll down menu). (describing its urban renewal areas) (last visited July 29, 2010).

⁴⁹ See Downtown Waterfront – Portland Development Commission, <http://pdc.us/ura/dtwf/dtwf.asp> (last visited July 29, 2010) ("Since its creation in 1974, assessed land values in our central core have increased an average of 10.4 percent annually, from a total of \$466 million to more than \$1.6 billion.").

of what the redevelopment plan for the area called for.⁵⁰ But the Portland Redevelopment Commission wanted much higher densities than that.

Homer Williams, the Pearl District's primary developer, agreed to build apartments and condos at densities of 60 units per acre if the city would develop three parks in the area to compensate for the lack of open space on site if projects were built at this density, and as many as 90 units per acre, contingent on the city opening a modern public street car connecting the Pearl District to the rest of downtown (at a cost to the city of \$70,000,000, funded by bonds paid by downtown parking revenues, with the developer contributing \$700,000).⁵¹ Al Burns, a Portland senior planner, calls this use of TIF "buying the urban form you want".

II. SIX CRITICISMS OF TIF

A. OUTER SUBURBS USE TIF TO LURE EMPLOYERS FROM CENTER CITIES AND INNER SUBURBS

1. TIF in Minnesota

Cities use TIF money to outbid each other for jobs. TIF is the most commonly used economic development tool in Minnesota.⁵² Because TIF is available to all the cities and counties within a state, they compete against each other for jobs. Two researchers decided to take advantage of excellent available data in Minnesota to see whether TIF-subsidized employment helped where it was most needed, within easy reach of minority, low income, and transit dependent big city populations. The study faulted Minnesota's program for enabling prosperous outer suburbs sometimes to lure employers from the poverty-burdened cities of Minneapolis and St. Paul and their inner suburbs.⁵³

In rebuttal, the state's goal was job growth and keeping employers within the state, not a shift in job locations between cities and suburbs. TIF subsidies weren't meant to reverse the trend of jobs moving to the outer suburbs. From 2000 to 2008, Minneapolis-St. Paul, and their inner suburbs lost jobs while employment grew 15% in the developing outer

⁵⁰ AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT

BETWEEN THE CITY OF PORTLAND AND HOYT STREET PROPERTIES, L.L.C., IE (Mar. 1999).

⁵¹ Interview with Homer Williams, Chairman, Williams & Dame Dev. Portland, Or., (Sept. 29, 2009).

⁵² In 2005, there were over 2200 TIF districts in Minnesota. JOEL MICHAEL, MINN. HOUSE OF REP. HOUSE, HOUSE RESEARCH - SHORT SUBJECTS: TAX INCREMENT FINANCING (2009), <http://www.house.leg.state.mn.us/hrd/pubs/ss/sstif.pdf>.

⁵³ Based on state records, they were able to study 86 subsidized job relocations in the Minneapolis-St. Paul area that occurred between 1999 and 2003, most of them TIF funded. GREG LEROY & KARLA WALTER, GOOD JOBS FIRST, HOW SUBSIDIZED JOB PIRACY DEEPENS INEQUALITY IN THE TWIN CITIES METRO AREA 9 (2006), available at <http://goodjobsfirst.org/pdf/thincities.pdf>.

suburbs.⁵⁴ By a smaller margin, TIF subsidized employer relocations also favored the developing suburbs, though.⁵⁵

Over time, Americans move to where the jobs are,⁵⁶ and the Twin Cities is no exception. Fifty-four percent of the region's poor resided in the suburbs, up from 46% in 2000.⁵⁷ In 2008, the nonwhite population in the Minneapolis-St. Paul region was only 18.7% compared to 14.1% in the suburbs, but from 2000 to 2008 the nonwhite population in the suburbs grew more than twice as fast as in the Metropolitan Minneapolis-St. Paul region.⁵⁸ This is a national trend.

"Slightly more than half of African-Americans now live in large metropolitan suburbs, as do 59% of Hispanics, almost 62% of Asian-Americans, and 78% of whites. As a result the country is closer than ever to achieving a goal that many thought would never be achieved: city/suburban racial/ethnic integration. This is particularly so in the faster growing metropolitan areas of the South and West."⁵⁹

Despite these trends, the urban poor have difficulty relocating to job-rich suburbs.⁶⁰ As a Brookings Institution analyst recently concluded: "housing and labor market policies should seek to maximize access to job opportunities for the poor, and low-income workers more broadly, throughout metropolitan areas, regardless of where the workers

⁵⁴ During the 2000-2008 period Minneapolis lost 5.6% of its jobs, St. Paul lost 2.5% compared to 15% job growth in the outer suburbs. METRO. COUNCIL, EMPLOYMENT IN THE TWIN CITIES REGION, 2000-2008 (2009) <http://metro council.org/metroarea/Employment08.pdf>.

⁵⁵ During the 2000-2008 period Minneapolis lost 5.6% of its jobs, St. Paul lost 2.5% compared to 15% job growth in the outer suburbs. METRO. COUNCIL, EMPLOYMENT IN THE TWIN CITIES REGION, 2000-2008 (2009) <http://metro council.org/metroarea/Employment08.pdf>.

⁵⁶ Joel Kotkin observes that the next 100 million Americans will be a "staggering amalgam of racial, ethnic, and religious groups," an unprecedented ethnic diversity for a country as big and populous as ours. JOEL KOTKIN, THE NEXT HUNDRED MILLION: AMERICA IN 2050 2 (2010).

⁵⁷ "In 2008, 46.0 percent of poor individuals across the metro area lived in the primary city compared to 54.0 percent in the suburbs. Compared to 2000, this is a significant increase in the suburban share of the metro area's poor." METRO.POLICY PROGRAM, BROOKINGS INST., THE SUBURBANIZATION OF POVERTY: TRENDS IN METROPOLITAN AMERICA, 2008-2008, METRO PROFILE FOR MINNEAPOLIS-ST. PAUL, MN-WI, (2010).

⁵⁸ Growth of the nonwhite population from 2000-2008 was 77.2% in the suburbs as compared to 33.1% in the metro area. METRO. POLICY PROGRAM, BROOKINGS INSTITUTION, STATE OF METROPOLITAN AMERICA. MINNEAPOLIS-ST. PAUL, MN-WI METRO AREA, http://www.brookings.edu/~media/Files/Programs/Metro/state_of_metro_america/metro_america_profiles/minneapolis.pdf.

⁵⁹ See Morley Winograd & Michael D. Hais, NEW GEOGRAPHY, *Twenty-first Century Electorate's Heart is in the Suburbs*, New Geography, May 28, 2010, <http://www.newgeography.com/content/001591-twenty-first-century-electorate%E2%80%99s-heart-suburbs>. One-third of the US population is non-white. Eighty-three percent of the population growth from 2000 to 2008 has been non-white. Nearly one-fourth of all US children have at least one parent who is an immigrant to the US. By 2008 in large metropolitan areas a majority of the residents under 18 were non white. See also BROOKINGS INSTITUTION, STATE OF METROPOLITAN AMERICA 7 (2010), available at http://www.brookings.edu/~media/Files/Programs/Metro/state_of_metro_america/metro_america_report1.pdf.

⁶⁰ Steven Raphael and Michael A. Stoll, Job Sprawl and the Suburbanization of Poverty (March 2010).

and the jobs are located.”⁶¹ Anti-poverty advocates call for more suburban multifamily housing, lower impact fees, more housing vouchers, vigorous enforcement of fair housing laws, improved public transport, and better dissemination of information about suburban jobs and housing opportunities.⁶²

2. Rogers, Minnesota: How One Suburban Town Transformed Itself Through TIF, Until Voters Said, ‘Enough!’⁶³

To appreciate what Minnesota’s outer suburban towns can accomplish with the strategic use of TIF, consider the example of Rogers, Minnesota. Before 1984, the town of Rogers was an isolated farming community of three square miles with a population of 650 on the outer fringe of the Twin Cities (Minneapolis and St. Paul). Today, Rogers houses 7,000 residents on seven square miles (through annexations). Median household income and median house/condo values are 50% above the state average. In 1984, the tax base was \$40,000,000. Today it is \$1.1 billion. Now, as then, over half the town is dedicated to commercial and industrial uses.⁶⁴

This transformation began the year Gary Eitel became the city administrator and planner of Rogers, Minnesota.⁶⁵ He arrived at about the same time as Interstate 94 was being extended through town. He saw the potential because the interstate extension brought Rogers within commuting distance of Minneapolis-St. Paul. He began energetically planning for the town’s expansion with much needed sewer and water facility improvements, and a planning framework friendly to new commercial and industrial development. Gary Eitel explains: “By using tax increment programs to leverage public and private investments into infrastructure, the City could influence the location of new industry and retail where it was most efficiently served by utilities and transportation, and ensure compatible land use consistent with the City’s existing and planned residential areas.”⁶⁶

The pace of commercial and industrial development quickened in the mid-1990s as the Minnesota Department of Trade and Economic Development embraced the notion of using tax increment financing to keep major industrial firms from departing across state lines after a well known manufacturer named Graco threatened to leave the state. ‘They

⁶¹ Id. at p. 15.

⁶² Steven Raphael and Michael A. Stoll, *Job Sprawl and the Suburbanization of Poverty* 1 (March 2010).

⁶³ Mike Kaszuba, *Enough with the Subsidies, Rogers= New Officials Say*, Minneapolis -St. Paul, Minnesota, *Star Tribune* (Nov. 27, 2007).

⁶⁴ Estimated median household income in Rogers, 2005, was \$79,200. Statewide: \$52,024. Median house/condo values were \$319,500. Statewide median: \$198,800. Rogers is 96.6% white, non-Hispanic. <http://www.citydata.com/city/RogersMinnesota.html>

⁶⁵ See Bob Grawey, *Eitel’s Legacy Measured in Concrete Block*, *STAR NEWS* (Elk River, Minn.), Feb. 6, 2007, available at <http://www.crstamnews.com/2007/February/6block.html>.

⁶⁶ Email from Gary Eitel, City Adm’r and Planner of Rogers, Minn. (Jan. 23, 2009) (on file with author).

(state officials) wanted us to develop an economic assistance program (along with other cities in the state),'Eitel explains. 'They wanted us to be aggressive, so we came up with a policy that projects costing \$10 million or more could get 25 percent of the available tax increment as an economic incentive.' ⁶⁷

Roger's Eitel landed Graco's 300,000 square foot facility, visible from I-94, and other firms soon followed as the town negotiated deals with Graybar, Opus, Super Target, Kohl's and MBY. Today, Rogers boasts an industrial park of 3,000,000 square feet of built space.

All these new businesses, through their utility bill payments, seeded downtown redevelopment, and helped amortize the town's sizable investment in updated sewer and water systems. In 1984, the town's wastewater treatment facility could handle only 100,000 gallons a day. Its present capacity is 1.6 million gallons a day. Before launching its aggressive economic development program, the town had only one school, an elementary school. Today it boasts a high school adjoining a new 40 acre park, a junior high school located next to a 50 acre park, and two elementary schools. There are other new parks as well, a fire station, the Rogers Activity Center and Ice Arena, trails, and new streets. All these public improvements have been financed by TIF dollars. (Rogers keeps 75% of the tax increment).⁶⁸

By 2006, Rogers' voters, chagrined by the fact that Rogers led all Minnesota cities in the percentage of its TIF surrendered to private firms (27%), balked at the town's subsidy to a sporting gear retailer called Cabela's which builds colossal megastores. Voters elected a city council that would put an end to the tax increment give-aways. ⁶⁹

B. SHOULD OR SHOULD NOT TIF PROJECTS BE RESTRICTED TO SERIOUSLY BLIGHTED AREAS?

1. Why Restricting TIF to Seriously Blighted Areas Is Impractical

Some TIF critics believe that TIF should be confined to seriously blighted areas filled with dilapidated or abandoned buildings because public subsidies are best reserved for "truly distressed areas marked by a high poverty rate and/or high unemployment rate,"⁷⁰ characterized by a resident population with incomes below regional medians. A legislature could reserve TIF subsidies for census tracts where median incomes stood below the regional median by a certain amount, or where property valuations had steadily

⁶⁷ Email from Gary Eitel, City Adm'r and Planner of Rogers, Minn. (Jan. 23, 2009) (on file with author)..

⁶⁸ Memorandum from Gary Eitel, City Adm'r and Planner of Rogers, Minn. (Feb. 11, 2009) (on file with author)..

⁶⁹ Mike Kaszuba, *Enough with the Subsidies*, STAR TRIBUNE (Minneapolis), Nov. 27, 2006, at 3B, available at 2006 WLNR 20582507.

<http://www.sayno2outdoorsretailsubsidies.com/pdfs/nov2706startribune.pdf>

⁷⁰ Inst. for Local Self-Reliance, *New Rules Project: TIF Reform*, <http://www.newrules.org/retail/rules/tif-reform>. The Institute for Local Self Reliance is a public interest group.

declined for years.⁷¹ Indeed, a pending Missouri law would limit the use of TIF to areas of moderate income (less than 80 percent of the surrounding area's median income), high unemployment (one-and-a-half times the rate of the surrounding area), or low fiscal capacity (assessed value per capita is at least 40 percent lower than in the surrounding area).⁷²

Comment [nc1]: This bill has died in the senate. Was proposed in 2002 but never passed. Probably should mention it as such if you do at all. See: <http://www.senate.mo.gov/03info/billtext/intro/sb172.htm>

2. Blight and the Efficient Use of TIF

The problem is that TIF is an ineffectual tool for assisting most seriously blighted areas. Few "truly distressed areas marked by a high poverty or unemployment rate" offer untapped opportunities for profitable private development. Localities with the attributes identified in the proposed Missouri law could have great difficulty finding projects that would produce tax increment. In Chicago, for instance, with its 152 separate TIF districts, eight of the ten TIF districts scheduled to receive the most tax increment money through 2011 are in prosperous neighborhoods near downtown.⁷³ Similarly, Iowa researchers found that TIF projects in struggling medium sized cities produced "lack-luster results at best" while TIF worked best "by a large margin" in booming suburbs and metropolitan areas.⁷⁴ After all, that is where costly new developments have the best chance of being financed, built, and adding greatly to the property tax rolls.

Christopher Leinberger explains that "most of the market demand for walkable urbanism will probably take place in the inner suburbs" of the favored quarter of the city.⁷⁵ To locate the favored quadrant in any city, draw an arc from downtown in the direction with the most limited access freeways, upper income housing, high-income households, the

⁷¹ In Kentucky, the state will share its property tax increment to assist with mixed use redevelopment in blighted urban areas. To qualify as blighted, the project area must meet three of seven criteria, one of which is that 40% of the project area households must be low income. Kentucky Economic Development Finance Authority, Tax Increment Financing, (Oct. 29, 2009).

⁷² Mo. S.B. 172. Besides the provision mentioned, this bill would require that municipalities conduct economic feasibility studies to determine that the development would not occur without the subsidy. It would prohibit the use of TIF on sites that are more than 25 percent undeveloped land or farmland, and limit the use of TIF for projects that are primarily retail unless the development occurs in a federal enterprise or empowerment zone, or a "distressed community" as defined elsewhere in state law. The bill would also reduce the impact of TIF on schools, libraries, and fire departments by stipulating that 25 percent of the tax revenue used to pay off the bonds be diverted to these other taxing districts. Currently, these districts have no say over the creation of TIF districts, but lose revenue every time a municipality establishes one. Some cities have threatened the provision of essential public services by converting much of their tax base to TIF districts. <http://www.newrules.org/retail/rules/tif-reform/tif-reform-missouri-proposed>.

⁷³ Ben Joravsky & Mick Dumke, *Shedding Light on the Shadow Budget*, CHICAGO READER, Dec. 10, 2009, available at <http://www.chicagoreader.com/chicago/shadow-budget-tif/Content?oid=1251320>. "The biggest winner is the Near South TIF, roughly bounded by Michigan, Van Buren, State, and 21st Street: the TIF budget indicates that about \$118 million will be spent there through 2011 on things like streetscaping on Congress, facade work on the Harold Washington Library, a rehab of the Blackstone Hotel, and construction of a new Jones High School. That's more than the total TIF spending planned for 82 districts on the other end of the spectrum in the same period."

⁷⁴ Dave Swenson & Liesl Eathington, *Tax Increment Financing Growth in Iowa* 6 (Dep't of Econ., Iowa State Univ., 2006), available at http://www.econ.iastate.edu/sites/default/files/publications/papers/paper_12586.pdf.

⁷⁵ Christopher B. Leinberger, *THE OPTION OF URBANISM* (Island Press, 2008), p. 134.

largest concentration of white collar jobs outside of downtown, and the lowest crime rates.⁷⁶ “The local minority housing concentration is typically 180 degrees on the other side of the metro area from the high-income housing, assuming the topography allows it, and where it does not, it is as far away as physically possible.”⁷⁷

3. Permissive or No Blight Findings Are the Norm

Most states don’t confine the use of TIF to blighted areas, or define blight so broadly as to make the requirement virtually meaningless. Legislators may be responding to the reality that TIF funded redevelopment built in distressed areas would seldom boost property values enough for the project to pay its own way. One-third of the states allow TIF with no prior finding of blight.⁷⁸ In the other two-thirds of the states, where TIF is conditioned on a finding of blight, most define blight so broadly as to qualify projects in almost any part of the locality.⁷⁹ In Oregon, for instance, the statutory definition of blight would permit a local agency to replace a one story building if the market would support a six story building on the site.⁸⁰ Another example, before 1985, Iowa urban renewal law was aimed at the elimination of slum and blighted areas. In that year, the urban renewal law was amended “to provide a municipality with authority to adopt an urban renewal plan based solely on the existence of an economic development area.”⁸¹

On the other hand, courts in some states interpret state statutory or constitutional blight-finding requirements quite strictly. New Jersey courts, for instance, have rejected the inclusion within redevelopment project areas of vacant parcels for being stagnant, unproductive, or underutilized, unless the local public agency could show that the vacant parcel had “a demonstrable negative impact on the community or surrounding areas.”⁸²

4. Obstacles to Challenging TIF Projects for Flawed Findings of Blight

⁷⁶ Christopher B. Leinberger, *THE OPTION OF URBANISM* (Island Press, 2008), p. 35-41.

⁷⁷ Christopher B. Leinberger, *THE OPTION OF URBANISM* (Island Press, 2008), p. 38-39.

⁷⁸ See Craig L. Johnson & Kenneth A. Kriz, *A Review of State Tax Increment Financing Laws*, in *TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT* 31, 38 (Craig L. Johnson & Joyce Y. Man eds., 2001) (showing 33 states with a blight finding required). See also COUNCIL OF DEV. FIN. AGENCIES, 2008 TIF STATE-BY-STATE REPORT (2008), available at [http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/TIFStatebyState.html/\\$file/CDFA-2008-TIF-State-By-State-Report.pdf](http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/TIFStatebyState.html/$file/CDFA-2008-TIF-State-By-State-Report.pdf) (showing that sixteen states and the District of Columbia do not require a blight finding).

⁷⁹ Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 *FORDHAM URB. L.J.* 305, 320 (2004). and Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 *U. CHI. L. REV.* 65, 78-79. (2010).

⁸⁰ One of a number of potentially permissive conditions that qualifies as “blight” under Oregon’s statute is “[a] growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety and welfare” *OR. REV. STAT.* § 457.010(1)(h) (2010).

⁸¹ *McMurray v. City Council of West Des Moines*, 642 N.W. 2d 273, 281 (Iowa 2002).

⁸² Robert S. Goldsmith, *What Will Happen to Redevelopment in New Jersey When the Economy Recovers?*, 36 *RUTGERS L. REC.* 314, 319 (2009).

State laws invariably delegate the task of making blight findings to the same local government sponsoring the TIF funded redevelopment project.⁸³ Some officials use their best efforts to comply while others hire permissive consultants and rely on their findings uncritically.⁸⁴

In any event, few blight determinations are ever challenged in court. Blight litigation is complicated and expensive. The attorneys most capable of filing such challenges are jeopardizing their future dealings with the city officials they sue and with officials in other cities who get wind of their whistle-blower-like behavior.⁸⁵ Challengers usually lose when contending that a particular renewal area wasn't blighted; standards of judicial review strongly favor upholding local government decisions.⁸⁶

5. Redevelopment of Seriously Blighted Areas Does Not Necessarily Help Area Residents

Restricting TIF projects to seriously blighted areas won't necessarily aid the residents of those areas, and could harm them. State enabling legislation does not mandate that projects in seriously blighted areas must be designed to improve the well being of its impoverished or poorly housed residents.⁸⁷ Displaced property owners have rights to compensation and displaced residents to relocation payments.⁸⁸ But they have no constitutional or statutory right to prevent the redevelopment of the project area for the benefit of others.⁸⁹ Tax increment would seldom result from demolishing high density, run down housing and replacing it with affordable housing built at a lower density, particularly if the replacement housing was exempt from the property tax.⁹⁰ Tax increment might result, though, from replacing worn out housing occupied by a low income population with expensive office buildings, shopping malls and luxury housing

⁸³ ALA. CODE §11-9-2(d) (2010); VA. CODE ANN. § 58.1-3245.2(A) (2010); MINN. STAT. § 469.174 subd.10, 469.175 subd. 3 (2010).

⁸⁴ Board of Educ., Pleasantdale School Dist. No. 107, Cook County, Ill. v. Village of Burr Ridge, 93 N.E.2d 856, 860 (An eligibility study commissioned by the redevelopment agency was used to justify the creation of a TIF district despite its own counsel acknowledge the findings were "marginal". The project was put to end by a successful challenge in court by the local school board.) See e.g. Refocusing Wisconsin's TIF System on Urban Redevelopment by Matthew Marl (2005) pg. 21

⁸⁵ George Lefcoe, *Finding the Blight That's Right for California Redevelopment Law*, 52 HASTINGS L.J. 991, 1025-27 (2001).

⁸⁶ "[A]ll that is at issue is a reasonable difference of opinion as to whether the area in question is in fact substandard and insanitary. This is not a sufficient predicate for us to supplant [New York State Urban Development Corp]'s determination." *Goldstein v. N.Y. State Urban Dev. Corp.*, 921 N.E.2d 164, 173.

⁸⁷ See, e.g., *Friends of Urban Renewal v. Portland*, LUBA No. 2008-116, slip op. at 11, (Or. Jan 2, 2009), <http://www.oregon.gov/LUBA/docs/Opinions/2009/01-09/08116.pdf> (where Oregon Land Use Board of Appeals blocked the Portland Development Commission's attempt to expand the tax increment finance ("TIF") district to a finance the construction of a multi-purpose public facility ten miles from the original TIF district).

⁸⁸ See generally, David Callies and Shelly Ross Saxer, *Is Fair Market Value Just Compensation?*, ABA-KELO s 7.IV, Eminent Domain Use & Abuse: Kelo in Context s 7.IV (2006); Ronald K. Chen, *Compensation and Relocation Assistance for New Jersey Residents Displaced by Redevelopment: Reform Recommendations of the State Department of the Public Advocate*, 36 RUTGERS L. REC. 300 (2006).

⁸⁹ Laura S. Underkuffler, *Kelo's Moral Failure*, 15 WM. & MARY BILL RTS. J. 377, 384-85 (2006).

⁹⁰ CAL. REV. & TAX CODE § 236 (2009)

that attract affluent newcomers.⁹¹ Residents' best hope of blocking wholesale demolition and displacement is through aggressive participation in the political process.⁹²

6. Redevelopment of Bunker Hill, Los Angeles

Bunker Hill in downtown Los Angeles was typical of early redevelopment efforts. Downtown streets built to accommodate street cars (1880-1920) were too narrow for heavy automobile traffic and on-street parking.⁹³ By the 1950s much of the central city housing stock was in deplorable condition. The most picturesque buildings, once glorious Victorian mansions, had long ago been cheaply converted into "flophouses."⁹⁴

No doubt, Bunker Hill met the most stringent definition of physical blight. A sad consequence of the area being labeled blighted was to justify turning 11,000 people out of their homes.⁹⁵ This made possible the transformation of Bunker Hill as redevelopment brought a new extensive network of wide roads and re-configured city blocks to accommodate amply sized building pads that would support the generous floor plates demanded by modern accounting, law, finance and other business firms. Without this aggressive civic intervention, it is quite possible that downtown would have forfeited its place as one of the region's prime office centers. Dorothy Parker is said to have described Los Angeles as 72 suburbs in search of a city.⁹⁶ The Bunker Hill project was the beginning of a concerted and continuing civic effort to re-establish the regional primacy of downtown.

7. The Houston Inner Loop Gentrification Story

Gentrification of Houston's Inner Loop has been the result of concerted public action. "In the past decade, the public sector has invested upwards of \$8 billion in the central

⁹¹ Bunker Hill Urban Renewal Project 1B of Cmty. Redevelopment Agency of Los Angeles v. Goldman, 389 P.2d 538, 567 (Cal.1964) (describing Occidental Petroleum's interest in one million square feet of office space in the proposed Bunker Hill redevelopment project area).

⁹² See, e.g., John Powell, *Sprawl, Fragmentation, and the Persistence of Racial Inequality: Limiting Civil Rights by Fragmenting Space*, in URBAN SPRAWL: CAUSES CONSEQUENCES AND POLICY RESPONSES 73, 105-07 (Gregory Squires ed., 2002). Mina Dixon, Putting Residents at the Center of Neighborhood Redevelopment, May 12, 2010 (University of Maryland, Journalism Center on Children and Families). <http://www.journalismcenter.org/resource/reporting-best-practices/putting-residents-center-neighborhood-redevelopment>. Lisa T. Alexander, *Stakeholder Participation in New Governance: Lessons from Chicago's Public Housing Reform Experiment*, 16 GEO. J. ON POVERTY L. & POL'Y 117, 166. ("Accountable development is defined as a movement that seeks "to change city redevelopment practices through more confrontational grassroots campaigns aimed at increasing community participation in the planning process and forcing local developers and governmental officials to commit to redevelopment projects that are responsive to the needs of low-income residents.")

⁹³ SCOTT L. BOTTLES, LOS ANGELES AND THE AUTOMOBILE: THE MAKING OF THE MODERN CITY 59 (1987).

⁹⁴ See About on Bunker Hill, <http://www.onbunkerhill.org/about> (last visited July 29, 2010); see also ANGELS WALK LOS ANGELES, BUNKER HILL/HISTORIC CORE District 16 (2008), available at http://www.angelswalkla.org/pdfs/AWLA_BUNKERHILL_GUIDEBOOK.pdf.

⁹⁵ Anastasia Loukaitou-Sideris, Gail Sansbury, Lost Streets of Bunker Hill, 74 California History 394 (Winter, 1995/1996) available at <http://www.jstor.org/stable/25177534>.

⁹⁶ Spencer Beck, Editor's Note, *A Tale of Two Cities*, LOS ANGELES MAGAZINE, Feb. 1999 at 6.

area ... much of it geared toward making the city more enticing to affluent suburbanites. There's an eight-mile light rail line, new football and baseball stadiums, a museum district that's doubled in size, new downtown parks and fresh landscaping.”⁹⁷ Increasing numbers of Houston-area suburbanites are warming to the idea of shortening their interminable commutes by moving closer to downtown.⁹⁸

Two University of Houston professors studied twenty TIF projects in Houston, 1994-2005 and discovered considerable gentrification in four of six redevelopment project areas within Houston's Inner Loop. Professors Yuasa and Thomas selected clear, simple metrics for identifying the equity and efficiency consequences of TIF subsidized development in the Inner Loop. They measured equity or redistributive impacts by calculating block by block income and racial/ethnic characteristics of the residents before and after redevelopment. Their assumption was that gentrification would be signaled if the number of white residents increased while the number of African-American and Hispanic residents fell, and if median incomes rose markedly over pre-redevelopment levels.

To measure efficiency, they looked at real estate values and building permits. In four of the Inner Loop tax increment reinvestment zones (TIRZ), property values increased enormously and at a far higher rate than the citywide average.⁹⁹ Low income residents were replaced by inhabitants with above average incomes,¹⁰⁰ and the percentage of African-American and Hispanic residents fell sharply while the white population multiplied.¹⁰¹ With gentrification came increased property values. Gentrification was not inevitable. In several Houston wards it was forestalled or moderated by aggressive political intervention.¹⁰²

C. TIF-SUPPORTED RETAIL CAN DISPLACE SALES FROM OTHER RETAILERS

1. Displacement, Cannibalization

Many TIF sponsored projects involve retailing, especially in states that remit a share of the sales tax back to the locality where the sale took place. Cities have lavished billions

⁹⁷ John Buntin, *Land Rush: Inner cities are becoming hot places to live. Does government have any business telling developers to keep out?*, GOVERNING, Feb. 28, 2006, <http://www.governing.com/topics/health-human-services/housing/Land-Rush.html#>.

⁹⁸ Toshiyuki Yuasa, Professor, University of Houston & Richard D. Thomas, Professor, Univ. of Houston, Presentation at the 2006 annual meeting of the Midwest Political Science Association, Efficiency-Equality Consequences in City Redevelopments: Assessing the “Devil-in-the-Details” of Tax Increment Financing in Houston 16-21 (Apr. 19-23, 2006).

⁹⁹ Yuasa & Thomas, *supra* note 176, at 13 fig. 1.

¹⁰⁰ Yuasa & Thomas, *supra* note 176, at 24 tbl. 4.

¹⁰¹ Yuasa & Thomas, *supra* note 176, at 23 tbl. 3.

¹⁰² Yuasa & Thomas, *supra* note 176, at 25-26. See also, John Buntin, *Land Rush: Inner cities are becoming hot places to live. Does government have any business telling developers to keep out?*, GOVERNING, Feb. 28, 2006, <http://www.governing.com/topics/health-human-services/housing/Land-Rush.html#>.

of dollars of subsidies upon big box retailers like Wal Mart, Costco, Target, IKEA and Nordstrom,¹⁰³ and regional mall developers.

"Cannibalization is the extent to which new sales come at the expense of existing sales."¹⁰⁴ Aggregate spending for consumer goods does not vary much with the proliferation of new shops, due to the "relatively fixed nature of retail spending per capita."¹⁰⁵ Studying the "fierce competition for retail business" among California cities, two researchers concluded in the late 1990s that despite municipal efforts to subsidize redevelopment projects with retail components, "the total sales tax revenues of all cities, measured in real dollars per capita, were only marginally higher in 1995-96 than in 1971-72."¹⁰⁶ The California researchers found that despite substantial efforts to lure retailers, "the overall hierarchy of cities in terms of their success has been quite stable over time. In other words, whatever their efforts in recruiting retail, most cities have not risen or sunk a great deal relative to their competitors."¹⁰⁷ Retailers generally select locations convenient to their customer base, transportation accessibility, suppliers, and competitors; concessions or not.¹⁰⁸

Naively, we might assume that city officials would always be rational enough not to subsidize retailers whose success comes from cannibalizing trade within the city. But public officials may disregard broader municipal interests and vote to subsidize a particular retailer that they believe their constituents would gratefully welcome.

2. Leakage and Inter-Municipal Rivalry

Leakage is a word used to describe a city's failure to capture a fair share of its residents' per capita spending.¹⁰⁹ Leakage is especially costly in states that remit a portion of retail

¹⁰³ "One would be hard-pressed to find a major chain that had not financed part of its growth with public subsidies. Some chains have based their entire expansion strategy on government handouts." STACY MITCHELL, *BIG-BOX SWINDLE*, 164, 165 (2006); *See Also*, EAST-WEST GATEWAY COUNCIL OF GOVERNMENTS, *AN ASSESSMENT OF THE EFFECTIVENESS AND FISCAL IMPACTS OF THE USE OF DEVELOPMENT INCENTIVES IN THE ST. LOUIS REGION, INTERIM REPORT IV* (Jan. 2009) (\$2.5 billion in public funds has been spent in TIF districts and similar programs in Missouri alone). <http://www.ewgateway.org/pdf/files/library/regdev/tifpt-012609.pdf>

¹⁰⁴ Allan T. Ingraham, Hal J. Singer, & Thomas G. Thibodeau, *Inter-City Competition for Retail Trade: Can Tax Increment Financing Generate Incremental Tax Receipts?* 5 (July 22, 2005) (unpublished), available at <http://ssrn.com/abstract=766925>.

¹⁰⁵ Paul G. Lewis and Elisa Barbour, *City Competition for Sales Tax: Symptom of A Larger Problem?* (November 1999). <http://www.californiacityfinance.com/WC9911CityCompetition.htm> This is the summary of a larger report entitled *California Cities and the Local Sales Tax*, a Public Policy Institute of California. A copy of the full text is available on the Internet at www.ppic.org

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.* Given the favorable attention that cities show to retail, it is also likely that residential and industrial development are somewhat more difficult and expensive to develop than would be the case in the absence of a situs-based sales tax." "The chase for sales tax has been a factor in driving out manufacturing jobs in California." Max Neiman and Daniel Krimm, *Economic Development: The Local Perspective* (Public Policy Institute of California, May, 2009), p. 12. http://www.ppic.org/content/pubs/report/R_509MNR.pdf

¹⁰⁹ Retail Leakage Concept occurs when, "goods not readily available within the City, or when greater selection and/or better prices are available elsewhere, residents will travel outside of

sales taxes back to the city where the sales took place. Remittances vary wildly from one city to the next. In California, for instance, "the amount of local sales tax revenues per resident ranged from \$2.25 to \$56,891.84 in 1995-96."¹¹⁰ Cities experiencing leakage are eager to grow their tax revenues by encouraging new retail development, and seldom hesitate because in doing so, they could 'beggar their neighbors' retailers.¹¹¹ They regard subsidizing new retail development as a legitimate defensive move to assure the municipality's fiscal survival.

In Missouri, where local governments also benefit from sales taxes originated within their boundaries,¹¹² retail development can be found in about 80% of the \$2.5 billion TIF subsidized projects in Missouri.¹¹³ A recent study by the East-West Gateway Council of Governments (the St. Louis region) concluded that these subsidies didn't result in real growth, and regional benefits were elusive at best. Short term localized benefits were undeniable.¹¹⁴ Elected officials could enhance the local tax base by subsidizing retailers even though "[f]ocusing development incentives on expanding retail sales is a losing economic development strategy for the region."¹¹⁵

3. State Law Reforms Enacted to Curb TIF Use for Retailing

State legislators have done little to curb inter-municipal competition for retail activity. A handful of states have enacted limitations on TIF funding of retail development. The most aggressive can be found in Utah and Minnesota. Utah bars the collection or expenditure of TIF for retail development in an economic development area if development of retail is

the City to make purchases and satisfy at least a portion of their demand. When residents travel out of the City to shop, retail expenditures "leak" out of the City, that is merchants located outside the City capture expenditures that local residents, businesses, or employees might otherwise have made with local merchants." Memorandum from Matt Kowta, Principal of Bay Area Econ., to Mike Webb, Econ. Dev. Coordinator for City of Davis, CA (July 22, 2004), http://www.city.davis.ca.us/ed/pdfs/2003_Davis_Retail_Leakage_Memo.pdf.

¹¹⁰ Press Release, Public Policy Institute of California, July 8, 1999, Pursuit Of Sales Tax Revenues Driving Development Decisions In California Cities. <http://www.ppic.org/main/pressrelease.asp?i=347>

¹¹¹ See, e.g., OFFICE OF THE CITY MANAGER, CITY OF RIO RANCHO, NEW MEXICO, 2010-2015 RETAIL DEVELOPMENT PLAN iv, v, 13-19 (2010), <http://ci.ri-rancho.nm.us/documents/City%20Administration/Retail%20Development/Retail%20Plan%20updated.PDF>

¹¹² MO REV. STAT. ANN §

¹¹³ Both California and Missouri enabled local governments to keep a share of sales taxes originated locally. This added to the already powerful incentive to subsidize retail development. But while California's population has grown steadily in the past three decades, Missouri's population growth has been nearly flat. See U.S. CENSUS BUREAU, United States Summary 26-27 Tbl. 16 (Aug. 27, 1993), available at <http://www.census.gov/population/www/censusdata/files/table-16.pdf>; FRANK HOBBS & NICOLE STOOPS, U.S. CENSUS BUREAU, DEMOGRAPHIC TRENDS IN THE 20TH CENTURY 23, 24 (2002), available at <http://www.census.gov/prod/2002pubs/censr-4.pdf>.

¹¹⁴ EAST-WEST GATEWAY COUNCIL OF GOVERNMENTS, AN ASSESSMENT OF THE EFFECTIVENESS AND FISCAL IMPACTS OF THE USE OF DEVELOPMENT INCENTIVES IN THE ST. LOUIS REGION, INTERIM REPORT iv (Jan. 2009), <http://www.ewgateway.org/pdf/files/library/regdev/tif rpt-012609.pdf>

¹¹⁵ EAST-WEST GATEWAY COUNCIL OF GOVERNMENTS, AN ASSESSMENT OF THE EFFECTIVENESS AND FISCAL IMPACTS OF THE USE OF DEVELOPMENT INCENTIVES IN THE ST. LOUIS REGION, INTERIM REPORT v (Jan. 2009), <http://www.ewgateway.org/pdf/files/library/regdev/tif rpt-012609.pdf>.

the project area's 'primary objective.'¹¹⁶ It only allows TIF to be used for retail development in a blighted urban renewal area. In Minnesota, economic development districts generally cannot be used for retail, office, or similar commercial developments.¹¹⁷ Statutes in Missouri¹¹⁸ and West Virginia¹¹⁹ require local governments to make a finding that retail projects in economic development areas will not "compete unfairly" in the local economy. In Missouri, when a locality seeks permission from the state to utilize a portion of the increment from state sales taxes to finance a redevelopment project, it must convince the state development finance board and department of economic development that "the sales tax increment attributable to retail sales is from new sources which did not exist in the state during the baseline year."¹²⁰

¹¹⁶ UTAH CODE ANN. § 17C-1-407(1)(a) (West 2010) ("If the development of retail sales of goods is the primary objective of an urban renewal project area, tax increment from the urban renewal project area may not be paid to or used by an agency unless a finding of blight is made under Chapter 2, Part 3, Blight Determination in Urban Renewal Project Areas.

(b) Development of retail sales of goods does not disqualify an agency from receiving tax increment.

(c) After July 1, 2005, an agency may not be paid or use tax increment generated from the value of property within an economic development project area that is attributable to the development of retail sales of goods, unless the tax increment was previously pledged to pay for bonds or other contractual obligations of the agency.")

¹¹⁷ MINN. STAT. § 469.176, subd. 4c(d) (2010). There are two exceptions allowing retail in TIF. One is that retail or commercial uses are allowable in economic development projects in small cities (less than 5,000 population, and more than 10 miles from a city of 10,000 or more.) The other is that unsubsidized retail or commercial uses are permissible in redevelopment or economic development areas following blight removal. Telephone interview by Nicholas Christen with Arlan Waelti, Assistant State Auditor, Dir. of TIF Div., State of Minn., (Jun. 24, 2010).

¹¹⁸ MO. REV. STAT. § 99.810.1(1) (2010). See e.g., Id. at § 99.805 (5) ("An economic development area is one that is neither blighted nor a conservation area and "the governing body of the municipality finds that redevelopment will not be solely used for development of commercial businesses which unfairly compete in the local economy and is in the public interest because it will (a) Discourage commerce, industry or manufacturing from moving their operations to another state; or (b) Result in increased employment in the municipality; or (c) Result in preservation or enhancement of the tax base of the municipality.")

¹¹⁸ MINN. STAT. § 473F.01 (2010).

¹¹⁸ See generally Myron Orfield & Nicholas Wallace, *The Minnesota Fiscal Disparities Act of 1971: The Twin Cities' Struggle and Blueprint for Regional Cooperation*, 33 WM. MITCHELL L. REV. 591, 592 (2007). Until last year, Minneapolis with its large poor and minority populations was a net contributor to the regional tax pool because of its above regional average property tax wealth per capita, attributable in large part to its well developed downtown. See GREG LEROY & KARLA WALTER, *GOOD JOBS FIRST, HOW SUBSIDIZED JOB PIRACY DEEPENS INEQUALITY IN THE TWIN CITIES METRO AREA 21*, (2006), available at <http://goodjobsfirst.org/pdf/thincities.pdf>. See also Metrocouncil.org, *Fiscal Disparities: Tax Base Sharing in the Twin Cities Metropolitan Area* (last visited July 29, 2010), <http://www.metrocouncil.org/metroarea/FiscalDisparities/index.htm>.

¹¹⁸ If the district in which a development project is to be built is outside a city's central business district then a maximum of 20% of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumer, and other commercial uses other than office space. N.C. GEN. STAT. § 158-7.3 (a)(1) (2010).

¹¹⁹ W. VA. CODE § 7-11B-3 (10) (2010) ("Economic development area' means any area or portion of an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county . . . and for which the county commission finds that development or redevelopment will not be solely used for development of commercial businesses that will unfairly compete in the local economy . . .").

¹²⁰ Mo. Rev. Stat. § 99.845 subdiv. 8 (2010).

North Carolina takes an anti-sprawl tack by restricting economic development projects located outside the boundaries of a central business district from dedicating more than 20% of its built space to “retail sales, hotels, banking, and consumer-directed financial services offered directly to consumer, and other commercial uses other than office space.”¹²¹ The statute makes an important ‘welfare’ exception for tourism related economic development in disadvantaged areas.¹²²

California bars agencies from assisting motor vehicle dealers or big box retailers to relocate from another jurisdiction.¹²³

In Illinois, “TIF funds cannot be used to pay for a new retail project that is relocating into a TIF district while closing a similar facility in another town within 10 miles of the TIF, except in cases where the relocation is ‘beyond the control’ of the company. This provision is intended to prevent the use of TIF funds to ‘pirate’ or steal stores from other municipalities.”¹²⁴ It doesn’t prohibit a city, for instance, from subsidizing a retailer that is likely to eviscerate the sales of a competitor doing business in a neighboring town.

Oklahoma prohibits the use of property tax exemptions for retail establishments to avoid this type of cannibalization between cities.¹²⁵ But this law applies only to tax abatements, not to TIF-related tax breaks.¹²⁶ Oklahoma redevelopment authorities often lure retail development with deals that provide sales tax kickbacks, but seldom with rebates of property tax increments.¹²⁷

4. Why So Few States Intervene to Halt the Inter-local TIF Subsidized Competition for Retail Activity

¹²¹ If the district in which a development project is to be built is outside a city’s central business district then a maximum of 20% of the plan’s estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumer, and other commercial uses other than office space. N.C. GEN. STAT. § 158-7.3 (a)(1) (2010).

¹²² The 20% limitation doesn’t apply to development financing districts located in an area with high unemployment, low median household income, a high percentage growth in population in the last 3 years, and low property value per capita, and created primarily for tourism-related economic development (e.g. developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, etc.). N.C. GEN. STAT. ANN. § 158-7.3 (a)(1), 143B-437.08 (2010).

¹²³ CAL. HEALTH & SAFETY CODE § 33426.7 (West 2010).

¹²⁴ NEIGHBORHOOD CAPITAL BUDGET GROUP, TIF ALMANAC 21 (2003); See 65 ILL. COMP. STAT. 5/11-74.4-3(Q)(13) (2010).

¹²⁵ OKLA. STAT. Tit. 62, § 860 (2010). (“No ad valorem tax incentives or exemptions authorized in this section may be granted for retail establishments. If a retail establishment is located in property which otherwise qualifies for an incentive or exemption pursuant to this section, the incentive or exemption shall not be allowed for that portion of the property used for such retail establishment. As used in this subsection, ‘retail establishment’ shall not include an establishment that provides lodging, including but not limited to a hotel, apartment hotel, public rooming house or motel.”)

¹²⁶ Telephone interview by Nicholas Christen with Don Batchelor, Gen. Counsel, Okla. City Urban Renewal Auth. (Jun. 19, 2010).

¹²⁷ Telephone interview by Nicholas Christen with Don Batchelor, Gen. Counsel, Okla. City Urban Renewal Auth. (Jun. 19, 2010).

Only state legislatures can put an end to TIF-based bidding wars among localities for retail development. We can but imagine why so few states have done that.

Professor Briffault notes that TIF fits well with “the fragmentation of local governments and the resulting inter-local struggle for investment” and “the entrepreneurial spirit characteristic of contemporary local economic development policy.”¹²⁸ Perhaps state legislators are sympathetic to local governments’ efforts to overcome chronic shortage of funds for capital improvements. Maybe it is just politically difficult to convince legislators to tighten up permissive TIF laws and deny localities within their own districts the same opportunities to compete that rival municipalities took advantage of earlier. Possibly, state legislators recognize that many low income neighborhoods lack a full range of retail outlets, forcing residents to travel long distances to shop for the basics. But it has proven difficult to find a politically acceptable statutory language for defining those areas and denying other localities the right to use TIF. It could be that state legislators want to avoid alienating local elected officials whose support they could need in the next election.

Some economists laud inter-municipal competition because they believe in economic models that predict residents select their homes based partly on the different qualities and tax prices of public goods that local governments offer. This well-known hypothesis by Professor Tiebout implies that in a free market, people will select their cities of residence rationally according to their preferences for various public goods and local tax levels.¹²⁹ “Simply stated, the Tiebout hypothesis contends that a consumer searches within the region for the municipality that best satisfies her optimal mix of services and taxes.”¹³⁰ To the extent the Tiebout hypothesis depicts reality—and scholars are divided on this—¹³¹ a community that depletes its future property tax base through TIF subsidies will either have to cutback in supplying public goods and services, or increase taxes. Residents will respond by voice (protesting), vote, or exit. And in doing so, act as a check against TIF abuse.

Tiebout posits that like minded people will be drawn to communities offering the public goods they want at tax rates they are willing to pay. Consider the example of two

¹²⁸ Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 65 (2010).

¹²⁹ “If consumer-voters are fully mobile, the appropriate local governments, whose revenue-expenditure patterns are set, are adopted by the consumer-voters.” Charles Tiebout, *A Pure Theory of Local Public Expenditure*, 64 J. Pol. Econ. 416, 424 (1956).

¹³⁰ Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 614 (1997).

¹³¹ See Ignacio J. Martinez-Moyano & Amy E. Smith, EXPLORING INTEGRATION IN PUBLIC CHOICE ECONOMIC THEORY: A SYSTEM DYNAMICS APPROACH 9 (2003), available at <http://www.albany.edu/~jm7797/presentations/Mart%EDnez-Moyano%20&%20Smith%202003.pdf>; Myrna H. Wooders, *Multijurisdictional economies, the Tiebout Hypothesis, and sorting*, 96 Proc. Natl. Acad. Sci. USA 10585, 10587 (1999); Toshiyuki Yuasa, Professor, University of Houston & Richard D. Thomas, Professor, Univ. of Houston, Presentation at the 2006 annual meeting of the Midwest Political Science Association, *Efficiency-Equality Consequences in City Redevelopments: Assessing the “Devil-in-the-Details” of Tax Increment Financing in Houston 2* (Apr. 19-23, 2006).

hypothetical cities. Each increased its tax base through aggressive TIF transactions. One city used the TIF-generated funds to build a new school. The other city used the surplus to reduce its tax rate. The Tiebout hypothesis would be confirmed if the city that built the new school were dominated by families with school age children while pensioners ruled in the other city. Similarly, residents of a wealthy bedroom suburb may see no reason to suffer the traffic congestion and aesthetic intrusion of a Wal-Mart superstore while a struggling town in the same region with little retail activity may lay out a big welcome mat for the merchants from Bentonville.¹³²

Maybe Tiebout was right, and state legislators are deferring to notions of consumer sovereignty, confident that local governments are being responsive to resident preferences.

D. THE LEGITIMATE INTERESTS ARE OFTEN UNDERVALUED OF OTHER TAXING ENTITIES (SCHOOLS AND COUNTIES) IN THE TAX INCREMENT

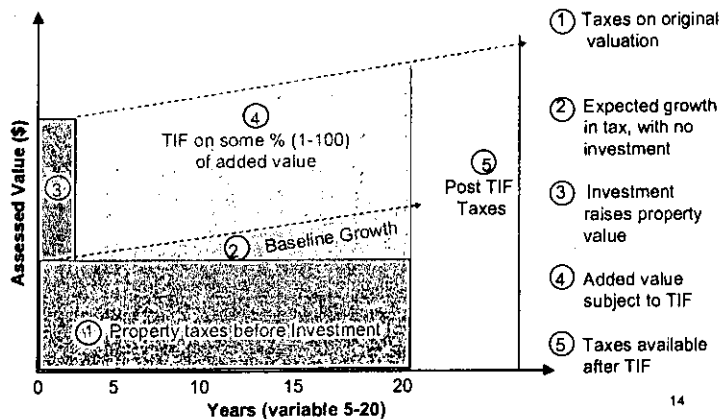
1. The TIF Bifurcation of the Property Tax Cash Flow

This section highlights the debate between redevelopment-sponsoring cities and other taxing entities over how best to share the costs of tax increment financed projects. In most states, other taxing entities including school districts and counties defer collecting any of the *tax increment* until the sponsoring agency fully recoups its development costs. By having their tax bases frozen at the pre-TIF development levels, other taxing entities dependent upon property taxes contribute indirectly to the TIF effort. These other entities continue receiving the same cash flow from property taxes as they did before the TIF district was formed. All tax proceeds above that level are potentially available to the sponsoring agency or city to repay project debt. Once the TIF debt is retired—statutory time limits for paying off TIF debt range in duration from 8 to 40 years¹³³—the other taxing entities can begin reaping the same percentage of the increment as they were entitled to receive of the pre-TIF general property tax base.

¹³² See, e.g., Richard C. Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 HARV. L. REV. 482, 537 (2009) ("As a matter of strategy, there is little doubt that cities are currently dependent upon large-scale, transnational capital to survive. How can cities become counterweights to private economic power if they are dependent upon it? A decentralist regulatory order offers one possibility. But it applies only to those cities that have the economic and political wherewithal to make choices about the form and timing of local investment. For the declining cities of the Rust Belt and elsewhere, the ability to dictate terms is fairly limited. Without a great deal of intergovernmental support, those cities are generally confined to market-based attraction strategies; they have few alternatives.")

¹³³ See FLA. STAT. § 163.385 (1)(a) (2010); MINN. STAT. § 469.176(1b) (2010).

TIF Mechanics



2. Why TIF Issuers Want All of the Cash Flow from the Increment

Typically, cities have claims to less than one-fourth of all local property taxes collected.¹³⁴ By being empowered to pledge all of the increment, not just the city's share, cities augment the property tax cash flow available to finance economic development or redevelopment. In California, for instance, school districts on average capture 45% of the property tax.¹³⁵ Cities would either have to downsize their economic development ambitions, or amortize their investments over much longer periods, if they weren't able to include tax increments otherwise available to counties and school district coffers.

In states where local governments have no opportunity to pledge tax increments from other taxing entities such as counties and school districts, there is very little TIF funded redevelopment. This is true in Virginia,¹³⁶ where TIF is only rarely deployed.¹³⁷ Similarly, TIF is seldom used in New York because the state constitution places tax increments from schools beyond the reach of TIF-sponsoring cities, and other taxing

¹³⁴ George Lefcoe, *When Governments Become Land Developers: Notes on the Public-Sector Experience in the Netherlands and California*, 51 S. CAL. L. REV. 165, 258 (1978).

¹³⁵ E-mail from John Shirey, Executive Director, Ca. Redevelopment Ass'n, to author (Jun. 21, 2010) (on file with author).

¹³⁶ William M. Leavitt, John C. Morris, and John R. Lombard, *Developing Infrastructure Through the Use of Tax Increment Financing: The Case of the Virginia Beach Town Center Project*, 13 Public Works Management and Policy 93-94 (2008). Independent cities in Virginia perform county functions and have no chance to siphon tax increments from counties because they are not lodged within counties. Also, school funding in Virginia is unaffected by TIF, as it is dependent on revenue sources other than locally assessed property taxes.

¹³⁷ Interview by author with Jose Vera, Vice President, Stone and Youngberg, May 19, 2010.

entities have the option of participating or not.¹³⁸ As a result, cities in New York state can only amortize their redevelopment or economic development investments with their own property tax increments. Not many have chosen to do so.¹³⁹

3. The Case For and Against the Use of TIF Proceeds from Other Taxing Entities

Redeveloping cities justify utilizing county and school district shares of the tax increment to preclude free-loaders from contributing nothing and reaping the benefits of a TIF-spurred enhancement in the tax base.¹⁴⁰ Once an area is successfully redeveloped, the theory goes, other tax entities should experience increased tax yields and possibly reduced public service costs.

Representatives of school districts and counties counter that much of the subsidized new development would have occurred anyway somewhere within their boundaries, making these projects economically inefficient for the public sector, considered as a whole. TIF proceeds are used for investing in the most affluent areas where private investment is abundant,¹⁴¹ and creating TIF project boundaries specifically to include already scheduled purely private development just to capture additional tax increment for the sponsoring city or county.¹⁴²

School districts, counties and other taxing entities also frown upon cities playing Robin Hood with their tax increment dollars. They have been known to subsidize tax-exempt projects for reasons of political expediency in areas they know won't add any new property tax revenues,¹⁴³ transferring TIF gains from thriving project areas to cover

¹³⁸ See footnote 181, *infra*.

¹³⁹ "The reason that the TIF law is infrequently used may be due to the fact that only the municipality's tax levy against the CV [captured value, the tax increment] is available to retire bonded indebtedness or repay project expenditures. Without the county and school district levies against the CV, the municipality's annual tax increment may not generate enough revenue to meet principal and interest payments on a typical redevelopment bond issue. Gary P. Winter, *Tax Increment Financing: A Potential Redevelopment Financing Mechanism for New York Municipalities*, 18 FORDHAM URB. L.J. 655, 682 (1991). TIF had never been used in New York City and rarely in New York State, according to Theresa J. Devine, *Learning from Experience: A Primer on Tax Increment Financing* (September, 2002, New York City Independent Budget Office.) <http://www.ibo.nyc.ny.us/iboreports/TIF-Sept2002.pdf>.

¹⁴⁰ Because "the increase in assessed valuation that would otherwise not exist, is now on the tax roll benefitting each and every political subdivision," "each political subdivision should share in the burdens." Gary P. Winter, *Tax Increment Financing: A Potential Redevelopment Financing Mechanism for New York Municipalities*, 18 FORDHAM URB. L.J. 655, 685 (1991).

¹⁴¹ Michael P. Kelsay, *UNEVEN PATCHWORK: TAX INCREMENT FINANCING IN MISSOURI*, Executive Summary (2007) ("88% of TIF plans are in four Council Districts (of Kansas City, MS) which contain the two-thirds of the city's population who are the most affluent, best educated and least likely to be members of a minority group.").

¹⁴² See, e.g. Rob O'Dell, *TUSCON CHOICES, Rare Funding Method Sets Rio Nuevo Tax Area Apart*, Dec. 31, 2008, <http://tucsongrowup.com/2008/12/31/tax-incremental-financing-tif-a-nationwide-look/>.

(Tucson officials wanted the legislature to extend the Rio Nuevo taxing district from 10 years to 40 years to capture an additional \$1.2 billion in state sales tax money.).

¹⁴³ Leeann Eckroth, *Lawsuit Filed Against the City of Bismark over TIF Funds*, BISMARCK TRIBUNE, April 6, 2010, http://www.bismarcktribune.com/news/local/article_883cc240-413c-11df-b15d-

losses from financially disastrous ones,¹⁴⁴ refusing to spend money on support facilities promised in the officially approved plans for the project,¹⁴⁵ and using TIF proceeds to close gaps in the municipal budget unrelated to economic development or redevelopment.¹⁴⁶ Other taxing entities resent that there is “virtually no oversight” to preclude cities from treating tax increment accumulations “as an ATM for projects that are important to the City Council but aren’t necessarily a top priority to the citizens of the community.”¹⁴⁷

Generally, state laws explicitly allow the use of TIF funds for land acquisition and construction of public capital improvements but stop short of specifying limits on how TIF funds may be used.¹⁴⁸ There are two notable exceptions. A few contain prohibitions against the use of public funds for purely private purposes,¹⁴⁹ and a handful of state laws

001cc4c03286.html; See also My Plain View, http://www.mypainview.com/article_e4df47db-369a-5c67-bacf-0986c6fb74af.html (last visited Aug. 4, 2010) (describing Dallas and Chicago competing to lure YMCA headquarters with TIF funds).

¹⁴⁴ This practice in Rockford, Illinois, has been likened to “corporate communism,” because “one district is rewarded at the expense of another” thereby “deplet[ing] tax dollars from their intended uses.” Stuart R. Wahlin, *Rockford’s TIF report card: Negative balances will drain public funds*, ROCK RIVER TIMES, May 19-25, 2010, <http://rockrivertimes.com/2010/05/19/rockfords-tif-report-card-negative-balances-will-drain-public-funds/>.

¹⁴⁵ State ex rel. Credit Life Ins. Co. v. City of Springfield, 551 N.E.2d 1252 (Ohio 1990). Local government that pledged TIF funds for a parking structure could not avoid using the funds for that purpose even though the city council amended the redevelopment plan because the court regarded the agency using TIF to be acting as an agent of the state and the initial council resolution as a state-level obligation not modifiable by municipal ordinance.

¹⁴⁶ See, e.g., Tom Daykin, *Milwaukee Might Tap TIF Money for Other Street Projects*, Milwaukee-Wisconsin Journal-Sentinel, Jan. 22, 2010, available at <http://www.jsonline.com/blogs/business/82297032.html> (“Milwaukee officials are moving forward with a plan that would tap tax incremental financing districts to pay for street repairs outside those districts.”).

¹⁴⁷ *Balancing Act: Ted Wheeler Wants to Talk Urban Renewal Areas. Here’s Why You Should Listen*, STREET ROOTS (Portland, Or.) July 10, 2009, available at <http://streetroots.wordpress.com/2009/07/23/balancing-act-ted-wheeler-wants-to-talk-urban-renewal-areas-heres-why-you-should-listen/>.

¹⁴⁸ See e.g., ALASKA STAT. § 29.47.460 (2010) (allows municipalities to use bond proceeds “to finance the acquisition, construction, rehabilitation, or development of public improvements in . . . an area that is capable of being substantially improved based on the property value within the area” and provides no further guidance on what “public improvements” qualify); MINN. STAT. ANN § 469.1763, SUBD. 2 (2010); MONT. CODE ANN. § 7-15-4288 (2010) (Tax increments may be used by the municipality to pay the cost of land acquisition, demolition and removal of structures, relocation of occupants, and the acquisition, construction, and improvement of infrastructure, industrial infrastructure, examples of which are listed in detail, and which include, bridges, rail lines, sewers, sewer lines, telecommunication lines, and waterlines.) WIS. STAT. § 66.1105(4)(i) (West 2010) (Requiring itemized cost reports and explanations why improvements benefiting private property owners should not be paid for by owners IDAHO CODE § 50-2903 (eligible project costs for tax increment financing include, but are not limited to, capital costs, financing costs, professional service costs, and other costs incidental to capital, financing, or professional service costs); ALA. CODE § 11-9-2 subdiv. 7 (eligible project costs include, but are not limited to, capital costs for acquiring and grading land, acquiring equipment, financing costs, costs associated with any deficit or loss incurred as a result of the sale or lease by the public entity within a tax increment finance district, professional services costs such as architects, lawyers, and underwriting costs).

¹⁴⁹ See, e.g., KAN. STAT. ANN. § 12-1770a(o)(2) (2010) (contains a lengthy list of permitted uses of funds, but prohibits funds from being used for any “[c]osts incurred in connection with the construction of

limit the extent to which TIF funds can be spent outside the project area or district where they were raised.¹⁵⁰

4. The Distinction Between Financial Viability and Economic Efficiency

Representatives of school districts and counties worry that city officials will only concern themselves with whether a project is financially viable, not whether it is also economically efficient for all the taxing entities contributing to it. A project is financially viable if it produces enough increment to reimburse the public for its investment in the project. A project is economically efficient if it produces greater net public revenues than any alternate use of the site and wouldn't have been built elsewhere within the taxing entity's boundaries.

TIF officials chasing financial viability at the expense of economic efficiency would not hesitate to designate an already thriving neighborhood as a TIF project area even though it would almost certainly have developed in virtually the same way without public assistance. Redevelopment agencies have been known to spring into action and modify a redevelopment project boundary to include a newly announced major private development project that the agency had no part at all in bringing to the area.¹⁵¹

Sometimes, the pre-TIF tax base is adjusted upward automatically for inflation or to reflect historic trends in the growth of the local tax base, sometimes not.¹⁵² In places like Chicago where many taxing entities had been experiencing growth in their tax base, and that growth is folded into the calculation of the tax increment, the losses to other taxing entities can be substantial. By one estimate, calculated on a 23 year projection, other taxing entities in Chicago would surrender \$1.6 billion of increment-- \$1.3 billion in base line growth that would have occurred anyway, and a gain of only about \$300,000,000 attributable to new development.¹⁵³

buildings or other structures to be owned by or leased to a developer," auto race tracks and parking structures notwithstanding)

¹⁵⁰ See, e.g., Office of the State Auditor, State of Minn., Statement of Position: Pooling Restrictions and the Five-Year Rule 1-2 (2010) ("[A]t least 75 percent of the tax increment generated from a TIF district be spent on activities in the TIF district that generates the tax increment. Up to 25 percent of the tax increment generated from a TIF district can be spent outside the district, but within the project area. However, all administrative expenses, up to 10 percent of the revenues generated by the district, are considered to be for activities outside the district.")

¹⁵¹ *Regus v. City of Baldwin Park*, 139 Cal. Rptr. 196, 201-04 (Ct. App. 1977) (striking down redevelopment project area formed to nurture retail and hotel uses, and which combined two separate areas within one project, an area arguably blighted, and another, totally devoid of blight characteristics, located one mile away across a freeway, which contained parcels already acquired by United Parcel Service, Nichols Lumber, and other private firms for imminent development); see also *Leach v. City of San Marcos*, 261 Cal. Rptr. 805, 810 (Ct. App. 1989) (rejecting agency's inclusion for the tax increment of non-contiguous, non-blighted property about to be developed.)

¹⁵² Compare MASS GEN. LAWS ch. 40Q, § 1 (2010) (increases base assessment value by at least 1% per year); S.B. 3151, 96th Gen. Assem., Reg. Sess. (Ill. 2010) (aims to adjust TIF district base assessment value for devaluation) with FLA. STAT. 163.387(1) (Florida does not account for inflation in its ad valorem base).

¹⁵³ Neighborhood Capital Budget Group, Who Pays for the Only Game in Town? <http://www.ncbg.org/tifs/game.htm#fisc>

"If property values would grow at a high rate in the absence of TIF, even a project that results in a permanent reduction in the growth rate would be easy to finance. Policy makers unused to the concept of opportunity cost might be susceptible to making a poor decision if financial viability is confused with efficiency."¹⁵⁴ Thus, a TIF project that increased values by 3% in a part of the city where values had been rising by 5% might be financially viable in the sense that it covers costs. But if values in the project area would have risen by 5% without public intervention, the other taxing entities will be net losers.

5. The Tension Between Financial Viability and Economic Efficiency in the Decision Whether to Form a Site-Specific or Area-Wide TIF Boundary

Perhaps no decision portrays the tension between financial viability and economic efficiency better than the size of the redevelopment project area. In most places, the TIF boundary is drawn to be coterminous with a particular, discrete project site.

An alternative is to draw the boundary area-wide to encompass enough territory to contain numerous individual projects. To bond investors larger project areas are more attractive than project specific ones because they prefer not to be dependent on a limited geographic area, a single project, or just one developer.¹⁵⁵

Redevelopment agencies defend the use of area wide TIF boundaries when they "intend to stimulate a series of reinvestments in a broader area."¹⁵⁶ Vast project areas also position TIF sponsoring entities to capture the benefits of their successful catalytic redevelopment efforts. TIF skeptics could point out that the larger the TIF district boundary, the more likely it will receive credit for tax increments it had no part in creating. To curb potential excesses, researchers have counted twenty-two states that limit the land area and value of the tax base that can be committed to a TIF district.¹⁵⁷ Federal tax law also limits "qualified redevelopment bonds" to 20% of the assessed value of all real property located within the jurisdiction of the local government.¹⁵⁸

California redevelopment agencies tend to have selected area wide project boundaries. Here are the project area sizes for California's 425 redevelopment agencies (398 active).¹⁵⁹

¹⁵⁴ Richard F. Dyc, Jeffrey O. Sundberg, *A Model of Tax Increment Financing Adoption Incentives*, 29 GROWTH AND CHANGE 90, 96 (1998), available at http://pirun.ku.ac.th/~g5164187/a_model_of_tax.pdf.

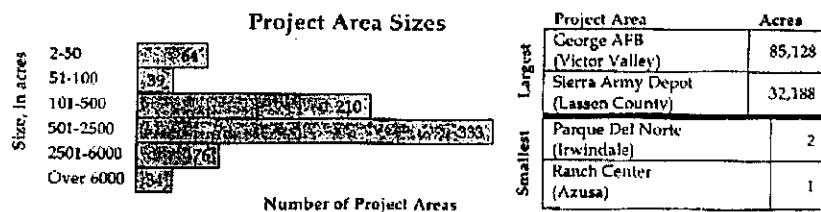
¹⁵⁵ Interview by author with Jose Vera, Vice President, Stone and Youngberg, May 19, 2010.

¹⁵⁶ COUNCIL OF DEV. FIN. AGENCIES, ADVANCED TAX INCREMENT FINANCE REFERENCE GUIDE 16 (2009).

¹⁵⁷ Rachel Webber and Laura Goddeeris, *Tax Increment Financing: Planning and Processing Issues* p. 56 (Lincoln Institute of Land Policy Working Paper, 2007).

¹⁵⁸ "The blighted area may not be greater in value than twenty (20%) percent of the total assessed property value of the jurisdiction as determined on the date of designation, nor can it be less than one hundred (100) acres provided that in the case where no more than twenty-five percent (25%) of the land in the area is provided to a single person or a group of related persons the one hundred (100) acre limitation is reduced to ten (10) acres." John G. Roach, *Financing Public Needs After Tax Reform*, 23-APR Tenn. B.J. 19, 22 (1987), discussing 26 U.S.C.A. 144 (c)(4)(C).

¹⁵⁹ CAL. SENATE LOC. GOV'T COMM., REDEVELOPMENT AGENCY FACT SHEET (Oct.2009).



6. State Intervention to Protect Other Taxing Entities

Only the state can confer upon a city the right to utilize property tax increments that otherwise belong to counties, schools, and special districts.¹⁶⁰ The basis for legislative concern is clear.¹⁶¹ Other taxing entities need to make up the revenue by service cutbacks, or increased fees and taxes, to the extent states allow development agencies to tap into their revenue streams.¹⁶² Counties may have to cut back on health clinics, drug treatment centers, sheriff patrol officers, jail beds, and library services.¹⁶³ Schools are particularly burdened by TIF and tax abatements to business firms. These firms often bring new families to the area without contributing to the property taxes that schools need “to increase school capacity to serve the new enrollment.”¹⁶⁴

(1) A few states authorize payments in lieu of taxes (PILOTs) to schools, counties and other taxing entities.¹⁶⁵ PILOTs never fully replace revenues lost to TIF.¹⁶⁷ Some states

¹⁶⁰ *LAUSD v. County of Los Angeles*, 181 Cal.App.4th 414 (2010) (“As against the state, local governments have no vested right to receive property tax revenues and have no property interest in those revenues.”).

¹⁶¹ See *Meaney v. Sacramento Housing & Redevelopment Agency*, 13 Cal.App.4th 566 (1993) (Where four school districts and the Superintendent of Schools in the Sacramento area sued the Sacramento Housing & Redevelopment Agency, the city of Sacramento, and its council alleging improper diversion of tax revenue to build a courthouse that would have otherwise gone to the schools.).

¹⁶² See *Meaney v. Sacramento Housing & Redevelopment Agency*, 13 Cal.App.4th 566 (1993) (Where four school districts and the Superintendent of Schools in the Sacramento area sued the Sacramento Housing & Redevelopment Agency, the city of Sacramento, and its council alleging improper diversion of tax revenue to build a courthouse that would have otherwise gone to the schools.).

¹⁶³ *Balancing Act: Ted Wheeler Wants to Talk Urban Renewal Areas. Here's Why You Should Listen*, STREET ROOTS (Portland, Or.) July 10, 2009, available at <http://streetroots.wordpress.com/2009/07/23/balancing-act-ted-wheeler-wants-to-talk-urban-renewal-areas-heres-why-you-should-listen/>.

¹⁶⁴ NAT'L EDUC. ASSN., PROTECTING PUBLIC EDUCATION FROM TAX GIVEAWAYS TO CORPORATIONS 2 (Jan. 2003), available at <http://www.goodjobsfirst.org/pdf/edu.pdf>. In Illinois, municipalities are obligated to reimburse school districts when they use their TIFs to fund new housing that brings increased enrollment for which it lack.

¹⁶⁵ NAT'L EDUC. ASSN., PROTECTING PUBLIC EDUCATION FROM TAX GIVEAWAYS TO CORPORATIONS 16 (2003), available at <http://www.goodjobsfirst.org/pdf/edu.pdf>. Also see *id.* at app. G (Table showing which states allows PILOTs). OHIO. REV. CODE ANN. § 5709.42 (West 2010); MO. REV. STAT. § 99.820 (11) (2010)s capacity. 65 ILL. COMP. STAT. § 5/11-74.4.5) (q) (2010).

See CAL. HEALTH & SAFETY CODE § 33607.5.

¹⁶⁷ In 1993-94 the California Redevelopment Association (a trade association representing the state's local redevelopment agencies) persuaded the state legislature to switch from a system of ‘opt out’ to a prescribed

make up all or most of the local school district revenue loss due to TIF by the formulas they use to distribute state funding for schools.¹⁶⁸

(2) Generally, the schools, counties or other districts receive notice of proposed TIF-funded projects that would divert revenues from schools and the opportunity to comment.¹⁶⁹

(3) In some states, school districts and counties take a seat on a TIF joint review board.¹⁷⁰

(4) In Florida,¹⁷¹ Kentucky,¹⁷² and New York,¹⁷³ school districts are barred from contributing any of their property taxes.

(5) A handful of states allow schools, counties and other taxing entities the choice of opting in or out of sharing their tax increments for any particular redevelopment or economic development plan.¹⁷⁴

schedule of pass through payments in lieu of taxes to other taxing entities, amounting to 35% of the tax increment collected. California Redevelopment Association, Bill Analysis, A.B. 1290, p. 4. (09/01/93). http://info.sen.ca.gov/pub/93-94/bill/asm/ab_1251-1300/ab_1290_cfa_930901_151805_sen_floor. Generally, these payments equal about 20% of what the school districts and counties would have received from a full exemption. Email to author from Calvin Hollis, Chief Operating Officer, Los Angeles Community Redevelopment Agency, Aug. 14, 2010. Cities and redevelopment agencies supported the change; opponents included school districts, counties and other taxing entities (fire protection agencies, mostly).¹⁶⁷ California Redevelopment Association, Bill Analysis, A.B. 1290, p. 4. (09/01/93). http://info.sen.ca.gov/pub/93-94/bill/asm/ab_1251-1300/ab_1290_cfa_930901_151805_sen_floor
¹⁶⁸ "In most states' foundation programs, the state first establishes a baseline level of funding that each student needs to get a good education. Then, the state determines each local government's ability to raise the money to reach that foundation for all of its students. If local property taxes are insufficient, then the state pays the difference. State aid = (Number of students x Foundation) - (Tax Rate x Property Values). If a state includes all property in a district when it estimates local property wealth, including property that does not actually contribute to the schools because of an abatement or TIF, then the state will commensurately overestimate the affected district's net tax capacity. That, in turn, means that the state will not reimburse the district for the revenue lost to the abatement or to TIF. On the other hand, if a state excludes the value of tax-abated or TIF-captured property from the locality's tax capacity, then the schools may get reimbursement for some or all of the resulting revenue loss." NAT'L EDUC. ASSN., PROTECTING PUBLIC EDUCATION FROM TAX GIVEAWAYS TO CORPORATIONS app. B, H (2003), available at <http://www.goodjobsfirst.org/pdf/edu.pdf>.

¹⁶⁹ See e.g., ARK. CODE ANN. § 14-168-306(e) (2010); FLA. STAT. § 163.346 (2010); IOWA CODE § 403.5 (2) (2010); KAN. STAT. ANN. § 12.1771 (d) (2010); MINN. STAT. § 469.175(2) (2010); OKLA. STAT. tit. 62 § 859, 862 (2010) (School districts can protest base level assessment).

¹⁷⁰ See e.g., COLO. REV. STAT. § 31-25-107 (9) (2010); 65 ILL. COMP. STAT. § 5/11-74.4.5) (b) (2010); UTAH CODE ANN. § 17B-4-1002 (2010); WIS. STAT. § 66.1105(4m) (2010).

¹⁷¹ FLA. STAT. ANN. § 163.340(2), 163.387 (2010).

¹⁷² In Kentucky, cities or counties have the option of contracting to join each other's TIF redevelopment projects. Ky. Rev. Stat. 65.7051 (4); School tax revenues are not local revenues subject to inclusion within a TIF district. KY. REV. STAT. ANN. §§ 65.7045, (22b) (2010), 65.680 (27), 65.490.

¹⁷³ N.Y. CONST. art. XVI, § 6. This provision authorizes the use of TIF by any county, city, town or village but excludes schools. Counties, cities, towns and villages are empowered to enter joint powers agreements with other local governments to provide for tax increment revenue sharing. N.Y.GEN.MUN.LAW § 970-n (McKinney 1986).

Taxing entities with the option of withholding their revenues from TIF projects frequently negotiate the terms of their participation through agreements with sponsoring jurisdictions.¹⁷⁵ Deal points usually include the duration of participation, the percentage of increment to be shared, reporting requirements, guaranteed minimum tax payments in the event that tax yields fall below the pre-redevelopment tax base,¹⁷⁶ and, sometimes, specific in-kind contributions such as a new school for a school district or a new fire station for a county.¹⁷⁷

Why have so few states granted schools, counties and other taxing entities the right to opt out of sharing their tax increments? The short answer probably lies in an analysis of the lobbying effectiveness of redevelopment agencies, schools and counties.

Legislative advocates for schools and counties could contend that if schools and counties were granted the option of participating or not, they could withhold their share of future increments from projects they deemed economically inefficient, and this might deter redevelopment agencies from sponsoring ill-conceived projects.

Redevelopment agency advocates might counter that school districts and counties could become free-loaders by withholding their approval even of projects likely to yield net tax benefits to all affected taxing entities. Schools and counties might even abuse their power of opting out, by trying to extract through negotiation more than their fair share of the tax increment from the sponsoring city.¹⁷⁸

In one instance, the Houston Independent School District (HISD) conditioned its participation in the redevelopment of an older shopping center on financial assistance to rehabilitate a school three miles away. Texas prohibits funds from one TIF district being spent in another district¹⁷⁹ and also has a contiguity requirement for district boundaries¹⁸⁰ so the boundary was gerrymandered by including public rights of way linking the

¹⁷⁴ See also e.g., GA. CODE ANN. 36-44-8 (1) (2010) (consent needed from independent taxing entities); OHIO REV. CODE ANN. § 5709.40 (D)(1) (2010) (Need school board approval if district is to last for more than 10 years); 53 PA. CONS. STAT. § 6930.5 (a)(7) (2010) (each entity can opt out of the plan); TEX. TAX CODE ANN. § 311.013 (f) (2010) (each taxing unit can opt out).

¹⁷⁵ COUNCIL OF DEV. FIN. AGENCIES, ADVANCED TAX INCREMENT FINANCE GUIDE 18 (2009).

¹⁷⁶ North Carolina authorizes development finance districts to enter agreements with other taxing entities guaranteeing a minimum value agreement so that even if property values decline, the taxing entity will be sure to receive enough of the property tax increment to continue making payments on its outstanding debts. N.C. GEN. STAT. § 159-108 (c) (2010).

¹⁷⁷ COUNCIL OF DEV. FIN. AGENCIES, ADVANCED TAX INCREMENT FINANCE GUIDE 18 (2009).

¹⁷⁸ The California Redevelopment Association contended that other taxing entities had been doing this under the state's pre-1993 opt-out arrangement. "CRA contends that counties and other agencies have effectively extorted money from redevelopment agencies by using pass-through agreements and threatening to challenge a project area." California Redevelopment Association, Bill Analysis, A.B. 1290, p. 7. (09/01/93).

http://info.sen.ca.gov/pub/93-94/bill/asm/ab_1251-1300/ab_1290_cfa_930901_151805_sen_floor

¹⁷⁹ See TEX. TAX CODE ANN. § 311.014 (2010).

¹⁸⁰ TEX. TAX CODE ANN. § 311.003 (a) (2010) (contiguity requirement applies if the district span across the municipality's borders).

shopping center tenuously to the school.¹⁸¹ “The proposed strategy succeeded; the HISD contributed significant revenues to the overall list of projects and also received assistance in the redevelopment of its school.”¹⁸²

When the Portland Development Commission tried something similar, connecting the River (Pearl) District with a long, thin line to a school site ten miles away, the Land Use Board of Appeals (LUBA) blocked the cross-subsidy move.¹⁸³ An Oregon statute specifies that when an urban renewal project includes a public building, the plan must explain how the public building serves or benefits the renewal area.¹⁸⁴ The Oregon court reasoned that public buildings pay no taxes so the statute must have been enacted to make sure that taxed properties benefited from these tax-exempt public buildings. In this case, the court concluded that the new elementary school site was located too far from the core of the River District to benefit or serve it.¹⁸⁵

E. LOCAL GOVERNMENTS SOMETIMES NEGLECT TO DETERMINE THROUGH THE USE OF ‘BUT FOR’ TESTS THAT TIF SUBSIDIES ARE NEEDED AND EFFICIENT

1. The Project Area ‘But For’ Test

In a minority of states, at the time public officials designate a project area for redevelopment, local governments are obliged by statute to make a finding that without government assistance, private developers would not have undertaken the project on their own. In twenty-one states and the District of Columbia, local governments must make a finding that redevelopment would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future, or that no significant private development would have been likely to be built at the target site ‘but for’ the public role.¹⁸⁶ Enforcement, though, is scant, left entirely to the discretion of the same local officials responsible for initiating the TIF effort, with no one specifically empowered to stop them from proceeding on the basis of cursory, poorly supported ‘but for’ findings.

¹⁸¹ COUNCIL OF DEV. FIN. AGENCIES, ADVANCED TAX INCREMENT FINANCE GUIDE 18 (2009).

¹⁸² COUNCIL OF DEV. FIN. AGENCIES, ADVANCED TAX INCREMENT FINANCE GUIDE 19 (2009).

¹⁸³ *Friends of Urban Renewal v. Portland*, LUBA No. 2008-116, slip op. at 1, 15, (Or. Jan. 2, 2009), <http://www.oregon.gov/LUBA/docs/Opinions/2009/01-09/08116.pdf>.

¹⁸⁴ OR. REV. STAT. § 457.085 (2)(j) (2010).

¹⁸⁵ *Friends of Urban Renewal v. Portland*, LUBA No. 2008-116, slip op. at 11, (Or. Jan. 2, 2009), <http://www.oregon.gov/LUBA/docs/Opinions/2009/01-09/08116.pdf>.

¹⁸⁶ ALA. CODE § 11-99-4(5) (2010); CAL. HEALTH & SAFETY CODE § 33367 (D)(11) (West 2010); D.C. CODE ANN. § 2-1217.03 (LexisNexis 2010); GA. CODE ANN. § 36-44-8 (3)(G) (West 2010); 65 ILL. COMP. STAT. ANN. 5/11-74.4-3 (N)(J) (West 2010); IND. CODE ANN. § 36-7-14-15(2) (West 2010); KY. REV. STAT. ANN. § 65.7049 (West 2010); MICH. COMP. LAWS ANN. § 125.1813 (1)(A) (West 2010); MINN. STAT. ANN. 469.175 SUBD. 3(B)(2) (West 2010); MO. ANN. STAT. § 99.810.1(1) (West 2010); NEB. REV. STAT. ANN. § 18-2116 (LexisNexis 2010); N.J. STAT. ANN. § 52:27D-471 (West 2010); New York: N.Y. GEN. MUN. LAW 970-E (F) (McKinney 2010); N.C. GEN. STAT. ANN. § 159-105 SUBD. (b)(5) (2010); OKLA. STAT. ANN. TIT. 62 § 852 (West 2010); PA. CONS. STAT. ANN. § 6930.5(A)(6)(IV)(D) (2010); R.I. GEN. LAWS § 45-33.2-4 Subdiv. (5)(II) (2010); S.C. CODE ANN. § 31-6-80 (G)(I) (2010); TEX. TAX CODE § 311.003(a) (Vernon 2010); WASH. REV. CODE ANN. § 39.89.030 Subdiv. 2 (LexisNexis 2010); W. VA. CODE § 7-11B-7 (7)(D)(F)-(G) (West 2010); WIS. STAT. ANN. § 66.1105(4M)(C)1 (West 2010).

2. The Individual Project 'But for' Test

Once a jurisdiction selects a private redeveloper, and negotiates a deal, a second type of 'but for' test calls for local officials to determine that the proposed project could not reasonably be expected to proceed with the same public benefits, on the same timetable, at the designated location, and still be financially feasible for the developer without the public contribution.¹⁸⁷ In Minneapolis, for instance, TIF applicants are expected to provide the basic financial data from which city officials can assess how much public support, if any, their projects require to be viable.¹⁸⁸

Responsible public agencies and developers negotiate, often for months, over the appropriate rate of return the project should yield the developer. They pour over the developer's estimates of project expenses and costs, consider the cost implications of different site plans and architectural treatments, and study the rates of return developers are earning on comparable projects. A thorough analysis takes into account the track record, solvency and capacity of the developer, the timing of the agency's and developer's respective contributions, and "unusual or extraordinary costs that made the project financially unfeasible in the marketplace, and public infrastructure to remedy existing deficiencies or provide adequate capacity to support the proposed project."¹⁸⁹

Though the industry lacks policies, procedures, and guidelines,¹⁹⁰ one of the industry's leading trade associations, the Council of Development Finance Agencies (CDFA), strongly recommends project specific 'but for' studies as a best practice. (1) This is an opportunity for local governments to articulate precisely why TIF is needed, to identify the aspects of the project that justify public assistance; (2) to make the most efficient use of public funds, not to squander public funds by over compensating developers; and (3) to justify public subsidies for private development.¹⁹¹

¹⁸⁷ E.g., City of Hartford requires that "[t]he developer is able to demonstrate that "but for" the TIF assistance requested, the project in question could not reasonably be expected to move forward." City of Hartford Tax Increment Financing Policy; City of Ottawa KS requires that "but for the availability of TIF, such projects would not be as economically viable." City of Ottawa, Tax Increment Financing Policy.

¹⁸⁸ "In all cases, it is required that the need for public assistance be demonstrated and documented by the developer to the satisfaction of the City Finance Department. All such documentation, including development budgets, cash flow projections, market studies and other financial and market information, must be submitted by the developer along with an application for public financial assistance. If the request is based on financial gap considerations, the developer will demonstrate the profitability and feasibility of the project (i.e. gross profit, cash flow before taxes, cash-on-cash return, IRR, etc.), both with and without public assistance." Minneapolis Tax Increment Policy. Updated September 9, 2009.

http://www.ci.minneapolis.mn.us/cped/tax_increment_policy.asp

¹⁸⁹ For annual reports required of public agencies using TIF, the Missouri Department of Economic Development issues a questionnaire that identifies potential justifications for public assistance: unusual or extraordinary costs that made the project financially unfeasible in the marketplace, and public infrastructure to remedy existing deficiencies or provide adequate capacity to support the proposed project. Missouri Department of Economic Development, Tax Increment Financing Annual Report for 2009 to meet the requirements of Mo. Rev. Stat. 99. 865, question 17. Missouri Tax Increment Financing Annual Report form

¹⁹⁰ COUNCIL OF DEV. FIN. AGENCIES, ADVANCED TAX INCREMENT FINANCE REFERENCE GUIDE 3 (2009).

¹⁹¹ COUNCIL OF DEV. FIN. AGENCIES, ADVANCED TAX INCREMENT FINANCE REFERENCE GUIDE 2 (2009).

Skeptics may challenge the utility of these types of inquiries, likely to be expensive and inconclusive because opinions will vary on whether an area is likely to be redeveloped without public assistance, and how large a rate of return the developer of any proposed subsidized project should receive. If forced to make these determinations against their will, public officials can be expected to select consultants likely to give them the results they are looking for at considerable public expense.

3. Judicial Review of 'But For' Determinations

Most courts display little interest in the local public agency's 'but for' analysis.¹⁹² Yet, it is not completely impossible to launch a successful challenge. A school district succeeded in doing that in its suit against the Village of Burr Ridge. The Illinois TIF Act required a showing that the subject property "would not reasonably be anticipated to be developed without the adoption of the redevelopment plan."¹⁹³ The plaintiffs showed that nearby sites had been successfully developed for a variety of commercial uses (three banks, a restaurant and two office buildings), and that the subsidized site at issue in the case had been sought after by other developers.¹⁹⁴ Earlier, the town had voted down two proposals, a 30-screen movie complex and a residential townhome development, for that site to appease neighboring home owners.¹⁹⁵ Equally telling, the current owner had proceeded with its project before the village actually adopted the ordinances establishing the TIF district.¹⁹⁶ Bottom line: the project in Burr Ridge flunked its 'but for' test. Make no mistake. This case is an outlier. As Professor Briffault rightly observes, state courts generally treat 'but for' determinations as legislative matters deserving great judicial deference "without much evidence required."¹⁹⁷

Similarly, challenges seldom succeed to redevelopment deals based on a public agency having paid a private redeveloper too much for the benefits the public received. Many variables figure in the final determination of what counts as a suitable rate of return and courts usually manage to sidestep second guessing the numbers.

Challenges based on overcompensation of the private redeveloper could be predicated on state constitutional provisions prohibiting governments from making gifts or loans to private firms. These suits seldom succeed.¹⁹⁸ Generally, courts have held that public

¹⁹² See, e.g., *Great Rivers Habitat Alliance v. City of St. Peters*, 246 S.W.3d 556, 562-63 (Mo. Ct. App. 2008) (applying the 'fairly debatable' standard of review to local government's finding that but for the city's intervention, private development is not reasonably anticipated to occur in the designated redevelopment site without the adoption of TIF).

¹⁹³ 65 ILCS 5/11-74.4-3(n)(1) (West 2002)..

¹⁹⁴ *Board of Educ., Pleasantdale Sch. Dist. No. 107, Cook County, Ill. v. Village of Burr Ridge*, 793 N.E.2d 856, 867 (Ill.App. Ct. 2003).

¹⁹⁵ 793 N.E. 2d at 867.

¹⁹⁶ *Board of Educ., Pleasantdale Sch. Dist. No. 107, Cook County, Ill. v. Village of Burr Ridge*, 793 N.E.2d 856, 867 (Ill.App. Ct. 2003).

¹⁹⁷ Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 80. (2010).

¹⁹⁸ See, e.g., California Constitution, article XVI, section 6: "The Legislature shall have no power to give or to lend, ... the credit of the State... in aid of or to any person, association, or corporation, whether municipal or otherwise...."

subsidies are not a gift of public money to private firms as long as conferred to achieve an identifiable public purpose or public benefit, whether tangible or intangible.¹⁹⁹

The Arizona Supreme Court recently rejected this permissive 'public purpose' test unless accompanied by a more stringent inquiry. In the future the Court promised to enforce the constitutional prohibition against gifts of public money by probing whether the public received consideration "so inequitable and unreasonable" as to evidence an abuse of discretion.²⁰⁰

F. TIF PROJECT FINANCES OFTEN LACK TRANSPARENCY

1. The Case for Transparency

There are great variations among local governments in what they report about TIF projects to the public, the state, and other taxing entities. Only a handful of states require TIF-using agencies to make formal assessments of whether a project is likely to be financially feasible for the local government, and mandate periodic audits to confirm whether the projections were realized. Development agencies often keep the public in the dark about their transactions.²⁰¹ Scant public reporting of TIF expenditures and revenues, "guided by the invisible hand of lobbyists, political action committees, and campaign contributions,"²⁰² does nothing to allay suspicions of favoritism and corruption. In some places, it is difficult even for local public officials to know whether agency cost-and-revenue estimates are accurate, and whether the project's performance matched its original projections.

"The use of TIF permits a municipality to finance redevelopment with dollars that do not originate from the general revenues of the municipal budget. As a result, local public

¹⁹⁹ See, e.g., *Redevelopment Agency v. Shepard*, 75 Cal.App.3d 453, 142 Cal.Rptr. 212 (Cal.App. 1977).

²⁰⁰ *Turken v. Gordon*, 224 P.3d 158, 165 (Ariz., 2010). Developers of a \$1.8 billion mixed use project with over one million square feet of retail space sought aid from the city of Phoenix to complete the project. The city agreed to provide up to \$97.4 million dollars from tax increments for the right to reserve for commuters up to 200 parking spaces in the project's 3180 space garage. The Arizona Supreme Court found "it difficult to believe that the 3,180 parking places have a value anywhere near the payment potentially required under the Agreement. The Agreement therefore quite likely violates the Gift Clause." 224 P. 3d at 167.

²⁰¹ A study of economic development subsidies in the St. Louis region by the Council of Governments concluded that across all incentive programs, reporting of revenues, expenditures and outcomes such as increased taxes, jobs, and personal incomes are "remarkably weak". Interim Report, *An Assessment of the Effectiveness and Fiscal Impacts of the Use of Development Incentives in the St. Louis Region* p. iv (Jan. 2009). In Chicago where Mayor Daley exercises control of more than half a billion in TIF revenues each year, TIF critics contend that "the specifics of how the city spends TIF money have always been kept from the public, even when Mayor Daley and his top aides craft a budget for it." Ben Joravsky and Mick Dumke, *The Shadow Budget*, Chicago Reader, Oct. 22, 2009.

²⁰² "Entrepreneurial capitalism (where investors use their own money), guided by the invisible hand of the marketplace, is a preferable means of financing private business entities than the government (where politicians use the taxpayers' money), guided by the invisible hand of lobbyists, political action committees, and campaign contributions." John L. (Lennie) Thompson, Jr., county commissioner, Frederick County, Maryland. http://www.fredericknewspost.com/sections/archives/display_detail.htm?StoryID=96285.

officials need not consider alternative uses, such as capital improvements, fire and police protection, health, recreation and maintenance of the capital infrastructure, for the funds they spend for urban real estate development. Since they are not forced to evaluate redevelopment expenditures in terms of other objects of municipal spending, public officials have less reason to review redevelopment expenditures as closely as they examine other budgetary items."²⁰³

Jeff Oris, a Florida redevelopment expert, attributes the lack of transparency partly to "lack of oversight and of monitoring by the public." "Citizens are not participating." Mr. Oris opines that reports are "a complete waste of effort and money" if no one reads them and on the basis of what is revealed, holds decision makers accountable.²⁰⁴

2. Disclosure Menu

Ideally, local governments would lay out two types of information for the public about their TIF projects.

(A) Financial Feasibility for the Local Government. An assessment of financial feasibility involves putting a price tag on projected public sector costs and benefits, with a back up source of guaranteed funding if tax increments fall short of covering the agency's debt service. Though some states demand exacting financial projections of local TIF agencies,²⁰⁵ other states do not.²⁰⁶

(B) Annual Audit of Revenues and Expenses. Once the project is in place, the local government should audit annually, comparing anticipated with realized expenditures and revenues. The audit informs other taxing entities of the annual increment diverted from them, and how the public agency used these funds. Sometimes, public agencies aggregate

²⁰³ Gary P. Winter, *Tax Increment Financing: A Potential Redevelopment Financing Mechanism for New York Municipalities*, 18 FORDHAM URB. L.J. 655, 682 (1991).

²⁰⁴ ²⁰⁴ Email from Jeff Oris to George Lefcoe, 06/02/10. Mr. Oris is a past president, Florida Redevelopment Association, and a planning and redevelopment consultant.

²⁰⁵ MINN. STAT. § 469.175 Subd. 6. (2010) ("Annual financial reporting. (a) The state auditor shall develop a uniform system of accounting and financial reporting for tax increment financing districts. The system of accounting and financial reporting shall, as nearly as possible: (1) provide for full disclosure of the sources and uses of tax increments of the district; (2) permit comparison and reconciliation with the affected local government's accounts and financial reports; (3) permit auditing of the funds expended on behalf of a district, including a single district that is part of a multidistrict project or that is funded in part or whole through the use of a development account funded with tax increments from other districts or with other public money; (4) be consistent with generally accepted accounting principles."). See also e.g., MO. REV. STAT. § 99.865 (2010); W. VA CODE § 7-11B-15 (2010).

²⁰⁶ One exception can be found in Kansas where feasibility studies are required of local governments desiring to pledge the locality's one percent sales tax for Star Bonds to facilitate certain large scale projects such as sports stadiums, museums, auto race tracks, regional lifestyle and entertainment commercial malls and other tourism attractions. The financial feasibility study requires an analysis that there will be enough sales tax generated to repay the STAR Bonds, a market study of how much draw the project will have and how many visitors there will be, and the impact of the project on existing businesses and projects. Telephone Interview by Parag Amin with Allen Bell, Econ. Dev. Dir., Wichita, Kan., 06/25/2010. See also, Kansas Department of Commerce, art.9; KAN. STAT. ANN. § 12-17, 162 (2010); Canyon Research Southwest, Inc., Star Bond Feasibility Study, Prairiefire at Lionsgate (Jan. 2009).

revenues and expenditures from all their projects, making it impossible for taxpayers and other taxing entities to trace the sources and uses of TIF capital to particular projects.

3. An Example: Americana at Brand

Examples abound of TIF project cost and revenue projections and audits.²⁰⁷ In California, if and when a local agency acquires land with TIF funds, and then makes that land available to a private developer for less than the agency's acquisition price, it is obliged to justify the discount as representing the fair market value of the property in light of the restrictions on the purchaser's use of the site.²⁰⁸ The agency must also make public the terms of the agency's sale or lease contract for the land.²⁰⁹ (By negative inference, if the agency acquires the land with funds not derived from tax increments, it has no statutory obligation to justify its below-cost selling price.)

This law was applicable to the Glendale Redevelopment Agency. (Glendale is a middle-income city with a population of about 200,000 at the eastern edge of the San Fernando Valley, commonly regarded as a suburb of Los Angeles.) The Glendale Redevelopment Agency had acquired a potential redevelopment site over a fifteen year period along Brand Avenue, the city's premier office high-rise and entertainment street, a site adjoining a regional mall called the Glendale Galleria. The agency proposed to make the land available to a private real estate developer for a retail-and-housing complex called Americana at Brand. "This development is a multi-use property of trendy stores, upscale restaurants, and luxury apartment and condominium residences. With dancing fountains similar to those at the Bellagio in Las Vegas (though admittedly on a much smaller scale), the Americana relates more to the more diverse, younger, affluent population than the profile of Glendale's original residents—WASP, Republican, middle class, traditional families."²¹⁰

The terms of the deal were embodied in a Development and Disposition Agreement (DDA), which the city put online for all to see.²¹¹ The city internal auditor issued an

²⁰⁷ See, e.g., Austin, Texas, report to city council on the Seaholm Redevelopment Project, March 27, 2008. http://www.ci.austin.tx.us/seaholm/downloads/seaholm_pres_march_27_08.pdf

²⁰⁸ CAL. HEALTH & SAFETY CODE § 33433(a)(B)(iii) (West 2010).

²⁰⁹ CAL. HEALTH AND SAFETY CODE § 33433. The agency needs to specify the cost of the agreement to the agency, the estimated value of the property at its highest and best use, the estimated value of the property given the conditions placed on the property by the agency, the compensation to be received by the agency, and an explanation of how the project will eliminate blight. "The focus of the law is on affording interested persons adequate notice, information, and a hearing prior to the sale of any property interest acquired with tax increment funds. The law particularly reveals a legislative intent to ensure disclosure of the comparison between the acquisition cost of fair market value of the property and its resale price, so that expenditure of tax funds can be monitored and fraud or corruption avoided." 4 Cal. Real Est. Digest 3d Public Housing and Redevelopment § 5 (2010).

²¹⁰ Laura Jean Berger, *Suburbia Evolved: Glendale Then and Now*, September 18, 2010.

Newgeography.com - Economic, demographic, and political commentary about places.

²¹¹ Available at

http://www.ci.glendale.ca.us/pdf/town_center_EIR/Disposition_and_Development_Agreement/DDA_Document.pdf

analysis of the costs and benefits of the project to the city.²¹² By reading the auditor's cost study, we learn that the city invested a total of \$77 million in the Americana at Brand project: the city contributed land at the city's acquisition price of \$62 million, promised public improvements of \$12.7 million and pledged \$1.8 million to the payment of specified development costs. The developer contributed \$98 million in building costs, \$6 million in public improvements, and \$29.5 million in private improvements. A housing developer committed \$53.6 million to build out the project's condo and rental units.

In return, the city could anticipate increased property and sales tax revenues. The DDA also called for the city to share half the developer's profits once the developer achieved an internal rate of return of 11.75% on the retail component of the project, and 8.25% on the residential component.²¹³

This was an open air, life-style mall where the central area connecting the shops and residences is designed to resemble an idealized city street. The developer was not going to entrust the security and maintenance of this space to anyone else. The city parks department estimated that the city would have spent a net present value of \$4.6 million taking care of the three acres had the developer not assumed the maintenance burden for the dedicated public space.²¹⁴

The Glendale Redevelopment Agency had no problem preparing and releasing all this information, though it is easy to see why public officials in other cities might be reluctant to prepare and publicize comparable data from their own communities. It arms project opponents with information they might otherwise never have found, and invites hard questions, and later criticism of elected officials if their revenue projections prove wrong. In this case, for instance, project opponents could probe whether the land was worth the \$62 million the city had paid for it, and if this project was the best the city could do for its money. They could argue about whether the city's internal auditor made realistic estimates of the extent of retail sales displacement or cannibalization. Project opponents could embarrass city officials by producing their own experts to contradict the city's estimates. Opponents could object to the city ceding supervisory control of public open space to the private developer's maintenance and security personnel. In the event, the Americana at Brand project was subject to a public referendum; most of the above arguments were raised in the public debate preceding the referendum, and Americana at Brand triumphed at the ballot box in a close vote.²¹⁵

4. State Reporting Requirements

²¹² Internal Audit (on file with author)]

²¹³ Report on Town Center Project Economics and Business Terms, submitted to the Glendale City Council, April 13, 2004. This was based on an Internal Audit, Summary of the Proposed Town Center Economics, March 29, 2004.

²¹⁴ Internal Audit, Summary of the Proposed Town Center Economics, March 29, 2004, p. 6.

²¹⁵ Business wire, *Caruso Affiliated Wins Final Victory in Glendale as General Growth Concedes*, December 20, 2005. <http://www.allbusiness.com/legal/trial-procedure-suits-claims/5182397-1.html>

State-mandated financial reporting requirements are rare and, for the most part, tepid and unenforced. Indiana economic development agencies aren't even required to calculate how much increment they are deflecting from other taxing entities each year.²¹⁶

A few states require local redevelopment or economic development agencies to file annual reports concerning their activities.²¹⁷ Florida, for instance, requires redevelopment agencies to file an annual audit with their governing bodies, the local government that created them.²¹⁸ The content of these annual reports is left entirely to the discretion of each issuing agency so the reports vary enormously in coverage and quality; and the lack of uniform information from one agency to the next disables efforts at inter-municipal comparison.²¹⁹

Some states have the right idea. Economic development agencies in Missouri must file an annual report, which elicits information probing whether public costs for proposed projects are offset by reasonably anticipated public revenues.²²⁰ Illinois TIF agencies must commission the preparation of annual district financial reports prepared by outside consultants (based on unaudited information the city supplies), and make available project redevelopment agreement information arranged by TIF district narratives and goals.²²¹

²¹⁶ Telephone Interview by Parag Amin with Dan Jones, Ass't Dir., Budget Div., Ind. (Jun. 21, 2010).

²¹⁷ See e.g., 402 MASS. CODE REGS. 3.12 (2010) ("Each municipality implementing an approved development program shall provide an annual status report to the EACC (Economic Assistance Coordinating Council) describing all significant activities, projects and events during the preceding year in furtherance of the program, including but not limited to, a list of properties acquired by the municipality by eminent domain during the preceding year, an update on the costs and financing of the program, including the status of tax increment financing for the program, and a schedule for the program containing a description of anticipated events during each of the next five years, and for each five-year period thereafter." MINN. STAT. § 469.175 Subd. 6(a) ("The state auditor shall develop a uniform system of accounting and financial reporting for tax increment financing districts. The system of accounting and financial reporting shall, as nearly as possible: (1) provide for full disclosure of the sources and uses of tax increments of the district; (2) permit comparison and reconciliation with the affected local government's accounts and financial reports; (3) permit auditing of the funds expended on behalf of a district, including a single district that is part of a multidistrict project or that is funded in part or whole through the use of a development account funded with tax increments from other districts or with other public money; (4) be consistent with generally accepted accounting principles."); W. VA CODE § 7-11B-15 (2010); MO. REV. STAT. § 99.865 (2010).

²¹⁸ Fla. Stat. Ann. § 163.357(3)(c). "shall file with the governing body, on or before March 31 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the county or municipality and that the report is available for inspection during business hours in the office of the clerk of the city or county commission and in the office of the agency."

²¹⁹ Email from Jeff Oris to George Lefcoe, 06/02/10.

²²⁰ Missouri Department of Economic Development, Tax Increment Financing Annual Report for 2009 to meet the requirements of MO. REV. STAT. § 99.865 question 17. Missouri Tax Increment Financing Annual Report form

²²¹ 65 ILL. COMP. STAT. 5/11-74.4-5(d)(9), 5/11-74.4-7 (2010). For information on Chicago's TIF districts, including redevelopment agreements, narratives, and financial reports, see City of Chicago :: Project Redevelopment agreements, http://www.cityofchicago.org/city/en/depts/dcd/supp_info/district_overviews.html.

Wisconsin mandates that each TIF sponsoring “city shall prepare and make available to the public updated annual reports describing the status of each existing tax incremental district, including expenditures and revenues.”²²² Milwaukee’s annual audit, for instance, of its 49 TIF projects shows the financial viability of each of them, enumerating public revenues and expenditures.²²³ This transparency has made it possible for the Milwaukee city council to engage in serious public debate over how TIF funds should be used.²²⁴

Another exception to the lax reporting and auditing requirements comes from Kansas. Kansas requires approval by the secretary of the Department of Commerce of a detailed feasibility and market analysis but only for certain large scale projects for which the locality wants to issue bonds secured by state sales taxes, projects such as sports stadiums, museums, auto race tracks, regional lifestyle and entertainment regional malls and major tourism attractions.²²⁵ The financial feasibility study needs to show that enough sales taxes will be generated to repay the bonded indebtedness, a market study of the project’s draw including anticipated numbers of visitor, and the impact of the project on competing businesses within a 100 mile radius.²²⁶ State officials have issued guidelines for reviewing these studies so they can foresee the net economic benefits to Kansas.²²⁷

4. SEC Required Annual Reports from Bond Issuers to Bond Holders

The SEC prohibits brokers, dealers, or underwriters from purchasing or selling municipal securities unless the issuer has contracted in writing to provide certain financial information for the benefit of bond holders, an annual report and certain ‘event’ notices.²²⁸ The information is all about the TIF cash flow—tax rates, assessed valuations, identification of the 10 largest taxpayers in the project area responsible for more than 5% of the taxes levied, property tax appeals, exemptions, tax increments collected in the prior year, tax delinquencies, estimated debt service coverage ratios.²²⁹

²²² WIS. STAT. § 66.1105(6m)(c) (2010).

²²³ DEP’T OF CITY DEV., CITY OF MILWAUKEE, 2009 ANNUAL REPORT: MILWAUKEE TAX INCREMENTAL FINANCE DISTRICTS (May 2010), available at <http://www.mkedcd.org/business/TIF/pdfs/2009AnnualTIDReport.PDF>

²²⁴ See generally Tom Daykin, *Milwaukee Might Tap TIF Money for Other Street Projects*, Milwaukee-Wisconsin Journal-Sentinel, Jan. 22, 2010, available at <http://www.jsonline.com/blogs/business/82297032.html> (Milwaukee’s Common Council must approve a proposed plan to extend the life of a TIF district to use the money for issues such as street repairs and environmental cleanups before it can take effect. The plan is controversial because approving the plans means that the funds that would otherwise have gone towards local services like Milwaukee’s public schools would go only towards the uses outlined in the proposed plan.).

²²⁵ Telephone Interview by Parag Amin with Dan Jones, Assistant Dir, Budget Div Ind. (Jun. 21, 2010).

²²⁶ Telephone Interview by Parag Amin with Allen Bell, Dir. of Econ. Dev., Wichita, Kan. (Jun. 25, 2010).

²²⁷ Telephone Interview by Parag Amin with Richard Cram, Dir. of Policy and Research, Kan. Dep’t of Revenue (Jun. 25, 2010). See also, Guidance to STAR Bond Applicants (on file with author).

²²⁸ See 17 CFR § 240.15c2-12 (2010).

²²⁹ COUNCIL OF DEV. FIN. AGENCIES, ADVANCED TAX INCREMENT FINANCE REFERENCE GUIDE 73 (2009).

III. SUMMARY: THE FUTURE OF TIF

As cities and suburbs compete for the next hundred million Americans, they will need both public and private capital investments to build the kinds of places potential newcomers desire. TIF enables local government officials to influence the design, location and uses of private development more directly than they could in their regulatory capacity alone. Portland nurtured a downtown revival with high density residential construction in mixed use projects served by street car. Virginia Beach countered its suburban sprawl image with the addition of a carefully designed, pedestrian friendly central business district and civic center. Through TIF, residents of both cities were able to advantageously alter the "prevailing pattern of private sector investment."²³⁰

Times are not optimal for TIF currently. The future of TIF depends on rising real property values and sales tax revenues. As the economy improves, we can expect to see TIF funded public improvements, and developers eager to add a TIF component to their financing capital stack to reduce their equity needs. It remains to be seen how state legislatures will respond to the various criticisms of TIF, including calls for greater accountability and pleas from schools and other taxing entities suffering budget shortfalls.

²³⁰ Michael T. Peddle, *TIF in Illinois: The Good, The Bad and the Ugly*, 17 N. ILL. U. L. REV. 441, 446-47 (1997).

To: Senate Finance and Taxation Committee
From: Jerry Hjelmstad, North Dakota League of Cities
Date: January 5, 2011
Re: Senate Bill No. 2050

The purpose of tax increment financing (TIF) districts is to provide funds for the payment of the cost of development or renewal of any development or renewal area. During the interim taxation committee meeting last summer, we surveyed city and county auditors and found that there were 27 cities with TIF districts. There were 89 TIF districts in these cities and 30 of those districts had been completed. So, as you can see, this has been a very important and successfully used tool for development and renewal.

A major concern with Senate Bill 2050 is the establishment of a joint review board under sections 2 through 4 of the bill. Any agreement with a project developer would need prior approval from this joint review board. This would make negotiations with a developer very difficult. Under section 4, the joint review board would have to include one representative appointed by each political subdivision that has the power to levy taxes on property within the development. This board could stop development simply by doing nothing. We feel that the city governing board is the appropriate board to deal with city development.

Section 1 of the bill would limit the property eligible for TIF financing. We support giving local governing boards the authority to determine appropriate areas for development.

Section 2 of the bill would limit TIF districts to twenty years. Because there could be reasons for extending beyond twenty years (for example, 75 mill school levy reduction), we support an amendment to this section to provide for a reset of taxable value so that taxable values used in determining the tax increment are never more than twenty years old. The attached amendments also provide for the replacement of the joint review board language with a requirement that TIF district plans be filed with the Department of Commerce, Division of Community Services, the same division that deals with Renaissance Zones.

TIF district financing has been an important tool for development, and we ask for support for the attached amendments.

To: Senate Finance and Taxation Committee
From: Jerry Hjelmstad, North Dakota League of Cities
Date: January 5, 2011
Re: Senate Bill No. 2050

PROPOSED AMENDMENTS TO SENATE BILL NO. 2050

Page 1, line 1, remove "to create and enact section 40-58-20.2 of the North Dakota Century Code,"

Page 1, remove line 2

Page 1, line 3, remove "subsection 2 of section 40-58-01.1," and the final comma

Page 1, line 4, remove "and section 40-58-20.1"

Page 1, remove lines 7 through 21

Page 2, line 2, remove "and has obtained approval of that plan from a joint review board under"

Page 2, line 3, remove "section 40-58-20.2" and after "area" insert "and has filed that plan with the department of commerce division of community services"

Page 2, line 7, replace "increment financing" with "increments computed"

Page 2, line 8, after "years" insert "without the original taxable values being reset by the governing body of the municipality so that the taxable values used as the original values are never more than twenty taxable years old"

Page 2, remove lines 9 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 10

Renumber accordingly

Good morning, Mr. Chairman, Committee members, thank you for your time today to hear testimony on SB 2050. My name is **Katie Andersen**; I am the **Mayor of Jamestown**, and a member of the executive board of directors for the Jamestown Stutsman Development Corporation which is a member of EDND Economic Development of North Dakota. I am here to testify in opposition to SB 2050, and request that SB 2050 **DO NOT PASS**.

SB 2050 proposes to limit the local government's ability to encourage development of areas within the local entities jurisdiction, proposes to limit the local government's ability to manage the length of time a Tax Increment Financing district (TIF) may be in effect, and proposes to make TIF districts more burdensome to use through the creation of the joint review board.

The **amendment** to the **definition of "blighted area"** to specifically "**not** include predominantly open land area that has been **developed only for agricultural purposes**" reduces the usefulness of the TIF districts. Though the need to use a TIF for land that was previously undeveloped may be rare, it could still be the tool that brings an economic development project to fruition. For example, an area previously undeveloped may have some **physical characteristics that make development** of that particular parcel of land **undesirable or cost prohibitive**. Such a characteristic may be a ravine, contamination, underground springs, or simply undulating terrain. Any of these factors, or many others that I have not mentioned, may be development obstacles that can be overcome through the use of TIF districts. **If SB 2050 passes this tool for economic development could not be used to solve such problems.**

Limiting the TIF for a development or renewal area **to not more than twenty years** will **limit the effectiveness** TIF districts can be for economic development. The decision for the local governing body to create a TIF district is based on the return on investment. If the return will not be possible for twenty-five years and the project is still a viable development possibility, **the local governing body should have the authority to determine the length of time** the tax increment financing district can operate.

Finally, the creation of **joint review board** is not only burdensome to the creation of the TIF districts, but is a deterrent to developers who may be interested in participating. Open meetings laws allow for public testimony on nearly every decision made by elected officials. If any member of the community is concerned about the impact a TIF district may have on themselves, their business, or even other taxing districts, they may voice those concerns at any of the **public meetings**. If individuals or groups are unsatisfied with their **elected officials** decisions regarding TIF districts the election process can provide the opportunity to remedy those concerns. A joint review board is **an unnecessary obstacle created by SB 2050 to reduce the autonomy of local taxing districts.**

I was elected to office on the principles of servant leadership. I ask myself with every decision I make, "Is this helping the people I serve become **freer**, healthier and more **autonomous**?" SB 2050 reduces the opportunity for local economies to grow and reduces their autonomy to control their local tax revenues. **SB 2050 does not help the people you serve become freer, healthier or more autonomous. DO NOT PASS SB 2050.**

Thank you for your attention, and I will be available for any questions.



Testimony of

Economic Development Association of North Dakota

SB2050

January 5, 2011

Chairman Cook and members of the committee, my name is Cal Klewin. I am representing the Economic Development Association of North Dakota (EDND).

EDND is the voice of the state's economic development community and provides networking for its 80 members, which include development organizations, communities, businesses and state agencies. Our mission is to increase economic opportunities for residents of the state by supporting primary sector growth, professionalism among economic development practitioners and cooperation among development organizations.

The belief of the EDND is local elected officials are capable of weighing the issues of a proposed development project and how the project benefits or affects the quality of life of its residents. For this reason, EDND recommends a do not pass on SB 2050.

Not all proposed developable areas are suitable for development and may include considerable financing consequences in developing a project due to location, terrain, zoning etc. Allowing the opportunity to look beyond the TIF district and utilizing other land options is a development tool that gives local officials flexibility in developing a plan, being visionary, making a decision they are comfortable with, and moving projects forward to enhance the development of communities.

EDND believe SB 2050 will create additional layers of bureaucracy and potentially detour proposed development in North Dakota communities.

EDND urges a **do not** pass on SB 2050.

Thank you. I would be happy to answer your questions.

E

Testimony on Senate Bill 2050
Senate Finance and Taxation Committee
January 5, 2011

Mr. Chairman and Members of the Committee: My name is Bob Stein and I am a Senior Planner with the City of Fargo. My primary duties are administration of the City's Renaissance Zone Program and management of the downtown parking system. Thank you for the opportunity to express my opinion on Senate Bill 2048. I speak in opposition to the bill.

There are two area of the proposed bill that I would like to comment upon:

- Limitation to twenty taxable years for Tax Increment districts; and
- Establishment of a joint review board.

Limitation to twenty taxable years for Tax Increment districts

A twenty year limitation on a Tax Increment may well be adequate much, if not most of the time. However there may well be situations where it is difficult to forecast what future revenues will be and this will have an effect on bond sales. Further, it is not uncommon presently to use twenty-five years for public infrastructure assessments and this would be a more reasonable time.

Establishment of a joint review board

Establishment of joint review board would delay and complicate the development process for the city, the developers, and the finance community. A practice of officially notifying other tax levying entities within a jurisdiction would achieve the same results without unnecessarily encumbering or delaying the review process.

Thank you again for your consideration of this important legislation and for listening to my testimony.

This legislation is not supported by the City of Fargo.

Notes SB 2050 1/5/11 11am

Introduction – Bismarck City Administrator
Speaking for self, not city; city commission not seen bill yet

Request Do Not Pass on bill as written
Support ND League of Cities amendments

No agricultural property in tax increment zone in Bismarck so no comments on that.

OK with filing of plan with ND Dept. of Commerce

Acceptable to looking at 20 year reset of property values (Increment would need to be calculated on property values less than 20 years old). Informally being discussed already.

Need to consider values up to 20 years old to allow bonding in smaller cities

Joint review board is unwieldy Another level of government. Will cause delay and maybe cost projects

Clarify earlier testimony city purchased shopping center with tax increment money with no plan for its use. No, Visitor Fund was used and will be repaid with project revenue in less than 12 years.

Committee questions

Testimony # 1

Testimony on Engrossed Senate Bill 2050
House Finance and Tax Committee
March 7, 2011

Good morning Mr. Chairman and members of the House Finance and Tax Committee. My name is Bill Wocken. I am City Administrator for the City of Bismarck. The City of Bismarck is supportive of Engrossed Senate Bill 2050.

Engrossed Senate Bill 2050 deals with tax increment financing of renewal programs in cities. Tax increment financing allows the increased taxes paid on developed or redeveloped property to pay some of the costs associated with the development of that property. The urban renewal law allows a tax increment district to be created on the basis of the existence or threat of slum and blighting conditions within the district. The city then has a public hearing and adopts a plan with specific activities to be accomplished. The activities are aimed at preventing and eliminating blight in the district when a district is created. The taxes on the properties in the district are frozen with respect to the amount of taxes being returned to the taxing entities. They are guaranteed no less than the level they are receiving when the plan is enacted. If the taxes paid rise, the increase over the frozen level goes into the tax increment fund. The tax increment fund can only be used to accomplish redevelopment of the tax increment district in line with the plan.

This bill does four things. First, it excludes predominantly open land developed for agricultural purposes from being considered as blighted property under the law. Second, it requires all urban renewal plans to be filed with the Department of Commerce to ensure a single place of registry of plans, for ease of research. A third ingredient of the bill is the requirement that a district, that presently has no time limit, can only exist for 25 years without resetting its initial "frozen" property values. If the district is 25 years old it must reset its values to no more than 20 taxable years prior to the date the district is reset. Finally, the bill allows a city to remit monies from the tax increment fund that are in excess of that necessary to accomplish the improvements contained in its plan to the taxing entities at any time without closing the district. The present law forces a city to keep a district open as any fund balance is lost if the district is closed.

This bill will allow better management of tax increment renewal projects, a way to limit the amount of increment in a district and a requirement for a single point of recordkeeping for all tax increment districts in existence. The City of Bismarck is in agreement with these changes and urges a Do Pass recommendation on this bill.

Bill Wocken
Bismarck City Administrator

Testimony #2a

**Testimony on Senate Bill 2050
House Finance and Taxation Committee
March 7, 2011**

Mr. Chairman and Members of the Committee: My name is Bob Stein and I am a Senior Planner with the City of Fargo. Thank you for the opportunity to express my opinion on Senate Bill 2050. I speak in opposition to Senate Bill 2050 as presented in the first engrossment.

Sections 1 and 3 are acceptable; however Section 2 presents some concern. Specifically, resetting the taxable values so they are never more than 20 years old will alter the increment that was pledged to meet obligations and therefore, will make it difficult to meet terms of bond repayments, to meet terms of the developer's agreements; and to honor the commitments made to various funding partners.

The City of Fargo currently has three TIF districts that would be seriously affected by this action. We offer an amendment that would allow tax increments to be used for a period longer than 25 years to repay existing obligations when the tax increments have been pledged. This would only apply to obligations established before January 1, 2011.

This legislation is not supported by the City of Fargo.

Testimony #2b

PROPOSED AMENDMENTS TO SENATE BILL 2050

[references are to the First Engrossment]

Page 2, line 9, after "old" insert "provided, however, that this provision shall not impair existing obligations of municipalities to repay debts from tax increment proceeds and, therefore, tax increments may continue to be used for a period longer than twenty-five years to repay existing obligations of municipality when the tax increment proceeds have been pledged for the repayment of obligations established prior to January 1, 2011.