



The Tiff Over TIF in Nebraska

By Dick Clark

This past spring, after it was clear that Senator Al Davis’s LB 1095 would not become law, the senator introduced LR 599. An interim study resolution to investigate the use of tax increment financing, or “TIF,” in Nebraska, LR 599 charged the Urban Affairs committee with looking into many of the same concerns discussed before the committee in its February 11 hearing on LB 1095.

TIF is a method of financing community and economic development projects using borrowing that is later paid off by the increase in tax revenues expected to come from the area where a project is located. Use of TIF has expanded rapidly since the 1980s, and especially since the turn of the century.¹ As recounted in the Platte Institute’s 2013 study, “[The Use of Tax Increment Financing in Nebraska](#),”

There has also been a shift over time in the types of projects financed through TIF. In 1997, approximately 54 percent of the base value of TIF projects was for commercial projects, with another 36 percent for residential TIF, and just under 10 percent for industrial projects. By 2012, almost 72 percent of base value was used on commercial projects, with 22 percent for residential and 6 percent for industrial and other projects.²

TIF can be a useful tool for the redevelopment of blighted, substandard areas, and state law explicitly describes this as the narrow purpose for which the Community Redevelopment Act was enacted by the Legislature.³ In locations where there is stagnation and deterioration, redevelopment financed by TIF dollars may be the only way to start the process of turning those neighborhoods around. And frankly, Nebraska law requires that to be the case through what is commonly called the “but for” test.

¹ Kriz, Kenneth A. “The Use of Tax Increment Financing in Nebraska.” Platte Institute for Economic Research. July 2013. p. 2. [URL: http://www.platteinstitute.org/Library/docLib/20130710_my_Platte-TIF.pdf]

² *Ibid*, p. 8.

³ Neb. Rev. Stat. §18-2102.

One should carefully consider what it means to say “this project would not occur but for TIF.” If a project is defined with sufficient specificity, and the project plan is entirely built around tax increment financing, it is fairly easy to conclude that particular plan would not occur “but for” TIF. This is the wrong question.

The more important question is whether *any* project of similar value might go forward on that parcel in the near future without TIF. If there is some alternate project that could go forward without it, the attribution of the incremental increase in future revenues to the TIF project becomes much less certain. That means that we have to question the dedication of that future tax revenue bump to the redevelopment authority.

The whole reason for the “but for” test is to ensure that the anticipated future revenues dedicated to paying for a project are really an “ROI” for that project. That is important, because there is an opportunity cost when we divert property tax dollars from other uses. Accurately assessing the probability of development without TIF is a crucial factor for understanding how a TIF project will affect local schools. The more likely it is that a project would have happened anyway, the more likely it is that “TIF-ing” the project will be detrimental to the local school district.⁴

The “but for” test currently in state statute⁵ is vague enough to allow for a lot of “shoe-horning” for projects that probably ought not be approved as TIF recipients. Simply claiming that “it won’t happen if we don’t TIF it” should not be adequate evidence to pass the test.

Taxpayers are entitled to transparency and public accountability for those projects that do receive TIF dollars to ensure that project backers are acting in good faith and are following through on the conditions they agreed to when they proceeded with a project. Conflicts of interest relating to TIF projects are defined — and prohibited — by the Community Redevelopment Act.⁶

As described in the Platte Institute’s 2013 study, decision-making by local officials is not always at arms-length. The report described one episode where a city attorney was also chair of the Community Redevelopment Authority and an investor in the community investment club that would be the direct beneficiary of the project.⁷ This is a clear case of what economists call “moral hazard,” - it puts local taxpayers at risk, and it is something that Nebraska’s current TIF law is not effectively preventing.

⁴ Kriz, p. 20.

⁵ Neb. Rev. Stat. §18-2116(1)(b)(ii).

⁶ Neb. Rev. Stat. §18-2106.

⁷ Kriz, p. 13.

Use of TIF has grown significantly over recent years, and the greatest growth in its use, on a per capita basis, has been in more rural parts of Nebraska. Wherever a TIF project is proposed, taxpayers should be protected from decisions that shift the burden of paying for local services onto fewer shoulders. That means that Nebraska needs less ambiguous standards for approving or disapproving TIF project proposals, standards that incorporate more objective economic metrics for measuring the costs and benefits of a particular plan.

Nebraska's law needs more transparency and accountability for projects after they are approved, too. The state should require local governments to regularly evaluate TIF projects. There should also be a framework in place to recover lost revenues when project parameters are not met. The Department of Economic Development is currently tasked with overseeing TIF programs in Nebraska. But while DED collects and publishes on implementation of TIF projects around the state, it doesn't have the authority to audit them or assess penalties for failing to comply with the law. Other states, such as Minnesota, task the state auditor with this oversight function.⁸ Wherever it lands in the structure of Nebraska's state government, it is a function that needs to be carried out.

Finally, the Legislature should also review the process for designating areas as blighted and substandard. The Platte Institute's 2013 study found that "municipalities seemed to be using [these] ... designations strategically and in a manner which seems to be excessive — in one case study city almost one third of the city land area was deemed to be blighted or substandard."⁹ That might be beyond the scope of the interim study under LR 599, but it is an important factor for policymakers and concerned members of the public to consider when examining how and why TIF is used in Nebraska.

This article is adapted from testimony presented to the Urban Affairs Committee of the Nebraska Legislature on October 17, 2014.

⁸ *Ibid.*, p. 22.

⁹ *Ibid.*