TIF in Illinois: The Good, the Bad, and the Ugly

MICHAEL T. PEDDLE

INTRODUCTION

Tax increment financing, TIF for short, is an economic development tool whose use tends to evoke much debate and disagreement. "Since its introduction in California in 1952, TIF has become one of the most widely used economic development tools by municipalities across the nation, including Illinois." Since initial legislative authorization in 1977, over three hundred TIF districts have been declared in Illinois, with nearly 60% of these declared since 1987. TIF is particularly popular with municipal policymakers and particularly unpopular with many other interests including school districts and other non-municipal local governments. Both sides offer compelling arguments to justify their positions, yet neither side in the TIF debate ever seems to have a full set of facts or a broad-based community perspective that extends beyond political jurisdictions or parochial interests. While it is nearly impossible to expect anyone with an interest in public policy to lack an opinion on the topic of TIFs, this paper is intended to provide an even-handed discussion of the pros and cons of TIF as implemented in Illinois. Thus, even though one would be correct in arguing that the conclusions of this paper indicate a clear opinion about TIF and its future in Illinois, that opinion does not mask the opposing side of the argument and represents one logical and reasonable means of summarizing and interpreting the evidence.

* Michael T. Peddle is a faculty associate at the Center for Governmental Studies at Northern Illinois University who specializes in local economic development policy and public finance. He manages the Center's regional input-output development projects and the operations of existing businesses on counties and regions in Illinois and has written extensively on the topics of impact fees, taxation and development-related costs to communities.


The first section of the paper discusses the basic components of TIF in Illinois. Subsequent sections then address the positive and negative aspects of TIF in Illinois. The final section of the paper utilizes the information from our analysis of TIF to make suggestions for improvement of the TIF law and process in Illinois. This section indicates that there are serious problems with the TIF law and its implementation in Illinois, but that TIF is a viable economic development tool that is worth preserving in a somewhat altered and arguably purer form.

I. WHAT IS TAX INCREMENT FINANCING AND HOW IS IT IMPLEMENTED IN ILLINOIS?

A. TAX INCREMENT CALCULATION

Tax increment financing is an economic development. Its premise is that through undertaking a given economic development project, one can expect that the property value of the project site and some amount of contiguous property will be enhanced as a result of the project. According to the Illinois statute: "[A redevelopment project area] shall include only those contiguous parcels of real property and improvements thereon substantially benefited by the proposed redevelopment project improvements." Therefore, a "tax increment" from these properties can be expected. This tax increment represents the additional tax revenue from the project site and contiguous properties, that is the result of the increase in property value after the project, as compared with the property value prior to the project.

An example might help make the concept clearer:

| Equalized Assessed Valuation Pre-Project | 1,000,000 |
| Equalized Assessed Valuation Post-Project | 2,500,000 |

Increase in Equalized Assessed Valuation (Post-Project - Pre-Project) = 1,500,000

If we assume a property tax rate of $10.00/$100.00 Equalized Assessed Valuation (hereinafter EAV), then the additional property taxes attributable

3. See 65 ILCS 5/11-74.4-8 (West 1996). This statute formally describes the increment calculation.
4. 65 ILCS 5/11-74.4-4(a) (West 1996).
to the increase in EAV would be $150,000. This would be the property tax increment for this project.

Operationally, the pre-project property value is calculated and certified. This property value becomes the basis upon which the future tax increments are calculated in the manner we just illustrated. It should be noted that in Illinois and in many other states, tax increment financing can be not only used with property taxes, but also under certain circumstances with sales taxes. The tax increment calculation for sales taxes proceeds in a similar fashion. A base, pre-project sales tax figure is established and increments are calculated off of that base.

B. TAX INCREMENT ALLOCATION

One of the most controversial aspects of TIF in Illinois and many other states is traceable to the difference of a TIF district and the allocation of the property tax increment after the declaration of a TIF district. Prior to the declaration of the TIF, all of the taxing districts extending property taxes in the area receive their full pro rata share of the property tax receipts based upon their share of the aggregate tax rate/tax bill.

After the declaration and certification of the TIF, all taxing districts still receive their full pro rata share of the portion of the property tax revenues attributable to the pre-project certified EAV. The tax increment is captured exclusively by the municipality for use in the TIF district. Thus, the tax increment attributable to the property tax rates of the non-municipal local government jurisdictions is diverted by TIF into a fund which is used by the municipality to pay for the TIF development project or other ancillary expenses in the TIF. Some of the broad range of purposes for which TIF revenues can be spent include: staffing costs to implement and administer the redevelopment plan; planning, architectural, engineering, legal, and other services; training costs for the business employees within the redevelopment area; property assembly costs and occupant relocation costs; site preparation costs including demolition; rehabilitation of buildings and fixtures for lease or resale; bond financing costs incurred by the municipality; interest costs incurred by a redeveloper; and construction costs of public infrastructure improvements and other capital costs. After the expiration of the TIF

5. 65 ILCS 5/11-74.4-9 (West 1996).
6. In Illinois, the tax increment can be captured for a period up to 23 years based upon an approved redevelopment plan. 65 ILCS 5/1-74.4-3(n) (West 1996).
7. 65 ILCS 5/11-74.4-3(q) (West 1996).
district, all tax revenues from the district are once again distributed on a pro rata basis to local governments. 8

C. THE GENERAL JUSTIFICATION FOR TIF

Depending upon who one talks to, one might hear a variety of reasons justifying TIF. Unfortunately, many of the justifications offered merely argue that TIF provides a flexible and powerful financing tool for municipalities undergoing fiscal stress. With the increased prevalence of property tax caps, this cry has become louder and more fervent. However, TIF has never been intended to be a general purpose economic development tool.

The intent of TIF is to allow a grant of power to municipalities to “use the taxing power of other local government bodies to selectively target blighted areas for redevelopment.” 9 Under these conditions, the general justification for TIF becomes relatively easy to buy into and understand. Indeed, TIF is a powerful and necessary weapon for inclusion in the local economic development arsenal. Having said that, I would argue that TIF is the analogue of a nuclear weapon in the arsenal and should be treated with appropriate respect and used with appropriate discretion.

TIF is built upon a fundamental foundation grounded in facilitating the redevelopment of blighted property that would not be subject to private sector investment in “but for” the intervention of government through a TIF district and its financing provisions. In such situations, blight conditions 10 have made redevelopment of the subject property unattractive or infeasible, such that private investment cannot be reasonably expected in the absence of government intervention. Given the power and tremendous commitment inherent in TIF financing, as well as the fact that very few if any areas become blighted overnight, one would expect a pattern of private sector and government efforts to redevelop the property prior to a decision to declare a TIF district. 11 A pattern of previous redevelopment efforts helps make the “but for” case. Unfortunately, most statutes, including the Illinois statute, are silent on the issue of the evidence that must be presented to

---

8. See 65 ILCS 5/11-74.4-8 (West 1996).
9. Redfield, supra n.2, at 46.
10. In my opinion, blight conditions must be defined as characteristics of an area that present barriers to redevelopment. In the Illinois statutes, blight conditions include such things as age, obsolescence, depreciation of physical maintenance, dilapidation, deleterious land use, and lack of community planning. Unfortunately, none of these terms are statutorily defined or subject to definition in administrative regulations. Furthermore, linkage of the blight conditions to redevelopment barriers has not been required by the courts.
11. The use of TIF as a last resort will be discussed infra Part IV.
make the case for satisfaction of the “but for” test. This omission is responsible for much of the debate over TIF.

Redevelopment of a blighted area that would not be subject to investment “but for” the TIF district makes TIF in this circumstance easy to justify from a public finance standpoint. On the cost side, the municipality is likely to incur the lion’s share of infrastructure and public project costs associated with the redevelopment plan. Once the project area is redeveloped, all of the local governments will benefit from the increased property tax base/revenues provided by the redeveloped project area. Thus, the tax increment allocation from the non-municipal local governments to the municipality can be justified as a quid-pro-quo resulting in net gains to all parties. If the area is truly blighted and would not redevelop in the absence of TIF financing, the non-municipal local governments will not lose any tax revenues under TIF that they would have otherwise expected to receive. Furthermore, to the extent that the project has spillover benefits on property values outside of the TIF district, the non-municipal governments may come out ahead even during the time of the TIF allocation financing. This is how and why TIF is supposed to work in its most basic and purest form. The legislative finding and declaration in the Illinois statute is consistent with this interpretation of TIF.12

D. OTHER MISCELLANEOUS (IMPORTANT?) INFORMATION ABOUT TIF IN ILLINOIS

TIF districts in Illinois are a minimum of 1½ acres of contiguous land that qualifies as a statutorily defined blighted, conservation, or industrial park conservation area that meets a three pronged test: 1) some level of blight (varies by area); 2) has not been subject to growth and development by private enterprise; and 3) no prospect for future growth “but for” the use of TIF.13

“Local taxing bodies having territory within the proposed redevelopment area are required to be given notice of public hearings on the formation of a TIF district, as is the Department of Commerce and Community Affairs. Representatives of the municipality and other taxing bodies are required to meet as an advisory board, but only the municipality has power to create the district, determine the boundaries of the redevelopment area, approve the redevelopment plan, and set the maximum life of the district.”14

12. See 65 ILCS 5/11-74.4-2 (c) (West 1996).
13. Redfield, supra n.2, at 12, and 65 ILCS 5/11-74.4-3(p) (West 1996).
The Industrial Jobs Recovery Act\textsuperscript{15} recently expanded the use of TIF to targeted areas that have lost substantial numbers of industrial jobs and have brownfield sites in need of redevelopment.

II. TIF IN ILLINOIS: THE GOOD

In talking about the good, the bad, and the ugly of the Illinois TIF experience, I want to paint with as broad a brush as possible to avoid unfairly singling out individual municipalities for praise or criticism. Some of the examples used may be known to readers without my naming the communities involved; please view these examples as generic and not idiosyncratic or specific to the individuals or communities involved. With this caveat in mind, let us turn to some of the good things about the Illinois TIF experience.\textsuperscript{16}

Tax increment financing in Illinois can be praised for at least four general reasons: 1) its power as a last resort economic development tool; 2) positive fiscal outcomes for fiscally stressed municipalities; 3) the projects that have been funded through tax increment allocation financing; and 4) alterations in the prevailing pattern of private sector investment. Each of these reasons can be briefly explored in turn.

There are far more TIF districts in Illinois that I have not visited than those that I have, it is safe to say that there are a large number of TIF districts in Illinois with which I am familiar and that seem to have been declared blighted in a manner consistent with the true spirit of TIF as a “but for” redevelopment tool. These projects have turned around vacant buildings, obsolete structures, brownfield sites, and decaying downtown areas into vibrant centers of economic activity.\textsuperscript{17} In the process, areas of blight have been reduced or eliminated. With increased interest in transit oriented development, in combination with the rail-oriented brownfield sites in many inner-ring suburbs in the Chicago area, TIF clearly remains a valuable and viable redevelopment tool that has a future in Illinois communities.

\textsuperscript{15} 65 ILCS 5/11-74.6-1 et. seq. (West 1996).

\textsuperscript{16} What is good, bad, or ugly is certainly open to personal opinion. While I have attempted to be even-handed and objective in discussing TIF, it is probable that my classification system and assertions will generate debate and disagreement. To the extent that such debate and disagreement leads to better understanding of TIF and better TIF policy, substantial progress will have been made.

\textsuperscript{17} Many other such projects have not been nearly as successful in creating new economic activity and investment. Nevertheless, their declaration as TIF districts was appropriate and offered a powerful tool for enticing reinvestment that would not otherwise be available.
Whether intended or not, TIF has also provided an economic development financing tool to Illinois to municipalities that is relatively painless and does not place additional fiscal stress on the often already stretched municipal budgets. This makes municipal involvement in economic development projects easier to justify and more politically palatable for local officials to advocate. Given the general difficulty in gaining public support for government involvement in the economy, especially at the seemingly complex level needed in economic development partnerships, the availability of TIF has allowed many projects to come to fruition that probably would have been otherwise doomed to failure.

Furthermore, whether TIF finance was appropriate or not in a given project case, it is hard to argue that most projects financed by TIFs have provided some benefit to at least some segments of the communities within which they were built. Indeed, in general it is probably fair to say that on net, financing method aside, more persons probably benefit from most TIF projects than lose from them. Thus, TIF has provided financing for projects that in many cases have improved quality of life for large numbers of persons. For example, a rural community might have attracted its first convenience or grocery store. A suburban community might have refurbished a local theater and simultaneously provided a home for a burgeoning community theater group and traveling fine arts productions. A central city might have been able to build a parking facility that makes downtown trips safer, more expedient, and more enjoyable.

Finally, TIF can be praised for offering a tool whereby local communities, consistent with their comprehensive plans, can offer incentives to alter the pattern of economic activity. For example, the municipality might be able to entice a new retail store to locate in a downtown area rather than in a strip mall or greenfield site in a commercial strip. TIF allows some equalization of the relative costs of developing greenfield and brownfield or retrofit sites. Furthermore, TIF can be used to indirectly improve any relative locational disadvantages between the greenfield and downtown sites.

Abstract

18. However, it should be noted that this argument is somewhat narrow in that municipal, rather than local government, finance is at its core. As will be suggested infra Part III, a broader view of the community’s finances may not make TIF look quite as good.

19. It should be noted, however, that this does not necessarily mean that TIF finance was the optimal means of paying for these projects.

20. Use of TIF to alter the pattern of economic activity is easily justified when the major difference between the greenfield and brownfield sites is site preparation and construction (i.e., there is no significant sacrifice in terms of expected sales and profitability). As soon as differences in expected sales and profitability are introduced into the equation, one must proceed carefully and try to assure some form of risk-sharing agreement that will
III. TIF IN ILLINOIS: THE BAD

The bad in the TIF experience can be summed up relatively easily in general terms: TIF in Illinois, due to the lack of administrative regulations, lax state agency enforcement, lax judicial review and intervention (as well as the high costs of litigation), perversion of the TIF declaration process by for-profit consultants and business location officials, and municipal co-conspirators, has become a general economic development tool available to nearly any municipality and used with little or no discretion or oversight. Each part of this lengthy assertion deserves some explanation and illumination.

Illinois, like most states but unlike the federal government, does not generally produce legally binding administrative regulation to assist in interpreting and implementing state statutes. In the case of the various TIF acts, including the seminal Tax Increment Allocation Redevelopment Act, this has been frustrating at the very least. The primary areas of contention regarding the statute would, not surprisingly, seem to be related to qualifying an area as "blighted" and meeting the "but for" test.

The number of TIF districts that have been overturned for not meeting the blighting condition and/or the "but for" test can be counted using fewer fingers that those on one person's hand. While Redfield notes an increased willingness to sue over applications of TIF, he goes on to say that, "until recently, the courts have given the actions of municipal officials in designating TIF districts a presumption of validity. There are no case law standards at the State Supreme Court level setting out the limits of how municipal officials can apply the statutory criteria, which are very broadly drawn to begin with." While Redfield asserts that there is no evidence to indicate that the law is being "widely misused" in designating TIF districts, he does note "the increased willingness of public officials to sue indicates a growing concern over how the TIF law is being applied."

benefit both the business and the community. Sales tax rebate agreements are often used for this purpose.

21. It should be noted that the Illinois Department of Commerce and Community Affairs has published a number of pamphlets on TIF and related issues that seem to offer guidance in interpreting the TIF statute (e.g., one pamphlet provides definitions of the blight factors cited in the statute). However, these pamphlets do not have the legal standing of administrative regulations and as a result cannot be used to substantively defend or impeach the methodology used to certify a given TIF district.

22. 65 ILCS 5/11-74.4-1 et. seq. (West 1996).

23. Redfield, supra note 2, at 38.

24. Id.
While clearly a matter of interpretation, I would take issue with Redfield’s assertion that there is no evidence of widespread misuse of TIF. If one subscribes to the use of TIF in blighted areas that would not develop/redevelop “but for” the use of TIF, I think one can find widespread misuse of TIF. Having read and reviewed probably fifty TIF qualification studies from a variety of communities and for a variety of types of project areas, I have yet to see more than a perfunctory treatment of the blighting factors and “but for” criterion. Perhaps more telling is testimony from a major TIF consultant who could not recall a single occasion where he had recommended against a TIF study for a given project area or made a negative finding in a TIF qualification study. Given the opportunity to create further business for themselves through doing a redevelopment plan or other comprehensive planning services for the municipality, perhaps this pattern of outcome should not be surprising. If not surprising, the failure to objectively investigate blighting and redevelopment alternatives is counter to the effective (and I believe intended) use of tax increment financing. Unfortunately, these perfunctory TIF qualification studies have become the norm and have been readily accepted by state review authorities. The standard, and I have heard this argument by municipal lawyers during litigation, is that the municipality merely declare the area blighted, declare the blight factors they claim, and assert the “but for” test is met; they argue25 nothing further is required or intended by statute. Blight and the “but for” test are therefore met by the administrative fiat of the municipality! It seems to be an incredible waste of legislature, legislative staff, and editorial time, as well as precious resources for the paper to go to the trouble of passing detailed economic development legislation that ultimately hinges merely on the exercise of administrative fiat. Further evidence of this fiat power is provided through recall of the earlier point that non-municipal local governments only have an advisory role in challenging or fighting TIF certification.

Unfortunately, in the absence of administrative regulations or serious state-level review of TIF district certification, litigation and judicial review appear to be the only feasible means of interpreting and challenging the application of the TIF act. Such challenges are extremely expensive, especially given the revenue generating ability of a municipality that is available to fight such a lawsuit. Furthermore, one who challenges a TIF in defense of the public interest is caught in a Catch 22: litigating the case forces the municipality to spend taxpayer dollars to defend a lawsuit ultimately grounded in saving taxpayer dollars. It is not at all inconceivable

25. Review authorities, including the judiciary, have tended to uphold this view.
that a successful plaintiff might end up winning the battle, but ultimately
losing the public interest war. Fortunately, some plaintiffs have enough
money and principle that they choose to go forward even in the face of the
overwhelming odds and downside risks.

In 1994, I served as an expert witness for the plaintiffs in a TIF case.
The case did go to trial and the defendant municipality was successful in
defending its TIF district and redevelopment plan/project. While I respect
the court’s decision in the case, the process and outcome nevertheless left
me even more disenchanted with some of the applications of TIF in Illinois
and more fodder for my arguments on the “bad” side of TIF.

One major point made in the trial by the defendants, and one that I
wholeheartedly agree with, is that the statute is silent on the time frame over
which development has failed to take place or the time frame over which
redevelopment/development cannot be reasonably expected to take place.
Furthermore, given that TIF can generally be expected to artificially increase
the rate of development or redevelopment, it is reasonable to conclude that
redevelopment with TIF will occur earlier than redevelopment without TIF.
Thus, we are left with an extremely important open question: How much
does TIF have to accelerate the pace of development or redevelopment in
order to meet a good faith “but for” test? Unfortunately, there is not
statutory or otherwise established objective standards for answering this
question. We will revisit this question in the TIF reform section.

Another issue raised at trial that left me disillusioned and dissatisfied
was related to the relationship between claimed blight factors and barriers
to redevelopment. I would argue that the TIF law makes sense only to the
extent that the blighting factors cited in the statute are shown to be barriers
to redevelopment. An easy example comes to mind: age of structures is a
blight factor in the statute. In the absence of consideration of the effect of
the age of structures on the prospects for development or redevelopment, the
citation of age as a blight factor is meaningless. Indeed, if one had an
economic development policy grounded in recreating a Dickens village with
bed-and-breakfast inns, age may be a positive rather than negative
development or redevelopment factor. Similarly, one would expect
deleterious land uses as an area makes economic transition. Unless the
deleterious land use is a barrier to redevelopment, I would argue that it is
not and should not be cited as a blight factor. Given that the statute is an
economic development statute containing a “but for” condition, I think this
interpretation of the blight factors is the only reasonable and appropriate
one. The judge in our case, at the beginning of the plaintiff’s direct
examination of myself as a witness, sustained an objection on the part of the
defendants that would not allow me to make any judgment as to whether the
blight factors were a barrier to redevelopment, because the statute makes no
explicit requirement that the blight factors in any way be related to the redevelopment prospects of the project area. While this is technically accurate, the statute and TIF as an economic development tool make little or no sense given this interpretation.

Another major issue for me in the case was related to blight mitigation efforts on the part of the municipality. In general, I believe it is bad public policy to allow municipalities to fail to seek mitigation or amelioration of blight conditions, and then turn around and designate a TIF district after several years of allowing the area to deteriorate. For example, why should a municipality be able to claim code violations as a blighting condition if they have no history of attempting to enforce their code? Alternatively, the defendant village in the lawsuit with which I was involved had an express policy of not maintaining residential streets in the absence of a special assessment district. To claim poor roads in the area as a blight factor seems audacious at the least. To claim lack of community planning as a blight factor and show no efforts to ameliorate this deficiency prior to declaring a TIF district also does not seem right. Though I am not a lawyer, I do understand the equity concept of “unclean hands” and would think there is some application in the case of attempting or producing a history of mitigating efforts before a declaration of blight can be registered.

The potential fiscal effects on other units of local government is another bad result in TIF implementation in Illinois. This is a particularly serious problem given Illinois’ unparalleled number of local governments (over 6600!).26 It should be noted that the negative fiscal effects on non-municipal governments becomes a major issue in cases where satisfaction of the "but for" test is an issue or in cases where ancillary economic development is induced by the redevelopment plan that occurs on fiscally unfavorable terms to the non-municipal local governments. These two categories of cases should be considered separately in the interests of not confusing the very different arguments underlying their potentially negative fiscal effects.

26. The objectives of governmental units tend to differ by their function. Furthermore, the fiscal effects of different forms of development varies by the type of governmental unit (e.g., many types of multi-family housing produce fiscal surpluses for municipalities at the same time they produce fiscal deficits for school districts and other residentially based service producers that are sensitive to population). Also, in Illinois, municipalities and counties are generally the only units of local governments that share in sales tax revenues. This diversion in fiscal outcomes can create significant conflict over the effects of economic development decisions that are generally driven by the objective functions of general purpose governments and imposed upon constituent special purpose governments.
As already pointed out, the Illinois TIF experience has generally been very lenient in terms of meeting the “but for” test. Furthermore, the statute is silent on the time frame of analysis for consideration of economic development prospects. However, from a theoretical standpoint, the appropriate time frame of analysis for the “but for” test from the perspective of non-municipal local governments is much less ambiguous. Any reasonable expectation of development or redevelopment in a time period shorter than the life of the TIF district will result in the TIF having negative fiscal consequences on the non-municipal local governments.27 However, while these negative fiscal consequences are factual, this is not a prima facie case against the corresponding TIF district. The benefits of the TIF, including removal of blight and the benefits of the TIF project itself, must be considered to determine the balance between social benefits and costs of a given TIF district and project.

Even where the “but for” test is faithfully met, the TIF district can be responsible for negative fiscal effects on the non-municipal local governments. While the situation is perhaps remote, especially in terms of the probable magnitude of the negative fiscal effects in most situations, the theoretical fact pattern is one that municipalities should be cognizant of in undertaking economic development activity, with or without a TIF. The general case scenario is one where a TIF project makes a community substantially more attractive for residential development or growth.28 This residential growth or development can have adverse effects on those special purpose governments responsible for producing population dependent services (like primary and secondary education). The real point here is to be sure to consider the indirect and secondary economic development effects of the TIF district and their implications for all constituent units of local government. The Illinois TIF law does not provide for more than advisory input on the part of non-municipal local governments,29 further exacerbating the problem of giving adequate consideration to the conflicting, often unintended, effects on different types of local governments from economic development projects including those funded through TIFs.

Some municipalities voluntarily rebate a portion of the tax increment to the school district and other constituent governments for use in the TIF.

27. This assumes no sharing or rebate of the tax increment to non-municipal governments. To the extent that there is pro rata sharing of the tax increment, the negative fiscal consequences are reduced. It should be noted that, other things held constant, the shorter the time horizon for expected economic development in the absence of the TIF the more negative will be the fiscal consequences for non-municipal governments.
28. For example, the opening of a large industrial facility in a rural area.
29. See 65 ILCS 5/11-74.4-5(b) (West 1996).
The major problem with this is that such funds are limited in their use to those uses allowed by the TIF statute and therefore have allowed the municipality to some extent dictate the planning priorities of non-municipal governments.

IV. TIF IN ILLINOIS: THE UGLY

In many ways, the ugly of the Illinois TIF experience is its worst indictment. The ugly of the Illinois TIF experience includes those uses of the TIF as weapons in interregional and especially intraregional development wars such that the net public economic gains are zero or negligible, with significant public costs incurred under TIF financing. While technically TIF is not intended to be used to finance relocation of firms from one jurisdiction to another, in point of fact TIF is often used in border wars that occur over the location and relocation of firms. Overcoming the prohibition against local relocation of a firm is actually fairly easy (and sleazy?) to do. In the interests of not exacerbating the problem of using TIF for reallocation of firms by explaining the methodology for circumventing the law, suffice to say that through creative business organization tools, existing businesses can be relocated and take advantage of even a sales tax TIF in Illinois.

To the extent that TIF is used as a tool in intraregional (or even interregional) economic development competition, the benefit-cost equation starts to take on negative connotations. In the case of a short-distance relocation of a firm from community A to community B, the region will experience little if any gain in economic development benefits from the firm’s local presence.30 However, in general, if TIF financing is used for the firm at its new location in community B the region is bearing public sector costs that would not have been present if the firm had retained its original location. Although for commercial firms the move from community A to community B may be a fiscal winner for municipality B (especially with TIF financing), the larger community (and commercial market area) loses out by paying a subsidy to a firm that would otherwise have been serving the region and employing the same workforce.

Unfortunately, the misuse of TIF in border wars and the view of TIF as a general purpose economic development tool is further perpetuated by the advice given communities by corporate site selection people and local economic development officials. Communities have been advised by firms

30. A notable exception to this point is when there is insufficient expansion capacity at original site A. In this case the incremental (and only the incremental) benefits of the expansion of the firm through a relocation to community B can be counted as a net gain to the region or area.
looking for a site that the firm will look much more favorably at the community if the community will declare their site of preference a TIF district. Local economic development officials in northern Illinois have also counseled small towns that their competitive advantage with their neighbors is greatly driven by their declaring a TIF district. This is as clear an example of the cart driving the horse as I have seen in a long time, and it is counter to the intended use of TIF. Even some proponents of TIFs acknowledge the problem of developer driven TIFs in terms of perverting the intended policy process.

V. TIF IN ILLINOIS: HOW WE CAN MAKE IT BETTER

TIF in Illinois has its problems, but it is by no means fatally ill. While there are perhaps hundreds of ways of implementing TIF and even dozens of ways of implementing TIF effectively, I want to highlight a few ways that the TIF law or its administration in Illinois could be changed for the better.

Suggestion 1: Offer two statutory paths for TIF designation: one for blighted areas, one not requiring a blighting declaration.

This suggestion would address many, if not most, of the concerns expressed regarding the TIF experience in Illinois. For blighted areas, the conceptual construct of the current statute would be followed. However, the declaration of blight and the meeting of a “but for” test with a time horizon equal to the life of the proposed TIF would have to be met and independently certified. In addition, taxing districts representing a majority of the tax extensions in the proposed district would be required to concur in the blight finding. In the absence of such concurrence, an appeal structure administered by the state would settle the disagreement in the form of binding arbitration. Regional TIF appeal panels in several of the more highly populated areas of the state would probably be the best means of addressing this issue, and these appeal panels should be outside of the judicial system. The important feature that makes this system an improvement on the current system is that the presumption is against the TIF. Indeed, the appeal process should be set up to ensure that the burden of proof in the process remains with the municipality seeking the TIF. If a proposed TIF district truly is a blighted area, the incentives for the constituent non-municipal units will be to approve the TIF.

Universally allowing declaration of TIF districts without a blight finding would be a unique addition to the Illinois TIF experience. The idea here would be that an area could be declared a TIF district without a finding
of blight, upon the concurrence of taxing districts (including the municipality) representing a supermajority (80%) of the tax extensions in the proposed district. This would allow TIF to be used as a general purpose economic development tool, but only upon the concurrence of a broad cross-section of the community as represented through the interests of a range of special purpose governments.

Another means of regulating the declaration of TIF districts would be to allow placement of the TIF district designation on the ballot as a binding referendum question upon receipt of a petition signed by a minimum of 10% of the registered voters in the smallest geographic area represented by jurisdictions extending a supermajority of the property taxes (again say 80%) in the TIF district. Such a referendum would likely doom most TIF proposals to failure, but the prospects of such doom could perhaps be reduced by increasing the signature requirement, reducing the geographic area over which the referendum is voted (e.g., reducing the referendum to the municipal level with a consequent requirement of a supermajority for passage), or requiring a supermajority against the TIF in order to invalidate or stop its declaration. When your author first proposed a derivative of this idea at a midwest symposium of economic development, the response was significantly more favorable than one would expect, although the idea was presented in the context of large economic development projects rather than merely TIFs.

Suggestion 2: Prohibit TIF from being used for greenfield development.

TIF works far better from an efficiency standpoint as a redevelopment tool. In cases of redevelopment, TIF funds are used to make the given site as attractive or more attractive than a comparable greenfield site. Such use of TIF encourages in-fill development, helps retain the financial viability for investment in downtown or other central areas that have lost their competitive edge to fringe area development, and such projects are much more likely to meet the “but for” standard.

Even in the case of authorized non-blight area TIFs, prohibiting the use of TIF for greenfield development would encourage exploration of alternative, more innovative economic development tools. Such tools could

31. The reason for this convoluted structure can easily be seen when one considers taxing entities like the Metropolitan Water Reclamation District in the Chicago area. If we merely took the geographic boundaries represented by all districts extending taxes in the TIF district, the geographic boundaries of the referendum would be extremely wide and would not be indicative of the appropriate unit of influence (positive or negative) for most, if not all, TIF districts.
include tax rebates, marketing and planning assistance, infrastructure buyback arrangements, and others that involve a division of risk and reward between the public and private sector in some form of partnership agreement.

Suggestion 3: In the case of TIF used for retail development (or other uses creating sales tax revenues), require municipal revenue sharing of revenues from the development for the life of the project.

A pet peeve that I have with TIF can be explained in the following fashion. A home-rule municipality who levies no real property tax can have a TIF by contributing an annual amount equivalent to 10% of the tax increment pool for the year. This means that the municipality can leverage its investment in TIF financed project at a rate of 9 to 1. The catch is that the municipality can then capture 100% of the municipal (and home-rule if applicable) sales tax revenue from the development. Thus, the municipality can use the TIF to create sales tax revenue for itself that is in effect financed (in excess of the 10% contribution which could come out of the sales tax revenues!) wholly for the length of the TIF by other local governments. Therefore, as a further incentive to explore alternatives to TIF and the use of TIF as a last resort financing tool, the municipality must participate in a sales revenue sharing agreement with the remaining local governments that will allow revenue sharing up to the property tax increment contributed by each local government.

Suggestion 4: Once a firm receives TIF assistance in a given market area, it is ineligible to participate in any other TIF financed redevelopment plan within the same market area for a period not less than 20 years.

Redfield points out a case of abuse that helps to drive suggesting this regulation. A grocery store was located in a community with the assistance of TIF in 1983. In 1994, an adjacent community formed a TIF to form a shopping district to be anchored by moving the grocery store across municipal boundaries to anchor the new development. The above suggested regulation would remove this particular manifestation of the ugly nature of TIF. Tightening up on the use of TIF for any type of reloca-

32. Redfield, supra n.2.
33. Id.
34. Id.
35. The notion of a firm would have to be clearly and broadly defined to avoid the loophole (or evasion device if you prefer) present in the current TIF law.
tion would also go a long way to relieving the zero-sum or negative-sum use of TIF to merely alter the location of existing economic activity.

**Suggestion 5:** As a general rule, TIF should not be used for residential redevelopment.

In general, most forms of residential development represent a fiscal loss for school districts in terms of their operating expenditures. Thus, the premise of TIF, utilizing the tax increment in the short-term for gains to all government units in the long-term, is inherently violated through the use of TIF funds for residential development.

**CONCLUSIONS**

TIF in Illinois has its problems, but most of those problems lie not in our statutes but rather in the administration and interpretation of those statutes. There is much good to be said about TIF as a special-purpose economic development tool. There is much bad to be said about TIF as a general-purpose economic development tool. There is much ugly to be said about TIF as a tool in economic development wars between jurisdictions.

The suggestions made in this paper are relatively simple, in some cases radical, and in all cases from the heart. As a public finance economist specializing in local economic development policy I believe in the use of TIF as a local economic development tool, but would rather see it eliminated rather than see the perversion of the Illinois experience.