

# Changes to tax increment finance

By Robert Josten and John Danos

After several months of discussions, during which it appeared that some very significant changes to present urban renewal and tax increment finance (TIF) laws might be approved, the Iowa General Assembly passed HF2460, which does not have a dramatic impact on urban renewal procedures or the purposes for which TIF may be used.

The League's *2012 New Laws of Interest to Cities* publication includes a complete list of the provisions of HF2460, and this article will focus on some of the major provisions in the bill, many of which became effective on July 1, 2012.

Of perhaps equal importance to what is in the bill are some of the topics that, largely because of the League's efforts, did not wind up in the bill. For example, no purposes for which TIF may be used were eliminated; no reductions were made in the number of years for which TIF may be used; no adjustments were made in TIF base valuation dates and no changes were made in the state's "back-fill" payments to school districts.

Here are the most significant provisions of HF2460:

Many legislators expressed concern that insufficient information about TIF projects is currently available, either to the public or to other officials. Accordingly, the primary emphasis of HF2460 is a requirement that much more information be provided about past use of TIF revenue and projected future use. By no later than December 1 of each year, beginning this year, cities will have to file a report with the State Department of Management (DOM) (on forms to be developed by DOM) giving, at a minimum, the following information:

- Physical and legal aspects of each urban renewal area (copy of plans, amendments, map of area, TIF ordinances, expiration date of TIF, etc.).
- List of all renewal projects in progress and those that were completed in the prior fiscal year.
- List of all expenditures paid from TIF in prior fiscal year.
- Amount of outstanding debt payable from TIF and amount of new TIF debt incurred in prior fiscal year.
- Details of each TIF rebate agreement, including legal description of property, names of recipients of TIF rebate, amount of rebate paid in prior fiscal year and number of new jobs created and amount of private investment.
- Total taxable valuation in TIF area and amount of that valuation claimed for TIF purposes.
- Amounts spent for improvements related to housing for low and moderate income families and amounts spent for direct assistance to housing for such families.

While the accumulation of this information may be time-consuming at first, once the state has a more complete data bank of TIF information, it should be possible to discuss many of the positive aspects of how the program is being used around the state.

The League has developed a worksheet to help cities begin to collect the required information; visit the Advocacy page at [www.iowaleague.org](http://www.iowaleague.org) to access this resource.

Another of the more important subjects in HF2460 relates to the use of TIF for public buildings. Many legislators expressed

the belief that TIF should not be able to be used at all by cities to pay the cost of constructing public buildings. Others suggested that schools and counties should be given a “veto power” over city use of TIF for public buildings. A compromise was developed which does not require sign-off from other jurisdictions, but requires cities to provide information to justify why TIF revenues are being used for this type of project. First, unless the building project is already specifically set out in an urban renewal plan, a city will need to prepare an urban renewal plan amendment describing the project. In addition, a city must prepare an analysis of alternative funding options for the project and explain why those other options are “less feasible” than using TIF funds. For example, the analysis could state that a city could issue general obligation bonds for the building project but it is unlikely that the required 60 percent voter approval could be obtained. The analysis would need to be made part of the city’s materials that are sent out prior to the consultation session related to the urban renewal plan amendment for the project.

Consistent with the legislative goal of making more information available, HF2460 requires that cities amend urban renewal plans whenever new projects are proposed that are not already specifically mentioned in the existing plan. Cities should be prepared to review their urban renewal plans on an annual basis to make certain that any planned spending of TIF dollars on projects is adequately covered in existing urban renewal plans, and if not, cities will be required to amend the urban renewal plan to include the urban renewal project. This amendment must go through the public hearing and consultation process, but need not be sent to the planning and zoning commission. It is likely that this new statutory provision will result in cities having to amend urban renewal plans each year in order to show details of streets to be improved, buildings to be constructed, or economic development grants or TIF rebate agreements proposed to be approved. It is recommended that bond counsel should be consulted by cities with urban renewal plans to insure compliance with this new requirement.

One provision in HF2460 could have a financial impact on repayment of future TIF debt. After failing for many years, school districts were successful this year in convincing the General As-

sembly to exclude school instructional support tax levies from the TIF calculation formula. TIF debt incurred after April 24, 2012, will not be eligible to receive TIF revenues generated by these school levies, so that, in calculating the prospective amount of TIF revenue that may be available, a city must now exclude not only debt service levies and school physical plant and equipment levies, but also school instructional support levies. This could be significant, because most school districts have these levies, and in many cases they are as much as \$2 per thousand dollars of valuation. Cities may continue to receive revenues from these levies to pay debt incurred prior to April 24, 2012, if they submit a request to the county auditor for the amount needed by July 1 of each year (starting in 2013).

One final aspect of the bill that generated much discussion and debate became known as the “anti-piracy” provision, which places restrictions on the use of TIF as an incentive to encourage a business to move from one city to another city in the same county or a contiguous county. Before TIF funds could be used in this manner, one of two things would be needed:

1. An agreement between the two cities with respect to the use of TIF for this type of relocation or agreement with respect to the use of TIF to attract new development.
2. The city council of the city in which a business is proposing to relocate must make findings that the relocation is in the public interest, and the company must show it is “actively considering moving all or part of its operations to a location outside the State of Iowa,” and that this would result in a significant reduction in total employees in Iowa or a reduction in total wages paid to employees in Iowa.

---

*Robert Josten and John Danos are bond attorneys at Dorsey & Whitney LLP in Des Moines.*

**Once DOM has completed the rulemaking process, the League will issue a Special Report to provide guidance to cities. In addition to our annual budget workshops, this fall, the League will also conduct several webinars on the new requirements.**