The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government

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Tax increment financing (TIF) is the most widely used local government program for financing economic development in the United States, but the proliferation of TIF is puzzling. TIF was originally created to support urban renewal programs and was narrowly focused on addressing urban blight, yet now it is used in areas that are plainly unblighted. TIF brings in no outside money and provides no new revenue-raising authority. There is little clear evidence that TIF has done much to help the municipalities that use it, and it is also a source of intergovernmental tension and a site of conflict over the scope of public aid to the private sector.

Yet, the expansion of TIF makes sense in light of the basic structure of American local government law. Studying TIF can illuminate central features of our local government system. TIF succeeds—in the sense of its widespread adoption and use—because it, like local government more generally, is highly decentralized; reflects and reinforces the fiscalization of development policy; plays off the fragmentation of local governments and the resulting interlocal struggle for investment; and fits well with the entrepreneurial spirit characteristic of contemporary local economic development policy. A better understanding of TIF contributes to a better understanding of the political economy of American local government.

INTRODUCTION

Tax increment financing (TIF) is the most widely used local government program for financing economic development in the United States. TIF is authorized in forty-nine states and the District of Columbia,[1] and has been implemented in virtually every kind of community—central business districts, gritty urban industrial neighborhoods, small towns, suburbs, and even farmlands on the urban fringe. Typically, it is "the first tool that local governments pull out of their economic development toolbox."[2] In Chicago, where there were 155 TIF districts in 2007,[3] Mayor Richard M. Daley proclaimed TIF

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1 See Council of Development Finance Agencies and International Council of Shopping Centers, *Tax Increment Finance: Best Practices Reference Guide* 1 (2007), online at http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/documentpage.html/$file/CDFATIFRefGuide2007.pdf (visited Oct 24, 2009).

2 James Krohe, Jr, *At the Tipping Point: Has Tax Increment Financing Become Too Much of a Good Thing?*, Planning 20, 21 (Mar 2007).

3 Office of Cook County Clerk David Orr, *2007 TIF Report Shows 11.5% Jump in Revenue: Taxpayers Contribute $892 Million to TIFs in 2007*, online at http://www.cookctyclerk.com/sub/news_view.asp?NEWS_ID=222 (visited Oct 24, 2009).

"the only game in town" and his city's "only tool" for promoting economic development.[4]

The theory of TIF is that the revenue growth generated within a territorially defined district is earmarked, for a period of years, to pay for physical infrastructure and other expenditures designed to spur economic growth within that district. By generating new growth, those improvements and expenditures produce the incremental revenues that are used to pay for the program which sparked the growth. TIF is typically presented as self-financing, with its expenditures paid for by the increased revenues resulting from TIF-financed growth, without a tax increase.

TIF is highly controversial. Even TIF's most ardent backers acknowledge that "perhaps more than any other public finance/economic tool [it] can often elicit an emotional and personal response by the community."[5] Although some of that controversy has been due to the use of TIF funds to pay for *Kelo*-type eminent domain proceedings,[6] many TIF plans do not involve eminent domain, and many conflicts over TIF have little to do with takings. Rather, TIF has been challenged with respect to the type of development it supports, its impact on other local governments, and its broader effect on local government planning and policymaking.

This Article focuses not on the pros and cons of TIF, but on why TIF has become so widespread and what the debate about TIF tells us about the American local government system. TIF succeeds—in the sense of its ubiquitous adoption and use—because it maps precisely onto the principal features of contemporary local government. So, too, TIF is controversial because it exacerbates some of the basic tensions in our local government structure and policies.

Four interrelated features of TIF are key. First, like the local government system itself, TIF is highly decentralized, with the critical decisions concerning whether to adopt TIF, where to place the district, and what type of development to promote determined locally. Second, TIF exemplifies the fiscalization of local development policy. TIF enables local governments to pursue what is often the principal local development goal—increased tax base[7]—while avoiding the political

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4 Neighborhood Capital Budget Group, *Who Pays for the Only Game in Town?* *3, online at http://www.ncbg.org/documents/IMPACT%20STUDY%20FINAL.doc (visited Oct 24, 2009).

5 Council of Development Finance Agencies and International Council of Shopping Centers, *Best Practices Reference Guide* at 14 (cited in note 1).

6 See *Kelo v New London*, 545 US 469 (2005). See generally George Lefcoe, *After Kelo, Curbing Opportunistic TIF-Driven Economic Development: Forgoing Ineffectual Blight Tests; Empowering Property Owners and School Districts*, 83 Tulane L Rev 45, 67–73 (2009).

7 See, for example, Paul G. Lewis and Max Neiman, *Custodians of Place: Governing the Growth and Development of Cities* 126 (Georgetown 2009).

and legal limits on increased local taxation. Third, TIF plays off the fragmentation of local government. TIF reflects and reinforces the competition among neighboring governments as they bid for private investment as well as the tensions between overlapping local governments that share taxing authority over the same territorial base. Finally, and shadowing all these other features, TIF fits into the "entrepreneurial" spirit of contemporary local economic development programs.[8] TIF programs are market-oriented, aimed at inducing or retaining investment by private entrepreneurs. Moreover, local governments use TIF to act as entrepreneurs, formulating and implementing development plans. This close public-private collaboration can be a source of conflict within local governments.

The next Part of this Article provides a brief overview of the structure, history, and current use of TIF. Part II considers the principal legal and economic questions TIF has generated. Part III examines the resonances between TIF and the central features and fissures of local government law—decentralization, fiscalization, intergovernmental conflict, and entrepreneurial development policy.

I. TIF IN BRIEF

A. The Basic Structure

TIF laws vary from state to state, but the basic idea is straightforward. A territorial district is created within a city, and the assessed valuation of the property within the district—known as the base value—is determined. Property taxes continue to be levied, and the revenues generated by applying the tax rate to the base value continue to be paid to the local governments—including the municipality, county, school district, fire district, park district, and any other special districts—entitled to receive them. But revenues generated from applying the property tax to any *increased* property value within the district are, for the life of the district, set aside and paid to the municipality or an economic development agency (which typically is controlled by the municipality[9]) to be used for public improvements and other economic development programs within the district. These expendi-

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8 See, for example, Rachel Weber, *Equity and Entrepreneurialism: The Impact of Tax Increment Financing on School Finance*, 38 Urban Aff Rev 619, 619–20 (2003) (focusing on TIF as an entrepreneurial development technique).

9 See, for example, Jeffrey I. Chapman, *Tax Increment Financing as a Tool of Redevelopment*, in Helen F. Ladd, ed, *Local Government Tax and Land Use Policies in the United States: Understanding the Links* 182, 190 (Lincoln Institute of Land Policy 1998) (noting that in California 95 percent of the redevelopment agencies that operate TIFs are governed by city councils or county boards of supervisors).

tures may be made, as the incremental revenues are received, on a pay-as-you-go basis. More commonly for larger TIF districts, the district may issue bonds backed by the projected incremental revenues. The bond proceeds are then used to make major public investments upfront, thus jumpstarting the development process.

In theory, the process is a closed circuit: the incremental revenues pay for the public expenditures, which induce the private investment, which generates the incremental revenues, which pay for the public expenditures. Eventually, the TIF program expires, the bond is paid off, and the district's entire assessed valuation—base value and increment—becomes subject to taxation for the general purposes of all the local governments with jurisdiction over the area.

Although state laws differ, TIF-generated funds generally can be used for a host of purposes, including the installation, repair, or upgrade of physical infrastructure, such as streets and street lighting, curbs and sidewalk improvements, bridges and roads, water mains and supply, sewage removal, wastewater treatment, storm drainage, parks, parking, environmental remediation of polluted sites, land acquisition and clearance, planning and feasibility studies, and the transaction costs of bond financing. Within this basic template, TIF programs vary enormously in size, tax base, location, and type of development supported. A TIF district can be a few square blocks or most of a city. The assessed valuation of the initial tax bases of TIF districts in the Chicago area ranged from less than one thousand dollars to almost one billion.[10] Many TIF plans are intended to aid a specific firm, but others reflect efforts to attract large numbers of investors to an area. The TIF district may be created in response to a developer's proposal, or may be initiated by the city more speculatively, without a specific development in mind.[11] TIF plans can be created for central business districts, urban manufacturing zones, small towns, suburbs, decommissioned military bases, and farmlands, and are used to support industry, shopping malls, office space, mixed-use projects, and housing.

In approximately eighteen states, nonproperty taxes, particularly the sales tax or other economic activity taxes, can be committed to TIF pro-

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10 Richard F. Dye and David F. Merriman, *The Effect of Tax Increment Financing on Land Use*, in Dick Netzer, ed, *The Property Tax, Land Use and Land Use Regulation* 37, 49–51 (Lincoln Institute of Land Policy 2003) (illustrating the growth in equalized assessed value in TIF districts in the Chicago metropolitan area).

11 See, for example, J. Drew Klacik, *Tax Increment Financing in Indiana*, in Craig L. Johnson and Joyce Y. Man, eds, *Tax Increment Financing and Economic Development* 179, 183–84 (SUNY 2001) (reporting that nearly 40 percent of TIFs are created without specific development projects in mind); David A. Reingold, *Are TIFs Being Misused to Alter Patterns of Residential Segregation? The Case of Addison and Chicago, Illinois*, in Johnson and Man, eds, *Tax Increment Financing and Economic Development* 209, 223.

grams.[12] These states also rely on the theory that they are using incremental revenues to generate further revenue increments, but due to the difficulties of calculating incremental revenues generated by these taxes,[13] these programs typically just dedicate a specific fraction of the tax or revenue within the district, presuming it is attributable to TIF investment.[14] Municipalities may also appropriate general fund revenue to a TIF.

B. History and Evolution

TIF began in California in 1952 as a method of raising the local contribution required by a federal urban renewal program. The 1949 Housing Act[15] required municipalities with populations over 50,000 to finance one-third of the cost of redevelopment activities to match the two-thirds federal share.[16] In California, the local urban renewal match required citywide bond issues which, in turn, required voter approval,[17] and voters frequently declined to give that approval. So, California initiated TIF as a means of raising the matching funds. Initially, TIF grew slowly. Only twenty-seven projects utilized TIF in its first fifteen years,[18] and as late as 1970, there were only seventy-six TIF areas in California,[19] and just six other states authorized TIF.[20] The double

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12 See John L. Mikesell, *Nonproperty Tax Increment Programs for Economic Development: A Review of Alternative Programs*, in Johnson and Man, eds, *Tax Increment Financing and Economic Development* 58, 58–65 (cited in note 11). John Mikesell discusses ten jurisdictions which had at one time permitted the use of nonproperty taxes in TIF programs, noting that one—California—had repealed its authorization of the use of sales tax. A more recent study added eleven more states—Connecticut, Georgia, Kentucky, Mississippi, New Jersey, New Mexico, Oklahoma, Pennsylvania, Texas, Utah, and Washington—to the list of states using some nonproperty taxes to finance TIF programs, while indicating that at least two of the states on Mikesell's list—Maine and Wyoming—no longer did so. See Council of Development Finance Agencies, *2008 TIF State-by-State Report* 6, 10, 17, 19, 24, 30, 31, 36, 38, 43, 44, 47, 50, online at http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/TIFStatebyState.html/$file/CDFA-2008-TIF-State-By-State-Report.pdf (visited Oct 18, 2009).

13 See, for example, Michael P. Kelsay, *Uneven Patchwork: Tax Increment Financing in Kansas City* 4 (ReclaimDemocracy.org, Jan 2007), online at http://reclaimdemocracy.org/rdc/kc/tif_report_1.07.pdf (visited Oct 18, 2009).

14 See Rachel Weber, *Tax Incremental Financing in Theory and Practice*, in Sammis B. White, Richard D. Bingham, and Edward W. Hill, eds, *Financing Economic Development in the 21st Century* 53, 60–61 (M.E. Sharpe 2003).

15 Housing Act of 1949, Pub L No 111-21, 63 Stat 413 (1949), codified at 42 USC § 1441 et seq (expanding homeowners' insurance and financing, with the stated purpose of developing slum-clearing projects).

16 See Jonathan M. Davidson, *Tax Increment Financing as a Tool for Community Redevelopment*, 56 U Det J Urban L 405, 406 n 5 (1979).

17 Id at 423 n 133.

18 Id at 423.

19 See Chapman, *Tax Increment Financing as a Tool of Redevelopment* at 191 (cited in note 9).

20 Craig L. Johnson and Kenneth A. Kriz, *A Review of State Tax Increment Financing Laws*, in Johnson and Man, eds, *Tax Increment Financing and Economic Development* 31, 31 (cited in

whammy of the withdrawal of federal urban development aid funds beginning in the Nixon administration and the adoption of Proposition 13 in California in 1978 and comparable tax and expenditure limitations in other states soon after led to a rapid and dramatic increase in the use of TIF.[21] There were 299 TIF areas in California in 1980 and 658 in 1990.[22] Twenty-eight states approved TIF by 1984, thirty-three by 1987, and forty-four by 1992.[23] By the early 1990s, 56 percent of cities with populations over 100,000 had used TIF.[24] Today, every state but Arizona authorizes TIF.[25]

There is no national registry of TIF districts and many states do not centrally collect or publish data on their TIFs either, so it is difficult to know exactly how many TIF districts there are, but studies suggest that the number is substantial, reaching well into the thousands nationwide. In 2003, Wisconsin had 789, or an average of 1.3 TIF districts per municipality.[26] In Missouri in 2007, there were at least 291 TIF projects;[27] in Iowa in 1999, there were more than 2,400 TIF districts, covering 7.1 percent of the urban tax base.[28] In 2001, more than 10 percent of California's property tax base was in a TIF district.[29] In 2007, there were 402 active TIF districts in Cook County, Illinois,

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note 11) (noting that, by 1970, only Minnesota, Nevada, Ohio, Oregon, Washington, and Wyoming had followed California's lead).

21 See, for example, *South Bend Public Transportation Corp v City of South Bend*, 428 NE2d 217, 219 (Ind 1981) ("The legislature passed the tax allocation financing statutes at this time to provide redevelopment commissions with a necessary means to promote development when local governments are facing massive cutbacks in federal assistance and increasingly tight fiscal constraints attributable to the property tax freeze."). See also Weber, *Equity & Entrepreneurialism*, 38 Urban Aff Rev at 622 (cited in note 8); Joyce Y. Man, *Determinants of the Municipal Decision to Adopt Tax Increment Financing*, in Johnson and Man, eds, *Tax Increment Financing and Economic Development* 87, 90–93 (cited in note 11) (noting that the TIF boom of the 1970s and 1980s coincided with the decrease in federal intergovernmental aid in this period); Michael J. Wolkoff, *Economic Development Financing Policy: A State and Local Perspective*, in Richard D. Bingham, Edward W. Hill, and Sammis B. White, *Financing Economic Development: An Institutional Response* 29, 37 (Sage 1990).

22 Chapman, *Tax Increment Financing as a Tool of Redevelopment* at 191 table 9.1 (cited in note 9).

23 J. Drew Klacik and Samuel Nunn, *A Primer on Tax Increment Financing*, in Johnson and Man, eds, *Tax Increment Financing and Economic Development* 15, 18 (cited in note 11).

24 Id at 18

25 See note 1 and accompanying text.

26 David Merriman, *Does TIF Make It More Difficult to Manage Municipal Budgets? A Simulation Model and Directions for Future Research?* *4 (Lincoln Institute of Land Policy unpublished manuscript, May 1, 2009).

27 Id at *2.

28 David Swenson and Liesl Eathington, *Do Tax Increment Finance Districts in Iowa Spur Regional Economic and Demographic Growth?* *4, 7 table 4 (June 2002), online at http://www.econ.iastate.edu/research/webpapers/paper_4094_N0138.pdf (visited Oct 24, 2009).

29 Merriman, *Does TIF Make It More Difficult to Manage Municipal Budgets?* at 2 (cited in note 26).

covering more than 10 percent of the county's land area and generating a total of $892 million in dedicated revenues.[30]

As TIF proliferated, it also evolved, shifting from what was initially an urban renewal program targeted at depressed central city areas to a more general public investment and infrastructure financing scheme. The redirection, or expansion, of TIF is best captured through the change in the language used to describe TIF activity from *redevelopment*—that is, the revitalization of a once vibrant but now economically depressed or physically deteriorated area—to simply *development*, or increase in economic activity in an area that might have been vacant, farmland, undeveloped, or simply lightly developed. It is also seen through the decreasing significance of "blight" as a precondition for TIF investment. Given TIF's roots in urban renewal, it is not surprising that an initial determination that an area was blighted—not simply undeveloped or underdeveloped but downright deteriorated—was in many states a requirement for TIF investment.[31] The increasingly creative efforts of municipalities to label apparently healthy, albeit not affluent, neighborhoods as blighted in order to qualify for TIF treatment has long drawn the scorn of commentators.[32] But arguably more important than pushing out the definitional envelope of blight is the fact that sixteen states no longer require a finding of blight as a precondition for TIF.[33] Some states, like Missouri, permit TIF in so-called "conservation areas" that are threatened with the prospect of blight but not currently blighted. Others, like Indiana and Iowa, permit TIF in "economic development areas" for which the only requirement is that TIF will have a significant economic benefit[34] or

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30 Orr, *2007 TIF Report Shows 11.5% Jump in Revenue* (cited in note 3). Looking at a scattering of other major metropolitan areas, there appear to be twenty-two TIF districts in Houston, see City of Houston, *Tax Increment Redevelopment Zones*, online at http://www.houstontx.gov/finance/ecodev/tirz.html (visited Aug 30, 2009); ten in Atlanta, see Atlanta Development Authority, *Tax Allocation Districts*, online at http://www.atlantada.com/buildDev/tadFAQs.jsp (visited Oct 24, 2009); and thirty-three in Indianapolis, see Marion County Auditor's Office, *Tax Increment Finance District Cross-Walk Table*, online at http://www.indy.gov/eGov/County/Auditor/Tax_Rates/Pages/TIF_crosswalk_table.aspx (visited Oct 24, 2009).

31 See, for example, *Castel Properties, Ltd v City of Marion*, 631 NE2d 459, 465 (Ill App 1994).

32 See, for example, Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 Fordham Urban L J 305, 306–07 (2004) (criticizing the continuing lack of specificity as to what constitutes "blight").

33 See Johnson and Kriz, *A Review of State Tax Increment Financing Laws* at 38 (cited in note 20).

34 See Klacik, *Tax Increment Financing in Indiana* at 185–86 (cited in note 11) (contrasting the original purpose of TIFs to resurrect blighted areas and the now-frequent use of TIFs to develop vacant land).

simply that the area is "appropriate" for economic development.[35] Virginia permits TIF to be used in any area designated by a local government in order to promote "commerce and prosperity."[36]

As a result, TIF is now increasingly used for greenfields projects[37] on undeveloped land in the suburbs, at edge city highway interchanges, and in former cornfields.[38] A 1999 study found that 45 percent of Wisconsin's 661 TIFs have been used to develop open space—primarily farmland—including, most famously, a Wal-Mart Supercenter built on what had been an apple orchard in Baraboo.[39] Indeed, TIFs are now so widely used for suburban and exurban shopping malls that the coauthor with the Council of Development Finance Agencies of the *2008 Tax Increment Finance: Best Practices Reference Guide* is the International Council of Shopping Centers.[40]

To be sure, many TIF projects continue to be in urban centers and involve such redevelopment activities as the renovation of disused factory sites, the cleanup of polluted brownfields, and the revitalization of downtown business districts. The nation's largest TIF district was probably the intensely urban one located in Chicago's downtown Loop District,[41] which closed down at the end of 2008 after raising and spending approximately one billion dollars over its twenty-three-year lifetime.[42] Another very large urban TIF is Chicago's LaSalle Central, which was created in 2006 and is projected to collect $2.1 billion in revenues by 2029.[43] The main point is that in most states TIF is now an all-purpose local government tool for financing public investment in market-oriented development rather than simply a mechanism for combating blight.

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35 Iowa Code § 403.5(1) (1999). See also *McMurray v City Council of the City of West Des Moines*, 642 NW2d 273, 278–79 (Iowa 2002).

36 See Good Jobs First, *Straying from Good Intentions: How States Are Weakening Enterprise Zone and Tax Increment Financing Programs* 23 (2003), online at http://www.goodjobsfirst.org/pdf/straying.pdf (visited Oct 18, 2009).

37 See Anne Marie Pippin, Note, *Community Involvement in Brownfield Redevelopment Makes Cents: A Study of Brownfield Redevelopment Initiatives in the United States and Central and Eastern Europe*, 37 Ga J Intl & Comp L 589, 596 (2009) (defining "greenfields" as "pristine, underdeveloped land typically located in low density suburban areas").

38 Klacik, *Tax Increment Financing in Indiana* at 186 (cited in note 11).

39 Greg LeRoy, *TIF, Greenfields, and Sprawl: How an Incentive Created to Alleviate Slums Has Come to Subsidize Upscale Malls and New Urbanist Developments*, 60 Planning & Envir L 3, 11 (2008).

40 Council of Development Finance Agencies and International Council of Shopping Centers, *Best Practices Reference Guide* (cited in note 1).

41 See *Daley Letting Huge Loop TIF Die*, Crain's Chi Bus (Sept 24, 2008), online at http://www.chicagobusiness.com/cgi-bin/printStory.pl?news_id=31140 (visited Oct 24, 2009).

42 Mike Quigley, *A Tale of Two Cities: Reinventing Tax Increment Financing* iii (Heartland Institute, Apr 2007), online at http://www.heartland.org/policybot/results/21830/A_Tale_of_Two_Cities_Reinventing_Tax_Increment_Financing.html (visited Oct 18, 2009).

43 Id.

TIF, of course, is just one of many programs available for local economic development or redevelopment—including enterprise zones, tax abatements, special assessments and special benefit taxes, business improvement districts ("BIDs") and other special districts, and intergovernmental grants, loans, and tax credits.[44] TIF resembles enterprise zones, BIDs, special assessment districts, and special districts in targeting a territorially defined submunicipal area.[45] Moreover, like BIDs and special assessment districts, TIF involves a tight revenue-raising and expenditure nexus, with its funds collected and spent within the same district. However, TIF differs from these other programs in ways that make it appealing both to local government officials and to potential private sector investors.

Unlike tax abatements and enterprise zones—which typically involve tax cuts, credits, or reduced regulation in designated areas—TIF channels new money into districts. TIF supports physical infrastructure, land acquisition, site clearance, and other programs that reduce a developer's capital costs. Some argue this provides a more substantial benefit to developers than the cash savings resulting from a tax abatement or an enterprise zone regulatory modification.[46] Whether or not a TIF-backed capital investment is more beneficial to a developer than a tax break, the absence of a tax abatement makes it easier for elected officials to defend themselves against the charge that the program is a giveaway to developers, and, as discussed in the next Part, provides a defense against claims that the TIF program violates state constitutional requirements of uniformity of taxation.

Unlike special assessments, special benefits taxes, BIDs, other special districts, and similar mechanisms, TIF does not involve a tax rate increase, new tax, fee, or assessment. Instead, TIF uses existing taxes at existing rates. This can avoid the political hue and cry that a tax increase can generate and also the legal restrictions—voter approval requirements or tax levy limits—in many states on tax increas-

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44 TIF funds are often used in tandem with these other tools. See, for example, Mark S. Rosentraub, *City-County Consolidation and the Rebuilding of Image: The Fiscal Lessons from Indianapolis's UniGov Program*, 32 State & Local Govt Rev 180, 185–89 (2000) (discussing revitalization tools implemented in Indianapolis); John E. Anderson and Mark W. Wassmer, *Bidding for Business: The Efficacy of Local Economic Development Incentives in a Metropolitan Area* 84–86 (W.E. Upjohn Institute for Employment Research 2000) (discussing use of multiple programs intended to redevelop Detroit).

45 See Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 Minn L Rev 503, 509–21 (1997).

46 See, for example, Gary P. Winter, *Tax Increment Financing: A Potential Redevelopment Financing Mechanism for New York Municipalities*, 18 Fordham Urban L J 655, 692 (1991).

es. One study of TIF in Indiana concluded that "TIF may be the only politically acceptable tool for financing infrastructure."[47]

II. LEGAL AND ECONOMIC QUESTIONS AND (SOME) ANSWERS

TIF has sparked a host of legal and economic questions. The legal issues involve the application of state constitutional tax and debt restrictions to TIF activities, and the statutory requirements for approval of a TIF plan. The economic literature has focused on the determinants of TIF adoption and the effectiveness of TIF in promoting development. The legal questions about TIF are largely resolved, although some of the resolutions differ from state to state. The economic questions remain open—in particular, TIF's impact on development is unclear.[48] Yet, the uncertainty about whether TIF works has had little effect on TIF's spread.

A. Legal Issues

1. State constitutional questions.

TIF implicates three aspects of state constitutional restraints on local fiscal behavior: public purpose requirements for the use of tax dollars, restrictions on taxation, and rules governing debt.

a) Public purpose. Virtually all states require that the expenditure of taxpayer dollars be for a "public purpose."[49] These public purpose requirements reflect a longstanding concern about the potential for public support of private activity to both bankrupt the public sector and to invite private sector actors to corrupt government decisionmakers in pursuit of public support. Modern notions of the government's responsibility for promoting economic activity, however, have eroded the public-private distinction embedded in the public purpose doctrine, so that government programs that promote economic development are now generally treated as serving a public purpose. State courts have repeatedly held that TIF spending to promote economic development is consistent with public purpose requirements.[50] "The finding of a public purpose is generally unaffected by the fact

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47 Klacik, *Tax Increment Financing in Indiana* at 188 (cited in note 11).

48 Man, *Determinants of the Municipal Decision to Adopt TIF* at 97 (cited in note 21).

49 Richard Briffault, *Foreword: The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 Rutgers L J 907, 910 & n 17 (2003), citing Dale F. Rubin, *Constitutional Aid Limitation Provisions and the Public Purpose Doctrine*, 12 SLU Pub L Rev 143, 143 & n 1 (1993).

50 See, for example, *State v Unified Government of Wyandotte County/Kansas City*, 962 P2d 543, 552–54 (Kan 1998); *In re Request for Advisory Opinion on Constitutionality of 1986 PA 281*, 422 NW2d 186, 202–03 (Mich 1988).

that private interests may benefit" from the TIF program.[51] Indeed, rather than express concern about a program that blurs the public-private divide, some courts have endorsed the legislative finding that "public-private partnerships that take advantage of the special expertise of the private sector" are a particularly appropriate means of promoting economic development.[52]

b) Tax restrictions. TIFs have been challenged under state uniformity clauses—the common requirement that tax rates and assessments be uniform throughout the taxing jurisdiction.[53] TIF arguably violates uniformity because the incremental revenues raised within the TIF district are returned to the district to pay for improvements within the district, whereas revenues raised elsewhere in the city are used throughout the city, including for services in the TIF district. To the extent that TIF district taxpayers are able to use incremental revenues to pay the debt service on TIF bonds or otherwise earmark their taxes for expenditures that benefit them, they are taxed less than other municipal taxpayers. However, state supreme courts have consistently rejected uniformity challenges to TIF, pointing out that TIF departs from uniformity only with respect to spending, whereas the state constitutional uniformity requirement applies only to tax assessment and tax rates, not spending.[54]

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51 See, for example, *Request for Advisory Opinion*, 422 NW2d at 202. See also *McMurray v City Council of City of West Des Moines*, 642 NW2d 273, 283 (Iowa 2002) (ruling that a TIF program to pay for physical infrastructure necessary for a new shopping mall "advances a public purpose and will not be invalidated because it benefits not only the public, but also potentially benefits a private developer").

52 *Board of Directors v All Taxpayers*, 938 So 2d 11, 17 (La 2006) (determining that benefits to the public at large and private interests need not be mutually exclusive).

53 See, for example, *Delogu v State*, 720 A2d 1153, 1155 (Me 1998) (arguing that the TIF project violated the equal assessment requirement of the Maine constitution); *Meierhenry v City of Huron*, 354 NW2d 171, 183 (SD 1984) (arguing that the TIF project violated the South Dakota Constitution, which required that taxes "be uniform on all property of the same class, and shall be levied and collected for public purposes only").

54 See, for example, *Delogu*, 720 A2d at 1156; *Meierhenry*, 354 NW2d at 177–78; *South Bend Public Transportation Corp v City of South Bend*, 428 NE2d 217, 222–23 (Ind 1981); *City of Canton v Crouch*, 403 NE2d 242, 249–50 (Ill 1980) (holding that the Illinois constitution allows tax revenues collected from one taxing district to be used by another taxing district); *Denver Urban Renewal Authority v Byrne*, 618 P2d 1374, 1386–87 (Colo 1980) (holding that the Colorado constitution's uniformity provision is satisfied as long as property is taxed on a uniform basis and does not preclude the allocation of incremental revenues to TIF); *Metropolitan Development and Housing Agency v Leech*, 591 SW2d 427, 429–30 (Tenn 1979) (holding that the Tennessee constitution's uniformity clause is not violated when a portion of county property tax revenue is diverted to TIF redevelopment project). See also *Tribe v Salt Lake City Corp*, 540 P2d 499, 504 (Utah 1975); *Richards v City of Muscatine*, 237 NW2d 48, 60–62 (Iowa 1975) (rejecting uniformity clause challenge to TIF by finding that landowner in a TIF district is taxed on the same basis as other landowners and that the diversion of revenues to the TIF "has a rational relationship to the legitimate governmental purpose of having the urban renewal project pay for itself").

c) Debt limits. Nearly all state constitutions restrict local government debt, either by imposing limits on the amount of debt a locality can incur or by requiring voter approval for a local bond issue. Most state TIF laws exempt TIF debt from municipal debt limits,[55] and municipalities turn to TIF bonds at least in part to avoid debt restrictions and voter approval requirements.[56] In some states, where the TIF authorization is more ambiguous or where it is uncertain whether a statutory measure can resolve the constitutional debt question, the application of debt limits to TIF-backed debt has been controversial. With debt limits generally applicable only to general obligation debt—that is, debt backed by the full faith and credit of the city—TIF-backed debt ought to be exempt from limits as it is basically a revenue bond, supported only by the incremental revenues generated within the district, not the unlimited commitment of the city. On the other hand, most revenue bonds are backed by fees or charges, special assessments, or special taxes, but TIF debt is usually financed by the ad valorem property tax, which is the heart of the tax base for most cities and the foundation of local full faith and credit debt. State courts have split over whether the key fact in determining the constitutional status of TIF debt is the limited commitment of incremental revenues or the reliance on the property tax.[57] In a very recent case, the Florida Supreme Court initially voted to subject TIF debt to the state constitution's voter approval requirement for debt, but then on rehearing re-

An additional state tax issue has been whether incremental revenues can be redirected to a TIF when the state constitution authorizes a tax for certain purposes, such as schools, or when a tax has been authorized by the voters for a specific purpose. Some state courts have said redirection is not barred, while others have taken the opposite position. Compare *Request for Advisory Opinion*, 422 NW2d at 193–97 (noting that while the Michigan constitution does place a limit on tax *rate*, it does not do so for *use*, "leav[ing] the Legislature free to alter the purposes to which tax revenues are put"); *City of El Paso v El Paso Community College District*, 729 SW2d 296, 299 (Tex 1986) (allowing school district ad valorem tax revenue to be used for non-educational purposes as part of a TIF plan) with *Denham Springs Economic Development District v All Taxpayers*, 894 So 2d 325, 331–35 (La 2005) (finding that the revenue from taxes approved for a particular purpose could not be redirected as part of a TIF plan); *Leonard v City of Spokane*, 897 P2d 358, 360–62 (Wash 1995); *Miller v Covington Development Authority*, 539 SW2d 1, 5 (Ky 1976).

55 See Johnson and Kriz, *A Review of State Tax Increment Finance Laws* at 45–46 (cited in note 20).

56 Craig L. Johnson, *The Use of Debt in Tax Increment Financing*, in Johnson and Man, *Tax Increment Financing and Economic Development* 71, 71 (cited in note 11).

57 Compare *Tax Increment Financing Commission of Kansas City v J.E. Dunn Construction Co*, 781 SW2d 70, 74–75 (Mo 1989) (holding that limits on municipal debt do not apply to TIF debt); *South Bend Public Transportation Corp v City of South Bend*, 428 NE2d 217, 222 (Ind 1981) (same); *Denver Urban Renewal Authority*, 618 P2d at 1382 (same); *Tribe*, 540 P2d at 503 (same) with *Oklahoma City Urban Renewal Authority v Medical Technology and Research Authority of Oklahoma*, 4 P3d 677, 683–90 (Okla 2000) (requiring voter approval); *County Commission of Boone County v Cooke*, 475 SE2d 483, 494 (W Va 1996) (same); *City of Hartford v Kirley*, 493 NW2d 45, 50–56 (Wis 1992) (holding that the municipal debt limit applies to TIF debt).

versed itself, and over a strenuous dissent, concluded that TIF debt is exempt from the voter approval requirement because it does not commit local full faith and credit.[58]

2. Statutory issues.

The two most common statutory issues in TIF cases are whether TIF is necessary for economic growth within the designated district—that is, whether TIF is likely to be the "but-for" cause of any ensuing development—and, in those states that require the district to satisfy some standard of underdevelopment, does it meet that standard? Is the area "blighted"?

a) But-for causation. The conceptual heart of TIF is that the TIF expenditure is the but-for cause of subsequent economic growth in the TIF district. Indeed, courts have on occasion rejected a TIF proposal where it seems likely that investment would occur without TIF.[59] But for the most part, as TIF has spread the but-for requirement has fallen away, and today fewer than half the states have a but-for requirement in their TIF enabling legislation.[60] Even where it is on the books, the but-for test is usually a "very low hurdle[] and not uniformly or rigorously applied."[61] Courts generally defer to the but-for determinations of municipal legislative bodies and are likely to accept city judgments that are debatable and even conclusory.[62] For TIFs aimed at recruiting a specific project or retaining a specific firm, retailer, or mall, courts

58 *Strand v Escambia County*, 992 So 2d 150, 156–61 (Fla 2008). See also *Bay County v Town of Cedar Grove*, 992 So 2d 164, 168–70 (Fla 2008).

59 See, for example, *Board of Education, Pleasantdale School District No 107 v Village of Burr Ridge*, 793 NE2d 856, 867–68 (Ill App 2003); *Castel Properties, Ltd v City of Marion*, 631 NE2d 459, 464–67 (Ill App 1994). See also *Great Rivers Habitat Alliance v City of St Peters*, 246 SW3d 556, 566–67 (Mo App 2008) (overturning a summary judgment allowing a TIF district to be created when there still remained issues of fact concerning whether the property would be developed without TIF).

60 Different surveys of the number of states imposing a but-for test as a precondition for TIF district creation have come up with different numbers, although this may reflect an increase in the number of states adopting the requirement over time. A book chapter published in 2001 found that fourteen states use a but-for test. See Johnson and Kriz, *A Review of State Tax Increment Financing Laws* at 39 (cited in note 20). A 2006 law review note found that seventeen states require a showing that growth would not occur but for the TIF investment. See John Grand, Note, *Tax Increment Financing: Louisiana Goes Fishing for New Business*, 66 La L Rev 851, 860 (2006). My review of a state-by-state survey of TIF laws by the Council of Development Finance Agencies published in 2008 found that nineteen states and the District of Columbia impose a "but-for" test as a precondition for TIF district creation. See Council of Development Finance Agencies, *2008 TIF State-by-State Report* (cited in note 12). Even with that increased use of the but-for test, thirty states do not impose such a requirement.

61 Johnson and Kriz, *A Review of State Tax Increment Financing Laws* at 39 (cited in note 20).

62 See, for example, *JG St. Louis West LLC v City of Des Peres*, 41 SW3d 513, 520–21 (Mo App 2001).

will often rely on statements by the developer or investor in question that the TIF is "needed [ ] to meet its minimal investment return threshold."[63] For the many thousands of project-specific TIFs, "the logical premise of the 'but-for' test almost always yields a positive result."[64] City officials may claim that TIF is the but-for cause of TIF-funded development. That may enable them "to avoid the charge of 'giveaway' and claim credit for projects that would have occurred anyway."[65] But they are not usually legally required to prove but-for cause, and when they are, their claims are usually accepted.

b) Blight. As previously noted, TIF was originally designed and justified as a policy to alleviate the consequences of blight, and a finding of blight remains a legal requirement for the creation of a TIF program in thirty-three states.[66] But state statutes and state courts have transformed the meaning of blight from the slum image of decayed or deteriorated structures, unsafe and unsanitary conditions, and economic and social distress to something a lot more like "underdeveloped" or lacking the physical or legal preconditions for further economic development.[67] Pennsylvania law describes blight as including "inadequate planning of the area," "excessive land coverage by the buildings thereon," "faulty street or lot layout," and "the defective design and arrangement of the buildings."[68] In Missouri, blight includes "defective or inadequate street layout" and "improper subdivision or obsolete platting."[69] In Illinois, "diversity of ownership"[70] and—best of all—"lack of community planning"[71] support a finding of blight.

Not surprisingly, these statutory standards tend to result in judicial acceptance of municipal blight claims even in the absence of a showing that an area is seriously deteriorated. A Missouri court found

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63 *Board of Education of Community High School District No 218 v Village of Robbins*, 765 NE2d 449, 458 (Ill App 2002).

64 East-West Gateway Council of Governments, *An Assessment of the Effectiveness and Fiscal Impacts of the Use of Local Development Incentives in the St. Louis Region: Interim Report* 32 (Jan 2009), online at http://www.ewgateway.org/pdffiles/library/regdev/tifrpt-012609.pdf (visited Oct 18, 2009).

65 LeRoy, *TIF, Greenfields, and Sprawl*, 60 Planning & Envir L at 4 (cited in note 39).

66 See Johnson and Kriz, *A Review of State Tax Increment Financing Laws* at 38 (cited in note 20) (noting that thirty-three states require a finding of blight). See also Council of Development Financing Agencies, *2008 TIF State-by-State Report* (cited in note 12) (showing that sixteen states and the District of Columbia do not require a finding of blight).

67 See Gordon, *Blighting the Way* at 307, 315–16 (cited in note 32) (describing blight as "less an objective condition than it is a legal pretext").

68 53 Pa Stat § 6930.2(a)(1) (1990). See also *Mazur v Trinity Area School District*, 961 A2d 96, 106 (Pa 2008) (remarking that, under the statutory language, a property could meet the requirements for blight and still be considered "a prime location for shopping and entertainment").

69 Mo Rev Stat § 99.805(1). See also *JG St. Louis West*, 41 SW3d at 517.

70 65 ILCS 5/11-74.43. See also *Castel Properties*, 631 NE2d at 465.

71 65 ILCS 5/11-74.43. See also *Geisler v City of Wood River*, 892 NE2d 543, 547 (Ill App 2008).

that a major shopping mall in suburban St. Louis could be blighted, and thus the beneficiary of a TIF-funded redevelopment plan, even though the mall was "indisputably [the] City's greatest economic asset."[72] The court concluded that due to the presence of various statutory physical "blight" factors—obsolete platting in its current two-anchor store configuration, limited space for small retail shops, improper subdivision, and irregularly platted lots that constrained expansion—the mall would be unable to compete with newer malls in the area. "[W]ithout redevelopment, [the] shopping mall would accelerate into a downward spiral and eventually would not survive as a regional shopping mall."[73] The blighting factors might not have been obvious to customers, but they were "likely noticeable to probable tenants who could choose not to rent space at [a] shopping mall because of its physical status."[74] In an Illinois case involving a proposal to convert farmland into a Wal-Mart, the blighting factors were "topographical issues" such as the need to have the land regraded and the lack of utilities and a storm sewer system adequate to handle a large development.[75] The Pennsylvania Supreme Court agreed that a rural site proposed for a $400 million retail, restaurant, and hotel development project near the intersection of two interstate highways could be blighted, even though the tract was "a prime location for regional shopping and entertainment," because it exhibited some statutory blighting factors.[76]

Courts sometimes find that municipalities overreach. When the city of Richfield, Minnesota, hoping to use TIF to develop a new corporate headquarters for Best Buy, claimed the area was blighted because many buildings were not in compliance with the state energy code's insulation standards, the court found that "consideration of modern insulation standards as a component of whether a building is structurally substandard might result in all but the most modern homes being determined to be 'structurally substandard.'"[77] The claim of the village of Orion, Illinois that land was blighted because of "loose or missing shingles, gravel drives, grass growing through the cracks in a driveway, [and] surface cracking in driveways and sidewalks" was rejected by the court as no more than "routine disrepair common to many communities."[78] When the wealthy Chicago suburb

72 *JG St. Louis West*, 41 SW3d at 518.

73 Id.

74 Id at 519 (supporting the contention that the mall's platting and subdivision would be actual impediments to economic growth).

75 *Geisler*, 892 NE2d at 550.

76 *Mazur*, 961 A2d at 106–07.

77 *Walser Auto Sales, Inc v City of Richfield*, 635 NW2d 391, 403 (Minn App 2001).

78 *Henry County Board v Village of Orion*, 663 NE2d 1076, 1081 (Ill App 1996).

of Burr Ridge, which sought to create a TIF in order to attract a Radisson Hotel and Conference Center, declared that part of the village was blighted because the parcels in the proposed TIF site were "too large"—one of Illinois's statutory blighting factors—the court testily responded that on that theory "one would have to accept the conclusion that the entire country is blighted."[79]

Still, as with the "but-for" determination, state courts generally treat blight as a matter for municipal "legislative" determination,[80] without much evidence required.[81] For many courts the issue of blight turns into whether TIF will "provide stimulus and nurturing of economic development."[82]

B. Economic Analyses

Academic studies and policy analyses of TIF tend to focus on two issues: Which municipalities choose to adopt TIF and why? And what are the economic benefits of TIF and do they justify its costs? Neither of these questions has received entirely straightforward answers; indeed, as one recent study determined "we have more questions than answers with regard to the use of TIF as an economic development tool."[83]

TIF is not used primarily by poor or declining places. The leading study, by John Anderson, of TIF adoption in Michigan found that cities with growing populations and growing property values, rather than shrinking cities, were actually more likely to adopt a TIF plan because TIF provides a tool for financing the infrastructure required by growth.[84] Similarly, Richard Dye and David Merriman's examination of TIF in the six-county Chicago metropolitan area over an eighteen-year period found that in the four years before TIF adoption, property values grew slightly faster in the municipalities that were to later adopt TIF than in those that did not.[85] So, too, public policy group studies of TIF in Missouri found that it is used primarily in suburban areas in St. Louis,[86] and in the most affluent areas of Kansas City.[87]

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79 *Village of Burr Ridge*, 793 NE2d at 863.

80 *Meramec Valley R-III School District v City of Eureka*, 281 SW3d 827, 835–38 (Mo App 2009).

81 *City of Parker v State*, 992 So 2d 171, 178 (Fla 2008).

82 *Castel Properties*, 631 NE2d at 467.

83 Man, *Determinants of the Municipal Decision to Adopt Tax Increment Financing* at 97 (cited in note 21).

84 John E. Anderson, *Tax Increment Financing: Municipal Adoption and Growth*, 43 Natl Tax J 155, 160 (1990).

85 Dye and Merriman, *The Effect of Tax Increment Financing on Land Use* at 39–40 (cited in note 10).

86 Thomas Luce, *Reclaiming the Intent: Tax Increment Finance in the Kansas City and St. Louis Metropolitan Areas* *8–15 (Brookings Institution Center on Urban and Metropolitan Policy Discussion Paper, Apr 2003), online at

Other studies have been more inconclusive. Paul Byrne's study of TIF adoption in the Chicago metropolitan area found that although most TIFs were used in older, poorer areas, a significant fraction—about one-quarter—were adopted in more affluent areas.[88] TIF's adoption by growing cities is not surprising. Growth can generate a need for new capital investment which might not be easily financed out of the local tax base, especially in a jurisdiction subject to legal limits on raising taxes. Merriman's suggestion that TIF is more likely to be adopted in areas suffering mild economic distress than in areas marked by more severe distress[89] is consistent with this picture.

Turning from internal city factors to regional ones, a city is more likely to create a TIF when nearby localities have done so. Byrne determined that in metropolitan Chicago such "strategic interaction" played a significant role in making it likely that a municipality would create a TIF district,[90] and John Anderson and Mark Wassmer similarly found such "copycat" behavior played a key role in the spread of TIF and other development incentive programs across the Detroit metropolitan area.[91]

The consequences of TIF adoption are even more uncertain than the causes. Generally, TIF is accompanied by property value growth within the district, but there are counterexamples. A survey of TIF districts in Kansas City found that in many projects actual revenues were significantly below projected revenues,[92] and a survey of TIF districts in Texas found that one in five reported no new business activity attributable to the district.[93] A study by a grassroots community organization of thirty-six neighborhood TIF districts in Chicago found that in four of them property values grew more slowly than in the city as a whole, and

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http://www.brookings.edu/~/media/Files/rc/reports/2003/04metropolitanpolicy_luce/lucetif.pdf (visited Oct 25, 2009).

87 Kelsay, *Uneven Patchwork* at 6–9 (cited in note 13).

88 Paul F. Byrne, *Determinants of Property Value Growth for Tax Increment Financing Districts*, 20 Econ Dev Q 317, 323 (2006). But see Man, *Determinants of the Municipal Decision to Adopt Tax Increment Financing* at 90 (cited in note 11).

89 Merriman, *Does TIF Make It More Difficult to Manage Municipal Budgets?* at *3 (cited in note 26), discussing Diane Gibson, *Neighborhood Characteristics and the Targeting of Tax Increment Financing in Chicago*, 54 J Urban Econ 309 (2003) (analyzing the census tract information from Chicago and determining that TIF districts are more likely to benefit the "moderately disadvantaged" than the severely disadvantaged).

90 Paul F. Byrne, *Strategic Interaction in the Adoption of Tax Increment Financing*, 35 Regional Sci & Urban Econ 279, 298 (2005).

91 Anderson and Wassmer, *Bidding for Business* at 67, 153–54, 167 (cited in note 44).

92 Kelsay, *Uneven Patchwork* at 19 (cited in note 13).

93 Enid Arvidson, Rod Hissong, and Richard L. Cole, *Tax Increment Financing in Texas: Survey and Assessment*, in Johnson and Man, eds, *Tax Increment Financing and Economic Development* 155, 170 (cited in note 11).

that in three districts property value actually declined.[94] The Englewood, Colorado urban renewal authority defaulted on a $27 million TIF bond issue.[95] Even the Council of Development Financing Agencies, which serves as a kind of trade association for TIF, recognizes that certain TIF projects have failed to achieve their economic goals.[96] But for the most part it appears that TIF districts succeed in creating a "solid and robust" revenue base.[97] Property values and retail sales in TIF districts generally increase,[98] although there is a large variation in success across districts[99] and it is often debatable whether economic growth that is attributed to the TIF would have occurred anyway.[100]

Turning to the consequences beyond the TIF district, Dye and Merriman found that use of TIF was associated with relative decline in the property values of municipalities that used TIF compared with those that did not, and that this was especially true when TIF was used to promote commercial development.[101] They also concluded that TIF-backed commercial development did little more than substitute for or displace commercial activity that would have occurred elsewhere within the city.[102] On the other hand, a study of Indiana TIFs by Joyce Y. Man and Craig L. Rosentraub found that TIF-financed infrastructure investment and improvements had a statistically significant positive effect on median house values in the entire host city.[103] As another analyst recently put it, "The effect of TIF on property value growth at the municipal level [ ] remains unresolved."[104]

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94 Neighborhood Capital Budget Group, *Chicago's TIF Encyclopedia: The First Comprehensive Report on the State of Tax Increment Financing in Chicago* 16 (1999), online at http://www.ncbg.org/documents/tifreport.pdf (visited Oct 18, 2009).

95 Johnson, *The Use of Debt in Tax Increment Financing* at 81 (cited in note 56).

96 Council of Development Finance Agencies and International Council of Shopping Centers, *Best Practices Reference Guide* at 9 (cited in note 1).

97 Id at 85 (noting that "[i]n some states, incremental assessed values have become larger than base values").

98 Joyce Y. Man, *Effects of Tax Increment Financing on Economic Development*, in Johnson and Man, eds, *Tax Increment Financing and Economic Development* at 102–05 (cited in note 11).

99 Byrne, 20 Econ Dev Q at 325 (cited in note 88) (displaying the results of a regression analysis done for Chicago-area TIF districts).

100 Quigley, *A Tale of Two Cities* at 30 (cited in note 42) (claiming that 40 percent of the growth in property value in Chicago's TIF districts would have occurred even without TIF).

101 Richard F. Dye and David F. Merriman, *The Effects of Tax Increment Financing on Economic Development*, 47 J Urban Econ 306, 319 (2000) (comparing pre- and post-adoption growth rates, and concluding that the implementation of a TIF plan has a "devastatingly negative impact on municipal growth").

102 Dye and Merriman, *The Effect of Tax Increment Financing on Land Use* at 57–59 (cited in note 10). See also Dye and Merriman, 47 J Urban Econ at 322–24 (cited in note 101).

103 Joyce Y. Man and Mark S. Rosentraub, *Tax Increment Financing: Municipal Adoption and Effects of Property Value Growth*, 26 Pub Fin Rev 523, 541–42 (1998).

104 Byrne, 20 Econ Dev Q at 319 (cited in note 88).

There may be less debate over the regional benefits—or lack thereof—of TIF-backed development, particularly the growing use of TIF for commercial projects. Studies in Missouri and Texas have found that TIF commercial projects do little to add to regional jobs or tax base and may simply redistribute sales within a metropolitan area.[105]

TIF may have different success rates in promoting tax base growth depending on whether it is used for industrial, commercial, or mixed-use projects, and that success in turn may be influenced by the characteristics of the neighborhood where the development is located. Thus, although Byrne found that TIFs located in industrial areas were particularly successful in promoting property value growth, Rachel Weber and her coauthors determined that TIF support for an industrial project in an industrial area of a city might actually retard property value growth, although locating a mixed-use TIF district in an industrial area would increase it. In effect, TIF designation, in addition to providing public funds for infrastructure, also appears to act as a form of land use planning. Chicago landowners and developers appear to prefer to transition industrial sites to higher-value commercial or mixed commercial and residential uses than to redevelop them for continued industrial use.[106] Weber's study also suggests there may potentially be a tension between the two goals of economic development that are usually treated as linked: job creation and property value increase. Industry-oriented development may be more likely to generate higher-wage jobs, but commercial or mixed-use development may be more likely to increase property values and tax base.[107] With the effectiveness of TIF defined in terms of its impact on property values, and with property value growth necessary to pay the debt service on TIF-backed bonds, commercial development is likely to get priority.

III. TIF AND THE LOCAL GOVERNMENT SYSTEM

From one perspective, the proliferation of TIF is puzzling. TIF was originally created to support urban renewal programs and was narrowly focused on remedying urban blight, yet now it is used in areas that are plainly unblighted. TIF brings in no outside money and provides no new revenue-raising authority. There is little clear evi-

105 See East-West Gateway Council of Governments, *Use of Local Development Incentives in the St. Louis Region* at 24–36 (cited in note 64); Arvidson, Hissong, and Cole, *Tax Increment Financing in Texas* at 174 (cited in note 93) (explaining that TIF supported mall development in Grapevine, Texas, and remarking that Texas used "public money to support private investment that would have probably occurred anyway, although perhaps not within Grapevine city limits").

106 See Rachel Weber, Saurav Dev Bhatta, and David Merriman, *Does Tax Increment Financing Raise Urban Industrial Property Values?*, 40 Urban Stud 2001, 2017–18 (2003).

107 Id at 2018.

dence that TIF has done much to help the municipalities that use it, while it is a source of intergovernmental tension and a site of conflict over the scope of public aid to the private sector. Yet, the expansion of TIF also makes perfect sense because it fits so well with the principal elements of late twentieth- and early twenty-first-century American local government law. TIF draws together and often reinforces some of the central features of our local government system. From an environmental perspective, we can say that TIF has flourished because it is well adapted to its niche, and that TIF's success tells us something about its legal-political environment. So, too, the conflicts about TIF resonate with the deeper debates about local government structure and policies. To continue the environmental metaphor, TIF is troubling to its critics because of the effect it has on its environment.

A. Decentralization

One striking feature about TIF is that TIF decisionmaking is almost entirely decentralized down to the municipal level. The decisions about whether to create a TIF district, where to place its boundaries, what kinds of infrastructure to finance with TIF funds, what types of private investments to pursue, what projects or mix of projects to fund, whether to issue debt or to rely on pay-as-you-go financing are all made by local government officials, with little or no oversight by other levels of government.

Unlike intergovernmental grants and other aid programs, municipal TIF decisionmaking is largely unencumbered by upper-level government red tape, bureaucracy, or oversight. There is no federal role in TIF. State law sets out basic rules governing the creation of a local TIF program, but very few states impose anything in the nature of a state approval requirement for local TIF actions, and in some of those states approval is required only when the TIF plans to use the state sales tax to help finance its projects.[108] Relatively few states even require localities to report on their TIFs or evaluate the effectiveness of TIF activities. Where reports are sought, the information required is minimal, and

108 A 2001 study found that only four states generally require state approval of local TIF plans. Johnson and Kriz, *A Review of State Tax Increment Financing Laws* at 36 (cited in note 11). North Carolina, which did not authorize TIF until 2004, requires the approval of local projects by the state's Local Government Commission. See Joseph Blocher and Jonathan Q. Morgan, *Questions about Tax Increment Financing in North Carolina*, Comm and Econ Dev Bull 3 (UNC School of Government, Aug 2008), online at http://eprints.law.duke.edu/1964/1/Blocher__5%C2%A0Community_&_Economic_Development_Bulletin%C2%A01-15_(August_2008)_.pdf (visited Oct 18, 2009). State approval is required when the TIF plan uses state taxes in Connecticut, Kansas, Missouri, New Mexico, and Vermont. Council of Development Finance Agencies, *2008 TIF State-by-State Report* at 6, 16, 25, 31, 45 (cited in note 12).

the reporting requirements indifferently enforced.[109] TIF is an eminently local tool, with few state (and no federal) strings attached.

TIF empowers local governments. It more directly enables a city to mold the physical and economic development of the community than either a tax break or other programs focused more narrowly on services to businesses. By enabling municipalities to weld TIF's incremental revenue stream to traditional land use planning and zoning powers, TIF gives them "a tremendous amount of city-shaping capacity," certainly more than simpler tax abatement programs.[110] By investing public funds in physical infrastructure, public facilities, land acquisition, and site clearance, and combining these expenditures with necessary planning, zoning, and subdivision changes, local governments can use TIF to articulate and shape a distinct urban development vision, and to woo the particular developers and firms necessary to bring that vision to life. TIF has been used, in tandem with other development programs, to create a theater district in Chicago;[111] a "venue for sports events and amateur sports organizations" in Indianapolis;[112] a high-density, mixed-use, transit-oriented "new urbanist" development in Colorado's Front Range;[113] a headquarters for Sears, Roebuck in Hoffman Estates, Illinois;[114] a spring training facility for the Boston Red Sox in Florida;[115] the International Spy Museum in Washington, DC;[116] and a forty-nine acre destination hunting, fishing, camping, and outdoor gear retail center combined with allied retail and commercial outlets, a museum, and a Sportsman Park Center in Gonzales, Louisiana.[117] It is not surprising that TIF is "[e]xtremely popular among local officials."[118]

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109 See Johnson and Kriz, *A Review of State Tax Increment Financing Laws* at 53 (cited in note 20); East-West Gateway Council of Governments, *Use of Local Development Incentives in the St. Louis Region* at 20–22 (cited in note 64); George Lefcoe, *After* Kelo, *Curbing Opportunistic TIF-Driven Economic Development: Forgoing Ineffectual Blight Tests; Empowering Property Owners and School Districts*, 83 Tulane L Rev 46, 66–67 (2008) (remarking that enforcement of TIF requirements in most states is "random, sporadic, and ineffectual").

110 Weber, 38 Urban Aff Rev at 620 (cited in note 8).

111 Neighborhood Capital Budget Group, *Chicago's TIF Encyclopedia* at 68 (cited in note 94).

112 See Rosentraub, 32 State & Local Gov Rev at 183 (cited in note 44).

113 See Lefcoe, 83 Tulane L Rev at 88–89 (cited in note 109).

114 James R. Paetsch and Roger K. Dahlstrom, *Tax Increment Financing: What It Is and How It Works* in Bingham, Hill, and White, eds, *Financing Economic Development* 82, 96 (cited in note 21).

115 Council of Development Finance Agencies and International Council of Shopping Centers, *Best Practices Reference Guide* at 83 (cited in note 1).

116 Id at 84.

117 *Board of Directors v All Taxpayers*, 938 So 2d 11, 14–15 (La 2006).

118 Chapman, *Tax Increment Financing as a Tool of Redevelopment* at 184 (cited in note 9).

TIF's "flexibility"[119] reflects the enormous amount of local autonomy built into TIF. So, too, the widespread authorization of TIF, the steady relaxation of the conditions for use of TIF, and the degree of judicial deference to local judgments concerning public purpose, but-for causation, and blight are themselves evidence of the degree of decentralization in our system when it comes to local planning, spending, and economic development. The rise of TIF demonstrates that the states are quite willing to delegate considerable economic development authority to municipalities with relatively modest oversight.

To be sure, the states have not turned TIF completely over to local governments. In response to complaints from local residents or from other local governments, some states have placed some restrictions on local discretion, by limiting or mandating the purposes for which TIF funds can be used.[120] Decentralization is not inexorable and the problems that TIF generates can spark a state-level response. Put another way, decentralization is not a steady state but a dynamic process reflecting the tensions in the local government system. Still, TIF both reflects and reinforces the decentralization characteristic of our local government system.

B. Fiscalization of Development Policy

TIF also fits in well with the growing fiscalization of municipal land use decisions,[121] which itself is due in part to our highly decentralized system.[122] Local governments are largely dependent on their own resources to finance their activities. The local ability to increase revenues by raising taxes is constrained by internal local politics, interlocal competition, and, increasingly in the last three decades, state constitutional constraints on the local ability to increase taxes, particularly property taxes. Thus, a primary goal for most local governments is to increase the value of taxable resources in order to increase revenues without rate increases. TIF is an ideal tool for that purpose. Its explicit

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119 See Joyce Y. Man, *Introduction*, in Johnson and Man, eds, *Tax Increment Financing and Economic Development* at 4 (cited in note 11); Paetsch and Dahlstrom, *TIF: What It Is and How It Works* at 92 (cited in note 114).

120 A handful of states limit TIF to commercial or industrial uses, and some mandate that a percentage of TIF funds be dedicated to affordable housing. See Johnson and Kriz, *A Review of State Tax Increment Financing Laws* at 51 (cited in note 20).

121 See generally Jonathan Schwartz, *Prisoners of Proposition 13: Sales Taxes, Property Taxes, and the Fiscalization of Municipal Land Use Decisions*, 71 S Cal L Rev 183 (1997).

122 See Helen F. Ladd, *Introduction*, in Ladd, ed, *Local Government Tax and Land Use Policies in the United States* 1, 15 (cited in note 9) (noting that easy mobility among localities has a substantial effect upon budgetary and fiscal decisions).

goal is to increase the tax base[123]—rather than, say, increase the number or quality of jobs, or improve environmental amenities. It promises to do that by new, development-oriented investments. And, unlike other development programs, it operates without either cutting or raising taxes.

TIF strengthens the fiscalization that underlies it. TIF can succeed only if the district tax base generates new revenues. TIF bonds require feasibility studies, investment analysis, and financial oversight intended to make sure that those bonds will be repaid. Although this has the beneficial effect of making it more likely that a TIF project will succeed—in the sense that it will be financially self-sufficient—it also means that tax base growth becomes the definition of TIF success.

This fiscalization is evidenced, and underscored, by TIF's increasing use for vacant or undeveloped land on the urban fringe and for commercial projects. Truly blighted areas are unlikely to attract new investment, even with substantial public-supported infrastructure investments, because of the enormous costs of making high-crime, high-poverty areas covered with deteriorated structures attractive to firms. Vacant land in less developed areas of a city or on the urban periphery is far more likely to yield a dramatic increase in value and, thus, in tax base growth.[124] Commercial projects are attractive because commercial land is typically assessed at a higher percentage of value than residential, and because commercial projects, such as shopping malls, retail outlets, and automobile dealerships generate sales tax revenues, which are typically not capped by Proposition 13-type tax limitations. Indeed, fiscalization is particularly advanced in the states that permit the use of sales or economic activity taxes to finance TIF projects. The availability of sales tax revenues to support TIF investment in places like Kansas City, Missouri all but assures that TIF will be used for commercial activity and that revenue enhancement will dominate development policy.[125]

Fiscalization has been sharply criticized by those who would like to refocus local planning and development policies on other goals, like job creation, improved service delivery, affordable housing, or preservation of quality of life. TIF reformers would do this by reviving and strengthening the blight and but-for tests and precluding the use of TIF for those projects most closely associated with purely tax-base-

123 Council of Development Finance Agencies and International Council of Shopping Centers, *Best Practices Reference Guide* at 4 (cited in note 1).

124 See Pippin, 37 Ga J Intl & Comp L at 596 (cited in note 37).

125 See, for example, Luce, *Reclaiming the Intent* at 7 (cited in note 86); Kelsay, *Uneven Patchwork* at 29 (cited in note 13). See East-West Gateway Council of Governments, *Use of Local Development Incentives in the St. Louis Region* at *35 (cited in note 64).

driven development policy. Indeed, some states have adopted measures intended to tighten up on the availability of TIF for greenfields sites or projects like auto dealerships, and some have required that a percentage of TIF funds be dedicated to affordable housing.[126] Fiscalization is a dominant theme in contemporary local government policy but it is not uncontested, and the fight over the fiscal focus of local actions can be seen in the ongoing TIF debate much as the rise of TIF has intensified the conflict over fiscalization.

C. Interlocal Conflict

TIF highlights two forms of interlocal conflict endemic to our fragmented local government system—the tensions among governments with overlapping authority over the same territory and the competition between neighboring communities for revenue growth.

In most states, a parcel of land in a municipality is also simultaneously located in a county, an independent school district, and other overlapping special purpose districts which may also enjoy the power to tax property or may be entitled by law to a share of property tax revenues. In a substantial majority of states,[127] the city that adopts a TIF program may commit to it the incremental property tax revenues that would have gone to overlapping local governments, such as school districts. These revenues are often substantial. In Illinois, for example, only 15 percent of local property tax revenues on average go to a municipality. The remaining 85 percent go to the county, school districts, and other special districts, with most of the money in the absence of TIF going to the school districts.[128] In Iowa the proliferation of TIF has been seen as diverting revenues from the counties.[129] Indeed, the Florida Supreme Court recently upheld the authority of a city to create a TIF district and divert property tax revenues to it even though the city itself did not levy an ad valorem property tax.[130] From a municipal perspective, TIF is far better than either tax abatement authority or revenue-enhancement authority because it permits the capture and use for municipal economic development projects of revenues that would have gone to these other governments. Unsurprising-

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126 See Good Jobs First, *Straying from Good Intentions* at 8–9 (cited in note 36); Alyson Tomme, Note, *Tax Increment Financing: Public Use or Private Abuse?*, 90 Minn L Rev 213, 237–44 (2005); Lefcoe, 83 Tulane L Rev at 80–83 (cited in note 109).

127 Only eleven of the forty-nine TIF states permit overlapping local governments to opt out of TIF. Weber, 38 Urban Aff Rev at 627 (cited in note 8).

128 Dye and Merriman, 47 J Urban Econ at 310 (cited in note 102).

129 Swenson and Eathington, *Do Tax Increment Finance Districts in Iowa Spur Regional Economic and Demographic Growth?* at 11 (cited in note 28).

130 See *City of Parker v State*, 992 So 2d 171, 175–77 (Fla 2008).

ly, many of the challenges to TIF formation are brought by school districts and other overlapping governments.[131] One study of the impact of TIF on interlocal relations in Illinois found that TIF formation "appears to have created an atmosphere of mistrust between school districts and municipalities."[132] Intergovernmental issues that had been previously resolved casually were now much more formalized, adversarial, and lawyered.[133]

This has been one of the most controversial features of TIF operations and one area in which some states have curtailed municipal TIF authority. These states now require notice to school districts and other overlapping governments about proposed TIF districts; require that municipalities negotiate with these overlapping governments; seat representatives of overlapping governments on TIF advisory boards; limit the extent of the diversion of overlapping government revenues to TIF districts; or require that the consent of the overlapping government be obtained before their revenues may be redirected to the TIF project.[134]

A further wrinkle in the overlapping government aspect of TIF is that the cost to school districts—the principal governments whose revenues are diverted—is often partially absorbed by the state through increased state school aid. This is sometimes known as "backfill."[135] Probably unintentionally,[136] the states are ameliorating the ten-

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131 See, for example, *Meramec Valley R-III School District v City of Eureka*, 281 SW3d 827, 834–35 (Mo App 2009); *Mazur v Trinity Area School District*, 961 A2d 96, 99 (Pa 2008); *Board of Education, Pleasantville School District No 107 v Village of Burr Ridge*, 793 NE2d 856, 859 (Ill App 2003); *Board of Education, Community High School District No 218 v Village of Robins*, 765 NE2d 449, 449 (Ill App 2001); *Sergeant Bluff-Luton School District v City of Sioux City*, 562 NW2d 154, 154 (Iowa 1997).

132 Weber, 38 Urban Aff Rev at 640 (cited in note 8).

133 Id.

134 See, for example, Lefcoe, 83 Tulane L Rev at 83–86 (cited in note 109). Requiring greater overlapping government participation in the TIF formation decision or consent to the diversion of their incremental revenues will not necessarily reduce TIF usage. Many local overlapping governments—perhaps agreeing with the municipalities that if the TIF succeeds the overlapping governments will benefit from the enhanced tax base too—are willing to commit all or most of their incremental revenues to TIF districts. See also Arvidson, Hissong, and Cole, *Tax Increment Financing in Texas* at 165–68 (cited in note 93) (noting that consents were given to twenty-three TIF districts in Texas); Council of Development Finance Agencies and International Council of Shopping Centers, *Best Practices Reference Guide* at 57 (cited in note 1) (describing voluntary participation of Cleveland Municipal School District in TIF project).

135 Jeff Chapman, *Tax Increment Financing and Fiscal Stress: The California Genesis*, in Johnson and Man, eds, *Tax Increment Financing and Economic Development* 113, 130 (cited in note 11) (discussing backfill in California and Indiana); Robert G. Lehnen and Carlyn E. Johnson, *The Impact of Tax Increment Financing on School Districts: An Indiana Case Study*, in Johnson and Man, eds, *Tax Increment Financing and Economic Development* 137, 142 (cited in note 11) (discussing state reimbursement formulas in Illinois, Michigan, Minnesota, and Wisconsin); Swenson and Eathington, *Tax Increment Financing Districts in Iowa* at *11 (cited in note 28)

sion between a market-oriented municipal economic development policy and the diversion of local tax dollars away from schools. In these states not only does TIF constitute a significant state delegation of development policy to municipalities but it also becomes an indirect means of increasing the state role in school financing.

In addition to the conflicts between overlapping governments, TIF underscores the sharply competitive structure of interlocal relations among adjacent municipalities in metropolitan areas. As the Byrne study demonstrates, TIF adoption is frequently a copycat phenomenon, with a municipality more likely to implement a TIF program when other municipalities in the vicinity have done so.[137] Indeed, TIF is just one of many tools used by neighboring cities as part of the ongoing interlocal bidding war for business investment—investment sought in large part because of the local dependence on the local tax base to pay for local services.

Interlocal competition explains and fuels TIF's turn to large commercial developments. Typically large retail projects—Wal-Marts and shopping malls—can be located in any one of a number of municipalities in a metropolitan area. Large retailers focus on serving a region rather than the particular locality in which they are located, and these developers draw shoppers (and their sales tax dollars) from a broad area. TIF-funded municipal support can make a key difference in deciding which of many possible localities in the metropolitan area wins the new mall or superstore, or, more defensively, whether the locality which is currently home to a large retail facility is able to keep it or help it compete with retailers in adjacent localities. By contrast, industrial redevelopment often involves the rehabilitation of already established older facilities and the benefits of job-oriented industrial development are not easily cabined within the sponsoring municipality, as nonresidents of a district may be as likely to obtain employment in a TIF-supported industrial project as district residents.

The proliferation of TIF, thus, makes sense in the interlocal struggle for business. Even if it is not clear how well TIF works, if other localities are already using it, any locality also interested in promoting tax base growth is likely to be drawn to it, and to use it in areas where it is most likely to add to the tax base and not necessarily in the areas most in need of development assistance. The fact that there is often

(explaining that, in Iowa, with state offsets for lost school revenues, much of the school district revenue loss caused by TIF is shifted to the state).

136 Weber, 38 Urban Aff Rev at 638 (cited in note 8) (noting that there is "little coordination between the state agencies responsible for education and economic development").

137 Byrne, 35 Regional Sci & Urban Econ at 280, 297–98 (cited in note 90).

little or no regional gain in fiscal health or jobs is irrelevant to the decisions of individual competing local governments.

The spread of TIF to greenfield sites, facilitated in part by the relaxation of but-for cause and blight standards, undermines the usefulness of TIF to the older, poorer neighborhoods which were the original focus of TIF. If every locality can offer an incentive, then the advantages of undeveloped sites over poor urban areas are not offset by government subsidies. Consistent with the general lack of regional governance structures in our system, there are no regional bodies that coordinate the use of TIF subsidies to maximize benefits within a region or metropolitan area. Instead, the overall pattern of state TIF legislation has been to make TIF more widely available and not concentrated on the poorest areas.[138] Concerns about the contribution of TIF-supported development on the urban fringe to sprawl,[139] a renewed focus on central city needs, or increased popular antipathy to takings for economic development in the aftermath of *Kelo* could lead to changes in the wide availability of TIF. But for now the general pattern has been that TIF has simply become part of the general interlocal competition for new investment and tax base.

D. Entrepreneurial Economic Development

TIF is nicely congruent with the entrepreneurial nature of most contemporary economic development efforts. Entrepreneurial in this context refers to both the local efforts to woo particular market entrepreneurs, as well as the frequently entrepreneurial nature of local government economic development programs.

On the first point, to a considerable degree today, local economic development involves public-private partnerships focused on the retention or recruitment of specific private firms—that is, identified mall developers, stores, manufacturers, hotels and convention centers, or housing developers—to invest in the community. Economic development could have a broader meaning, involving local improvements to public schools, energy networks, transportation and utility systems, or communications facilities. Indeed, such physical and social infrastructure investment has been and continues to be made with economic goals in mind. Some TIF projects do involve large-scale investments to create the physical foundation for the long-term development of relatively sizeable areas, although these typically involve either empty farmland, or the repurposing of once-substantial but now-abandoned

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138 See Good Jobs First, *Straying from Good Intentions* at 1 (cited in note 36).

139 See LeRoy, *TIF, Greenfields, and Sprawl*, 60 Planning & Envir L at 6–7 (cited in note 39).

facilities like older airports or military bases.[140] But for the most part TIF entails local governments working closely with specific firms to finance relatively narrowly defined projects. TIF-funded infrastructure, for example, will typically consist of local roads, overpasses, improved sewer connections, sidewalks, parking lots, street lighting, and other facilities closely linked to a specific mall, factory, or mixed-use complex.[141] Consistent with the interlocal competition point, these are investments which do not do much for regional growth but which can help bring a new project to a specific locality.

This is not to suggest that TIF necessarily involves market actor exploitation of municipalities. In most projects, the municipal investment is only a small fraction of what the private firms are committing. A study of TIF projects across fourteen Texas cities found that on average public money accounted for just 13 percent of project costs.[142] Similarly, in Chicago, the city generally limited its TIF subsidy to 20 percent of project costs, although the public share varied according to the type of project.[143] Moreover, there is evidence that municipalities do not simply yield to developer demands but engage in a "give-and-take process of negotiation."[144] In one project for the redevelopment of a suburban St. Louis shopping mall, the developer initially requested more than $50 million in public funds in exchange for a $200 million private investment, but ultimately settled for just $28.9 million.[145] Another St. Louis suburb negotiated a different shopping developer down from an initial request for $41 million to $35 million.[146]

Nonetheless, the growth in public-private relationships and the dedication of public funds to investments intended to recruit or retain private investment continues to be a source of political conflict and ongoing anxiety about the direction of local government. The state constitutional public purpose requirements are a reminder of the longstanding concern about the potential for public sector corruption and public interference with private competition when government is able to provide direct aid to private enterprise, much as the longstand-

140 See, for example, Lefcoe, 83 Tulane L Rev at 88–90 (cited in note 109).

141 See, for example, Michael A. Pagano and David Perry, *Financing Infrastructure in the 21st Century City*, 13 Pub Works Mgmt & Pol 22, 27 (2008); Neighborhood Capital Budget Group, *Chicago TIF Encyclopedia* at 37 (cited in note 94).

142 Arvidson, Hissong, and Cole, *Tax Increment Financing in Texas* at 173–74 (cited in note 93).

143 Neighborhood Capital Budget Group, *Chicago TIF Encyclopedia* at 26 (cited in note 94).

144 Josh Reinert, Note, *Tax Increment Financing in Missouri: Is It Time for Blight and But-for to Go?*, 45 SLU L J 1019, 1051 n 245 (2001).

145 Id at 1019, 1021 & n 16.

146 Id at 1051 n 245.

ing and growing departures from the norm of public-private separation demonstrate how hard that goal is to achieve when government is held responsible for the economic well-being of its people. TIF is simultaneously popular and controversial because of its central role in enabling local governments to work closely with private businesses in promoting development.

TIF matches the entrepreneurial approach many city officials have taken to promoting economic development. The arrival in or departure from a community of large private job-producing firms is tremendously politically salient—far more dramatic and far more open to public observation than the ongoing activities of smaller businesses or employers. As a result, local politicians are often judged by their success in attracting or retaining high-profile economic actors.[147] By enabling them to commit a pool of dedicated incremental revenues—usually enhanced by revenues that would have gone to other local governments—TIF gives local elected officials a very useful tool for the politically desirable activity of being able to say that they have brought new business into the community or retained old businesses that were at risk of leaving, and that they did so without raising taxes.

As a matter of internal city politics, TIF can strengthen the position of market-oriented economic development through its binding commitment of incremental revenues to TIF project expenditures. As the courts in the tax uniformity cases have recognized, TIF is really a mechanism for earmarking expenditures.[148] For the life of the TIF district, which is usually at least a generation, revenues are taken out of annual budget politics and dedicated to TIF-backed projects. The ability to deploy TIF funds for neighborhood investments can be a source of enormous political power for a mayor who controls the use of these funds and his public official and private sector allies. TIF can help a mayor, city manager, or planning director be a political entrepreneur as well as an economic one.

The concerns about the internal political consequences of TIF in giving a priority to market-oriented development policies are reflected in the host of measures to increase public involvement in the approval of TIFs and the transparency of TIF operations. These include early notice and outreach to residents of the areas proposed for TIF designation; public hearings; formalized neighborhood representation through citizens advisory committees or similar organization in the

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147 John P. Blair and Rishi Kumar, *Is Local Economic Development a Zero-Sum Game?*, in Richard D. Bingham and Robert Mier, eds, *Dilemmas of Urban Economic Development: Issues of Theory and Practice* 1, 15 (Sage 1997).

148 See note 54.

decision to create a TIF district and the oversight of TIF operations;[149] greater TIF district reporting of budgets and operations;[150] and disclosure to local residents of the portion of their taxes directed to TIF.[151] Enhanced opportunities for public participation and greater transparency fall within broader "good government" notions, but they can also be seen as challenges—albeit indirect ones—to the entrepreneurial bent of municipal development policy. The implicit assumption behind them appears to be that a more informed local public will be better able to review specific projects, as well as more attentive to the cost of TIF in terms of the incremental revenues unavailable for other municipal programs.[152] Given the powerful hold of fiscally oriented development policy on local officials, it remains to be seen whether greater public input will make a significant difference.

CONCLUSION

The spread of TIF tells us a great deal about the political economy of our local government system. TIF has flourished because of the structure of this system and contributes to reinforcing it. So, too, the controversies over TIF reflect the consequences of a system that decentralizes a considerable degree of fiscal responsibility and planning and development power to multiple competing local governments. The resulting fiscalization of local planning and the turn to entrepreneurial strategies that are facilitated and implemented by TIF are hardly surprising.

TIF is likely to continue to evolve. The impact of the recession on consumer spending is likely to put a dent in the shopping malls and other commercial projects that have been pivotal to the spread of TIF in the last decade or two. Concerns about the energy and environmental costs of sprawl may also lead to new curbs on the use of TIF for greenfields development. Reactions to the close municipal-private dealmaking characteristic of many TIF programs may lead to requirements for greater transparency and public participation in the approval of TIF programs and greater oversight of TIF operations. Yet, given the close fit between TIF and the structure of the local government system it seems unlikely that more substantial changes in the

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149 See, for example, Kelsay, *Uneven Patchwork* at 26–28 (cited in note 13); Gordon, 31 Fordham Urban L J at 334 (cited in note 32); Catherine Michel, Note, *Brother, Can You Spare a Dime: Tax Increment Financing in Indiana*, 71 Ind L J 457, 472–75 (1996).

150 See, for example, East-West Gateway Council of Governments, *Use of Local Development Incentives in the St. Louis Region* at 36–37 (cited in note 64); Neighborhood Capital Budget Group, *Who Pays for the Only Game in Town* at *30–34 (cited at note 4); Quigley, *A Tale of Two Cities* at 41–45 (cited in note 42) (asserting that the "lack of public information" about Chicago's TIF is "inexcusable," and suggesting the development of a website to provide information to the public).

151 See Quigley, *A Tale of Two Cities* at 34 (cited in note 42).

152 See id at 41–47.

purposes, structure, or scope of TIF will occur unless they are a part of a broader rethinking of the state and local roles in economic development, and of the place of economic development as conventionally defined in state and local policymaking.