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Tax Increment Finance and Suggestions for Reform

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Abstract

The ideological left and right agree that Tax Increment Finance districts (TIFs) often bypass traditional taxpayer protection measures, show no evidence that they result in greater economic activity, and are often used as a tool for cronyism, among other impacts.

TIFs are privileged areas within a city, town, or county where part of sales and property tax revenues are redirected exclusively to the district, often used to fund private investments. Among several negative impacts in Oklahoma, they often tap revenue sources intended for schools and other levels of government, burdening long-standing enterprises not in the TIFs.

When it comes to TIFs, Oklahoma desperately needs greater transparency, stricter limits on how funding can be spent, and more strictly limited lifetimes and revenue sources, along other reforms mentioned in this paper.

This paper, in its entirety, can be found at **www.1889institute.org/cronyism.html**

It is a rare thing to have the ideological left and right agree on anything. Yet, this is largely the case with respect to Tax Increment Financing districts ("TIFs" or "TIF districts"). Left-leaning organizations such as Good Jobs First and Public Interest Research Group question the legitimacy of how TIF laws have been used.[1] Their recommendations for reform are often the same as those of advocates for limited government. Such agreement should be enough in itself for state lawmakers to begin asking questions and enact significant reforms.

Ostensibly for the purpose of economic development and the elimination of urban blight, TIFs tap taxpayer resources, often using them to subsidize private enterprises. TIF districts almost invariably favor big business from out-of-town while long-standing residents and business owners bear the financial brunt of meeting the continued financial needs of schools and other entities that do not create TIFs, but help to fund them. The result is the redirection of economic activity, creating the appearance of success in encouraging economic growth when, in fact, TIFs just redistribute economic activity within a state. In other words, TIFs are often used as a tool for cronyism, fooling taxpayers into thinking entirely new economic development occurs from special tax deals that appear costless to the general taxpaying public.

Accordingly, TIFs do more to benefit politicians than the economy. In fact, there is evidence, noted below, that TIFs hurt economic growth. Many TIFs, especially those that tap property taxes, cost everyone in the state of Oklahoma, though TIFs are locally constituted. They redistribute resources to the wealthy and well-connected. They allow the bypass of taxpayer protection measures. And, TIFs often allow TIF-creating entities to steal away the revenues of other taxing entities.

"According to the Oklahoma Tax Commission's ad valorem division, local governments across the state had more than $445 million in active TIF districts in 2015."[2] In 2011, there were 47 TIF districts in Oklahoma, according to a study conducted by the state's commerce department.[3] By now, there are likely many more, even though some of the TIFs from the commerce study have since expired. TIF creation has been on a steady rise in the country for many years and Oklahoma is no exception. Oklahoma City is about to create its tenth TIF, for a single building. Single-business TIFs appear to be quite common in

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Oklahoma, but then, with little transparency surrounding these deals, there is no way to quantify such a statistic or to know how justified such deals might be.

TIFs should be reformed to be more transparent, only fund infrastructure and rehabilitation of properties, use only the creating entity's tax resources, have a lifetime limited to the completion of an explicit purpose, and require final state approval for their creation. Better yet, the state's TIF statute should be repealed along with the TIF provision in the state constitution since TIFs bypass taxpayer-protection provisions imposed on local government. Nothing of true importance that TIFs accomplish cannot be accomplished through traditional means.

What's a TIF?

A Tax Increment Financing district (TIF) is a defined geographic area within a taxing jurisdiction, usually a city or county, within which taxes paid to pre-existing taxing entities such as cities, counties, school districts and fire districts are frozen as of the date of a TIF's creation.[4] Tax revenues above the frozen level after the creation date are used within the TIF. They can be used to fund new infrastructure, for rehabilitation of old infrastructure, to remodel and build private structures, for environmental cleanup, and even to help fund new private investment. TIFs expire after a certain number of years has passed.

In Oklahoma, the power to create a TIF is limited to cities, towns, and counties and the lifespan of a TIF is limited to 25 years. TIFs cannot overlap. However, funds can be spent outside of the TIF district. TIF agreements can freeze property tax revenues from a TIF district for pre-existing property-taxing entities like school districts. They can simultaneously freeze sales tax revenues as well. Some TIFs may simply freeze one or the other type of tax. Cities, towns and counties are not required to obtain the approval of other taxing entities like school districts as a condition for creating a TIF.[5] TIF boards do have representatives from other taxing entities, however.

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Oklahoma's TIF law, initially passed in 1992, states that TIFs should be used "where investment, development and economic growth is difficult, but is possible if the provisions of this act are available."[6] That is, the law is intended for the development or redevelopment of blighted areas where significant private investment is unlikely to occur. There are no standards of evidence in the law that must be met to meet this requirement, although part of the process to create a TIF involves the appointment of a committee and public notice and hearings. There is no direct state oversight.

There are no objective standards for determining the conditions that justify a TIF, and again, there is no state oversight to check if any standards in law are met.

The law also states that a TIF is not to be created in an area where economic growth would have occurred anyway. That is, the law is intended for truly dilapidated areas, to refurbish and reconstruct them. In other words, TIF is intended for urban renewal that is adjudged unlikely or impossible without some sort of nudge by government. There are no objective standards for determining the conditions that justify a TIF, and again, there is no state oversight to check if any standards in law are met.

At the same time, the law states that a TIF is to "supplement and not supplant or replace normal public functions and services."[7] This appears to require that TIF funds be used within the district for extraordinary purposes, perhaps for environmental remediation or to demolish old, privately-held structures where the demolition cost alone makes redevelopment prohibitively costly if left to the private sector alone. Again, however, the only provision for oversight appears to be the press or the general public who must protest or bring a lawsuit if they consider the law is not being followed.

What TIFs Actually Do

TIF districts redistribute wealth by redistributing tax burden. TIFs are effectively business districts within which businesses, and often residents, benefit from having taxes that would have been paid to general government, often including schools, used to beautify and improve the district, making a TIF district especially attractive to new businesses and patrons of those businesses. While taxpayers in other areas see their sales and property taxes on new and expanded businesses dissipated to cities, counties, school districts, and other special districts, TIF district participants see their taxes on new business fund only projects within the TIF. This further redistributes wealth by making TIF district properties more valuable and by redirecting business to the TIF. Meanwhile, the burden for maintaining basic infrastructure and schools in the surrounding community falls squarely on the shoulders of those not in the TIF.

TIFs Benefit Politicians

When a TIF district is birthed, it is sometimes, but not always, aimed at a depressed area. TIF benefits are potentially so great that it is not all that hard to get private companies interested in investing inside the district. First of all, if an area covered by a TIF is blighted, even minimal investment in making it nicer, even if the investment is purely cosmetic, will result in higher property values. If the TIF is structured to claim a share of property taxes, this allows for the selling of bonds for improving infrastructure and increasing the attractiveness of the district, pushing up values even more. The increased property values push up property tax revenues, but all of the increase accrues to the TIF district rather than schools or other entities, and the cycle continues. The amount of money involved might even allow for spending on behalf of private entities in special deals to draw businesses like Cabela's who refuse to invest in an area without government making part of their investment for them.

When an area that was run down, old, and generally sad looking almost magically transforms into something

The costs that the TIF engenders are not apparent. All people readily see are the benefits.

unique, new, attractive, and dynamic after a TIF is formed, politicians involved get to point to the TIF district as an accomplishment. The costs that the TIF engenders are not apparent. All people readily see are the benefits.

Politicians are not only benefited in their next election by pointing to a success. They might also enjoy the gratitude of those who directly benefited from the TIF, namely developers, contractors, and business owners. It is rare that a community's leaders cannot be persuaded, based on these benefits, to pass more than one TIF.

The Crony Role of TIFs

A recent commentary in the Wall Street Journal described the history of a city block in Manhattan. Seemingly worthless land became farmland, which gave way to brothels for a short time. These were demolished at private expense in favor of garment factories. The factories closed as manufacturers moved to new buildings following the Triangle Shirtwaist Factory fire, which brought new fire regulations. Central planners wanted to raze the block, but were thwarted and a dynamic arts community arose, which thrives to this day.[8]

This example from New York shows the way of free enterprise. Nothing develops in a straight line. There

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are starts, stops, detours, and unexpected turns. All the while, the direction of a business and business in general in a given area is determined by entrepreneurial initiative seeing opportunity where others do not and with entrepreneurs using their own money rather than deflecting risk to taxpayers.

TIF districts often benefit businesses within the district by decoupling a portion of general taxes from supporting the wider, general community. These decoupled funds are used within the TIF district to create an environment and experience for patrons of retail businesses within the district that cannot be afforded elsewhere. These amenities cannot be afforded elsewhere partly because businesses in other areas are bearing the full cost of general community infrastructure and amenities in their general taxes. With respect to industrial businesses, TIFs often provide free land and/or infrastructure that developers are normally required to fund from their own pockets while still paying the same general taxes as everyone else.

Businesses in TIFs also often benefit from lower transactions costs in negotiating the nature of common infrastructure amenities that make the district attractive. For example, costly custom streetlight fixtures can be provided by the TIF without the businesses in the district paying any extra taxes. The district, already constituted, can make decisions about such amenities without extensive discussion, and the cost to each business is automatically settled. This does not mean consensus about how to spend TIF funds is always easy to achieve, but the nature of TIFs makes reaching consensus easier.

Without TIFs, some projects that are highly profitable for business participants would not be possible in the way they are constituted using TIFs. As one Oklahoma law firm has put it, "Joint private-public financing is making it possible to build shopping centers and industrial facilities. Without that funding – TIF Districts – shopping centers like the Tulsa Hills at East 71st St. and Highway 75, and the River District project in Jenks would not be possible."[9]

Such sales pitches are designed to make TIF projects sound wonderful, but consider what this really means. If it is possible to make a profit selling products sold in the Tulsa Hills shopping center, then those products will be sold in Tulsa regardless of a store's location. Perhaps they would not be sold at Tulsa Hills, but they would have been sold somewhere. The TIF merely redistributed business to Tulsa Hills, and given the nature of TIFs and their ability to draw business to them with strategic investment in amenities, any business that locates at Tulsa Hills is likely to do well compared to how they would do otherwise, likely drawing business from other retailers in the area that do not enjoy TIF benefits. Keep in mind, too, that such developments often involve a single landlord whose commercial rents are enhanced by the TIF's existence.

TIFs focus development within the districts and this development can often have nearby positive spillover effects, as has been demonstrated in Tulsa and other communities in Oklahoma.[10] The visibility of TIF development, however, should not be mistaken for having stimulated economic activity in general. Despite the eloquence of the editorial board of Stillwater's paper of record when it endorsed a TIF that benefits an Academy sporting goods store, among others,[11] TIFs likely just redistribute business within the state and within communities.

A rigorous economic study that looked at TIFs in Chicago concluded that there is evidence communities that adopt TIFs actually grow more slowly than those that do not adopt TIFs.[12] In a different paper, the same authors conclude that TIFs have no positive economic effects in TIF-adopting communities as a whole.[13] Another study looking at TIFs in Iowa concluded that the benefits of TIFs fail to outweigh the costs and, in fact, are essentially entitlements to industry and housing developers.[14] Yet another study concludes that TIFs focused on industrial development do increase jobs in a community, likely because the jobs are cherry-picked from other communities. Retail-oriented TIFs appear to reduce employment due to the attraction of more efficient retailers.[15] The efficient retailers are likely just large big-box retailers. Research also shows there is a natural tendency of decision makers who implement TIFs to favor large corporations, a risk noted even by TIF proponents, likely because large stores like Academy are noticeable, and because negotiating such agreements can be personally aggrandizing for those who do the deals.[16]

Oklahoma City has shown a willingness to use TIF to accomplish any number of redevelopment projects, including the refurbishment of an historic bank building, which will be its tenth TIF.[17] Another TIF is proposed for convention center parking.[18] Currently, the city has 9 TIFs. Two of them consist of specific buildings and little else, the Devon Energy tower (although Devon has used the money on surrounding community projects and not on the building itself), and the Skirvin Hotel.[19]

While it is beyond the scope of this paper to list every TIF in the state or any given jurisdiction and then discuss the level of cronyism involved, it is worth noting that many TIFs created in Oklahoma have crony impacts. All TIFs are aimed at specific areas and have as a goal the increase in the value of the property within those areas. So TIF funding often goes to street improvement and public amenities, e.g. the Myriad Gardens. Of course any public spending on infrastructure, whether financed by TIF or regular bond issues, tends to increase the value of real estate around the area where the infrastructure is built.

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However, TIFs can have an added problem. TIFs often expend funds on behalf of private investors on private property. For example, the Devon Tower TIF district appears to have spent $1.5 million on behalf of the Oklahoma Publishing Company, publisher of The Oklahoman newspaper, to help them move from one location in Oklahoma City to another.[20] Oklahoma City's TIF districts #1 and #7 are slated to spend $6.5 million on "Bio-Pharmaceutical Manufacturing Facilities" and $3.425 million on a parking lot for a new office building for GE.[21] Probably the most rapacious TIF proposal came from Clayco, a Chicago-based real estate developer, who wanted $69 million of tax dollars to finance new buildings on a prime spot in downtown Oklahoma City, with 300,000 square feet rented to OGE Energy, the parent corporation of Oklahoma Gas & Electric.[22]

Another TIF district in Broken Arrow, hardly a blighted community, is entitled "Broken Arrow FlightSafety and Downtown Economic Development One."[23] FlightSafety International builds flight simulators. In an article published by the National League of Cities, the mayor of Broken Arrow characterizes as "infrastructure" a 375,000 square foot facility made possible for FlightSafety by a $6.4 million "job retention and creation package," at least part of which is funded through the TIF district.[24] Private facilities are rarely referred to as infrastructure by public officials, and while the circumstances described by the mayor note that FlightSafety was threatening to move, there is nothing to indicate the TIF district was created in a blighted area.

Many TIF districts might well be constituted entirely for legitimate public purposes, but too often, they are tools for crony largesse.

In Stillwater, TIF has been used to subsidize an Olive Garden restaurant to the tune of $500,000. Almost a third of the restaurant's sales tax collections (1 cent of the city's 3.5 cents in sales tax) will be returned to the restaurant's corporate owner for ten years. That city has also turned to the sales-tax TIF subsidy method to aid the construction of an Aldi discount grocery store. The Aldi chain is based in Germany.[25]

In every case where there is some readily retrieved record of how TIF district monies are spent, much of the money is spent on truly public infrastructure, even when some of the money is clearly spent on what should be private investment. Many TIF districts might well be constituted entirely for legitimate public purposes, but too often, they are tools for crony largesse.

A Single TIF Costs the Whole State

Any TIF, regardless of whether it is constituted by a city, town, or county, can involve property taxes. Most TIFs in Oklahoma are established by cities and towns. Although cities and towns only have access to sales taxes for tax revenue, by state law, many TIFs in Oklahoma redirect property taxes from entities like school districts that do not establish TIFs. The property taxes redirected into TIFs come from school districts, counties, and special districts. What's more, while TIF districts' boards include representatives of property-taxing entities, there is no requirement in Oklahoma law that towns, cities and counties receive permission from property-taxing entities to tap those entities' revenue streams for the TIF.

While there is no legal requirement for an authorized local government to receive permission from other taxing entities to establish a TIF, it is not uncommon to see announcements in which school districts in Oklahoma endorse a TIF that impacts them. If school districts are losing money to TIFs, it seems irrational to politically acquiesce to a TIF's creation when it impacts a school district's revenue stream.

There are three reasons school districts and other taxing entities so often do not object. First, TIFs are intentionally constituted so that they do not appear to reduce property tax streams. When a TIF is created, a base tax revenue calculation is made. Revenues from property taxes and/or sales taxes (depending on the revenue source or sources tapped) are calculated for the state of property values and/or taxable sales that exist at the time the TIF is created. As property values and/or sales rise after the TIF is created, the increase is raked off for the TIF. Thus, taxing entities that receive taxes from the TIF's territory do not see revenues from the TIF district decline.

In fact, because of inflation and the number of years that TIFs can last, taxing entities' revenues from TIFs decline in inflation-adjusted terms. There is no provision in law to increase the base tax revenues with inflation. In addition, if the sales tax rate were increased by a taxing entity, the TIF gets the added revenue on all sales above the base. The same is true if a property tax rate were increased, even if a school district with no previous debt passed a new property tax rate to pay for bonds issued to buy new buildings.

The second reason taxing entities like school districts rarely object to TIFs is because they are all ultimately run by politicians. A TIF is almost always created after a deal has been struck with an established big corporation to bring business into the TIF's territory. It would be the political kiss of death for politicians in charge of other entities to object to the supposed creation of new jobs, new shopping centers, rebuilt infrastructure, and the benefits that flow from all these alleged benefits of a TIF.

The entire state helps to pay for a TIF that accesses school property taxes.

The third reason other taxing entities do not object to a TIF is almost entirely unique to school districts, and it has to do with how funding for common education in Oklahoma is shared between the state and districts. The entire state helps to pay for a TIF that accesses school property taxes.[26] A detailed understanding of how Oklahoma's school finance system works is not necessary to understand this, but it is necessary to understand the big picture of how school finance operates.

Think of Oklahoma's common education money sources as two liquids, water and oil (federal funding is ignored). The volume of water available to common schools statewide comes from property taxes. The volume of oil comes from the state. The two volumes together determine the amount of money available for schools to spend. Now imagine a beaker big enough to hold all the water and oil at the same time. Water is heavier than oil, and oil and water do not mix, so if the water is dyed, we can see the relative amounts of the water and oil – the relative amounts of local and state money that fund all the schools in the state.

The size of the beaker is only important in that it hold all the liquid. What is more important is what determines the level of the two liquids in the beaker. For every-day operations, school districts in Oklahoma have no control over property tax rates or property values. Therefore, the amount of water is outside their control. State money is poured into the beaker, and combined with the amount of water, the total amount available to school districts statewide is determined. It really is that simple – until TIFs are thrown into the mix.[27]

Now suppose that a TIF that impacts property taxes is created. The TIF can be analogized to drilling a tiny hole in the bottom of the beaker, fitted with a spigot that releases a fixed volume of water depending on the size of the TIF. Each new TIF is a new hole and spigot, each releasing some of the water. One or even several TIFs might have so little impact on the volume of water that the lower level is hardly noticed. Regardless, the level of water and oil is reduced. The level of water cannot be increased because property tax rates and property values available to districts are fixed. It is up to the state to decide whether to increase the volume of oil in order to make up for the lost funding. So, if a single TIF in Tulsa, Oklahoma City, or Broken Arrow drains off a little water, every taxpayer in the state makes up for it IF the legislature decides to keep the level from falling. Otherwise, every school district's funding is slightly decreased to make up for the reduction.

TIF proponents will object to the notion that TIFs drain off property tax revenues. They will point to property values around TIFs increasing and argue that in fact, TIFs pour more water in the beaker. But keep in mind that the beaker is an analogy to the whole state.

The Devon Tower TIF likely did help to enhance the value of surrounding properties, but there is no evidence at all that it enhanced the value of properties in Edmond or Norman or Tulsa. In fact, by drawing tenants away from buildings in these other cities, property values throughout the state likely marginally fell because of Devon Tower, at least compared to what they would have been otherwise. The net effect, due to the TIF is, in fact, a draining of local property tax revenue.

TIF proponents will still object that this analogy is too static. They will likely argue that TIFs result in economic growth above what would have otherwise occurred in the state. So, all the little TIFs draining off water are offset not only with more water from all the properties outside of TIFs (keep in mind that no new revenue results from TIF for its duration), but from more oil pouring into the state treasury from increased economic activity overall.

The only way TIFs can increase overall economic activity is to bring business into the state (or perhaps keep it if it was threatening to leave) that would not otherwise be here. The evidence for this assertion is scant to nonexistent. The best evidence is anecdotal, and the anecdotes always come from businesses that directly benefit from TIFs and the economic development professionals who put these deals together. Economic studies, as pointed out above, do not support the contention that TIFs enhance growth. At best, they redistribute it. At worst, they actually hurt growth.

Economic studies, as pointed out above, do not support the contention that TIFs enhance growth.

Consider this example. Olive Garden received a TIF deal in Stillwater with its location near an already-existing Italian restaurant. That restaurant later closed, likely at least in part as a result of losing business to Olive Garden. The argument in favor of the Olive Garden subsidy was in favor of the alleged net economic benefit of having the restaurant locate in Stillwater. While it is possible that Olive Garden draws customers from surrounding areas who might have patronized other more-local establishments, it is unlikely to have drawn customers from other states. There are many Olive Garden restaurants in those states that are far more convenient for those states' residents than the restaurant in Stillwater. The local subsidy to Olive Garden, at best, has only marginal benefit to Stillwater, but given the closed pre-existing restaurant, the net is likely negative.

Redistribution of economic net benefit is practically the very definition of cronyism. Cronyism can be the death of economic growth because it is the death of economic freedom. Few are clever or lucky enough to fly through crony regulatory loopholes like Uber and Lyft have done. It is at least as tough for small business people with good ideas to compete with crony subsidies like TIFs as to deal with crony regulation. The bottom line for now, though, is that ALL Oklahomans bear the cost of a TIF, especially those that impact property taxes, no matter where or how big the TIF might be.

TIFs Redistribute to the Wealthy and Politically Connected

Though this point was indirectly made in the previous sections it deserves to be made explicitly. Economic evidence and economic reasoning make it clear that TIF districts, at best, can only redistribute the blessings of economic activity. This is particularly true of TIFs that make direct payments to businesses or real estate developers. In all likelihood, it is rare that TIFs redistribute economic activity across state lines. Far more likely, TIFs are much better tools for big businesses, and politicians and bureaucrats who aid them, to redistribute economic blessings to themselves than to create new economic blessings. TIFs, with all but one state participating in the TIF game, allow private businesses to play communities against each other, often to get the best deal from decisions the businesses would have made anyway.

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If TIFs were a powerful economic growth tool, then California, by far the biggest creator of TIFs, would be doing far better economically. And, given California's natural advantages, people should ask why California needs so many TIFs to compete with other states. The answer is it doesn't. TIFs are for cronies, not growth. While much, perhaps most, TIF money covers legitimate infrastructure expenses, as noted above, much is used to explicitly lower costs for private investors.

Those who receive the benefits of TIFs and other economic incentives are not necessarily long-standing residents and businesses of the state. In fact, one of the more disturbing philosophies often expressed by supposed economic development experts and elected officials is that if they take care of, and attract, big businesses, then the small businesses take care of themselves. In other words, small businesses can act as suppliers and servicers of big businesses and their employees – and pay the taxes – while big businesses swallow up the bulk of business and get paid by the little businesses to do so.[28] This philosophy of economics has a name. It is consistent with Mercantilism, and is often called Corporatism or Fascism (which was an economic philosophy before World War II). These philosophies have been discredited, starting with Adam Smith some 240 years ago.

TIFs Allow Avoidance of Taxpayer-Protection Measures

Suppose there is a realization by a city council that roads, drainage, pipelines, and parks in a particular area of town are in bad shape, bad enough that businesses disgusted with the resultant problems are leaving. Others do not want to move in. All those years of government spending on other projects have seen these basics neglected for too long.

The normal course of city business would be to figure out what really needs to be done to repair the neglected infrastructure, preferably seeking to minimize the costs as much as possible. Then, the issue of how to pay for it must be addressed. Given the dire circumstances, redirecting existing resources to gradually repair and reconstruct the neglected area's infrastructure could look like throwing good money after bad since the time it would take would see the area economically depressed for years even as money is spent on it. Perhaps the better alternative would be to issue bonds, get the work financed and completed quickly, and then pay off the bonds gradually with revenues from the accompanying tax increase.

Local bond debates are not fun. First, there would have to be some admission of neglect. Second, there is the debate over what is and is not needed, which can get quite heated. Third, the area that needs the work might be small but the tax to pay off the bonds will apply to everyone within the jurisdiction. Finally, bond issues always carry a new tax with them. Nobody likes taxes.

TIFs allow for the avoidance of all the unpleasantness just described. As a city councilman, you create the TIF. The TIF issues the bonds without an election or debate. There is no tax increase, at least none explicitly associated with the neglect of infrastructure in a particular area. That area is almost magically revitalized using tax revenues that would otherwise flow into the state's education system. But nobody is the wiser. While it's not economically true, from a political point of view, it's a win-win-win for everybody.

TIFs Are a Way for Some Taxing Entities to Steal Revenue from Others

This is another point that has been made already, but deserves to be made explicitly. In Iowa, a state that has allowed TIFs since the mid-1980s, TIFs now take more than 6 percent of all property tax revenues, a rising trend that shows no signs of abating.[29] A TIF that only impacts sales taxes affects the sales tax collections of the state and other sales-taxing entities. A TIF that only impacts property taxes affects the property tax collection of schools, counties, and special districts. If a property taxing entity increases its rate, part of the increased revenue just from that rate increase goes to the TIF district. Yet, the TIF district has no taxing authority of its very own.

It is little wonder that TIF districts can afford to make their areas so very nice when they are able to focus the taxes paid by businesses and residents in the district only on the district.

It is little wonder that TIF districts can afford to make their areas so very nice when they are able to focus the taxes paid by businesses and residents in the district only on the district. Not only do they concentrate the taxes they would have paid to the local government that created the TIF, they are able to focus the taxes that would have been paid to every other taxing entity with jurisdiction over the district.

The amount of property tax revenue that could have gone to school districts but is redirected to TIFs in Oklahoma is not known and cannot be easily determined. In 2015, Oklahoma City TIF districts redirected a total of about $23 million in property taxes, with the loss of revenue split (unevenly) between Oklahoma County and the Oklahoma City school district.[30] In the same year in Tulsa County, roughly $2.1 million in property taxes were redirected by TIFs.[31] These numbers come from a mere handful of all the TIFs in the state and are a small fraction of all the property taxes redirected, despite the fact that some TIFs only redirect sales taxes. A substantial amount of school property tax funds are redirected to TIFs in Oklahoma, likely tens of millions of dollars per year.

Arguments for TIF

The first TIF law was written and passed in California in 1952. Then, within 5 years of the 1974 repeal of Title I of the Housing Act of 1949, which provided federal funding for urban renewal and was greatly criticized for its role in destroying neighborhoods with affordable housing, 15 states passed TIF laws.[32] TIF quickly served as a substitute for federal funding to carry out urban renewal projects. Today, Arizona is the only state without a TIF statute.

It is easy to understand why TIF is attractive to community leaders. They sell TIF as a way to accomplish redevelopment seemingly without either tapping existing public funding streams and without a tax increase.[33] There are reasons to suspect the claim that existing funding streams are undisturbed, as pointed out above. Nevertheless, TIFs do not generally draw much attention from taxpayers even as TIFs tweak the interest of wealthy developers. To all appearances, TIF districts seem not to cost the wider community anything at all. Yet, developers within a TIF district have more cash to direct for the district's purposes than they would have otherwise, making the businesses within the area more economically competitive than if the district did not exist.

Most TIF laws, Oklahoma's included, aim the policy at blighted areas, which are areas unlikely to see economic development due to conditions that make them undesirable for new investment. Blight is usually equated with run-down neighborhoods with housing long past its prime and in need of demolition, business districts that are largely unoccupied and in bad repair, and often decrepit, outmoded infrastructure. Environmental hazards also play a part as people have become increasingly concerned about various contaminants.

Redeveloping run-down areas of a city can be very costly. Street, sewer, and other infrastructure upgrades are often needed. In some cases, buildings must be demolished. In others, environmental remediation might be required. As a result, it is easy to understand why businesses considering investing in or around a city would prefer to develop on previously undeveloped or lightly developed land.

There are at least three issues with economic expansion in previously undeveloped areas when that expansion, at least in principle, could otherwise occur in blighted areas. First, while an area might be blighted, this does not remove the value of already-existing infrastructure that was built for a once-thriving and growing area. Such investments as streets and sewer cannot be easily thrown off and costlessly ignored. Highways, often expensively elevated, might pass through such areas with now almost useless ramps, for example.

Disused highway ramps bring up the second issue with investment on previously undeveloped land in preference to blighted areas. It necessitates effectively duplicating infrastructure that already exists. While already constructed streets, highway ramps, sewers, parks, and other public infrastructure are disused in blighted areas, government is making these very investments in newly developing areas. Again, in principle, it would seem less costly to reuse old public infrastructure investments rather than continuously build new.

TIF is often justified as a way to revitalize an area rather than abandoning it to a slow slide toward economic oblivion...

A third issue more related to blight itself than investing in areas previously undeveloped is blight propagating itself. Once an area becomes blighted, its borders often expand as those on the blighted area's boundaries see blighted conditions encroaching on them. Their property values fall. Many leave for better areas as maintenance becomes neglected. Office buildings and other facilities worth maintaining find themselves islands in a sea of blight with tenants often on the lookout to find a more desirable area to locate.

TIF is often justified as a way to revitalize an area rather than abandoning it to a slow slide toward economic oblivion, dragging down surrounding areas along with it and negatively impacting a city's reputation as a desirable place to live and work. It is often argued that TIFs have positive economic impacts beyond their own borders as development occurs nearby in order to exploit activity inside TIFs.

Recommendations for Reform

Increase Transparency

TIFs lack state-level oversight, a must, given the impact TIFs can have on state-level finances through school funding. TIFs are organized by local governments, which, in creating a TIF, essentially creates another sub-government by a vote of elected officials who are elected in low-turnout, non-November elections. These officials then, in turn, appoint an unelected board. TIF boards do not have taxing authority, but they do have spending authority. In passing a TIF law, the legislature has created a system that, if it has not been corrupted at some point, has remained uncorrupt only by good fortune.

As noted above, there is no way to quantify the exact amount of property tax money intended for schools that is flowing into the coffers of all the TIFs in the state. The legislature has no idea how much the state's budget and revenue picture is being impacted by all the TIF districts collectively. Where oversight of TIF creation at the state level, which is justified by the fact that TIFS are made possible by state law, is currently almost nonexistent, more attention might be paid if the legislature knew exactly to what degree TIFs impact school finance.

Oklahoma City councilman Ed Shadid has pointed out that transparency and public input are missing as Oklahoma City has implemented nine TIFs and counting and plans to create six more.[34] However, it should be noted that Oklahoma City is more transparent with its TIFs than most. Maps are readily available, and although the financials posted on the internet are rather cryptic, it is possible to at least get some idea of the revenues and expenditures of Oklahoma City's TIFs. Other TIFs throughout the state are almost impossible to identify, much less obtain financial information, at least not without considerable time and resources spent in doing freedom of information requests.

The legislature should enact a TIF transparency law that requires: 1) every TIF to be catalogued and mapped by the state with easy access to the data by the public,[35] 2) every TIF to release a comprehensive annual financial report that includes details on salaries and benefits paid, contracts, debt, and revenues by source as well as expenses, categorized intuitively, and 3) easy access to TIF information on the websites of TIF-creating entities.

Limit What TIFs Can Fund

Oklahoma law explicitly allows TIFs to fund privately owned projects. It is one thing for school tax money to be diverted to fund publicly-owned infrastructure like water, sewer, streets, and public parks. It is quite another to hand $500,000 over to a restaurant owner. TIFs should only be allowed to fund publicly-owned infrastructure and to cure property defects that thwart private investment by adding extraordinarily to development costs. The Olive Garden deal in Stillwater is an example of an outright gift to the restaurant's parent corporation, and should not be allowed in the future. Oklahoma City's TIFs accomplish a mixture of public and private investments, some of which are justified under the criteria laid out below, and some of which are not.

Among those expenditures that are unambiguously in the public interest and that can be justified as aiding to control, limit, or end blight, are: 1) cleaning up brownfields – areas certified as so environmentally contaminated that they pose a danger to public health, 2) demolishing effectively abandoned structures, 3) refurbishing/expanding traditionally publicly-owned infrastructure, including roads, sewer, water pipelines, and, perhaps, generally accessible, privately-owned historical structures.

Restrict TIFs' Ability to Access the Tax Bases of Taxing Entities

A city only granted access to sales tax as a source of revenue should not be allowed to create a TIF that accesses property taxes with impunity. This seems like obvious common sense. However, some might argue that when a city creates an environment that is more conducive to growth, other taxing entities too easily "free-ride" on that effort; therefore, the city should receive the tax benefits – all of them, at least for a time – from those efforts. Such an argument ignores the lack of evidence that overall economic growth and prosperity is actually enhanced by a TIF. It also ignores the enhanced incentive such extraordinary funding provides for cities to needlessly create TIFs and fund projects that are unnecessary or even deleterious to the public interest, as well as the open invitation to corruption.

Stillwater's TIFs appear to only access Stillwater's city sales tax. Oklahoma City, however, makes a regular practice of accessing other taxing entities' tax bases, including school districts' property taxes.

As noted above, school districts often acquiesce to TIF raids on their property tax base. The impact, though, is on more than the individual school districts. This is why they agree to the TIFs. They bear only a small fraction of the financial cost of their decision (see A Single TIF Costs the Whole State discussion above). The legislature should not allow local decisions to so directly impact others and the state budget. Therefore, if TIFs are allowed to continue to access school property taxes, and other taxing entities' tax bases in general, the TIF-proposing cities, towns or counties should be required to get the explicit permission of the other taxing entities to access their tax bases. Furthermore, where a school district's property tax revenues have fallen due to an agreed TIF, state aid should be calculated as if that property tax revenue were still flowing to the school district.[36]

Limit the Lifetime of TIFs

As the state's TIF law is currently written, a TIF's lifetime is limited to a maximum of 25 years. Given their potentially rich source of funding, a 25-year life-span seems excessive. On the other hand, given some infrastructure needs it is conceivable that 25 years is too short. If TIFs were limited to accomplish only basic functions, they could and should be limited to a life span that is only necessary to accomplish specific, basic functions such as reconstruction of specific roads. That limited life span would vary from one TIF to another, depending on the specific circumstances.

Require State-Level Approval for TIF Creation

Whether it is the Governor, Attorney General, State Auditor, or Treasurer, a state office holder, preferably one who is elected, should stand as a gatekeeper to grant final approval for a TIF's creation in order to make sure the TIF's purpose is legitimate and to make sure the TIF's existence is catalogued. Already, the Attorney General is providing oversight for licensing agencies to make sure the rules they pass do not violate national anti-trust legal precedent. With additional restrictions placed on TIFs for what they can fund, and given the liberality with which cities have constituted TIFs and spent the funds, such oversight will be sorely needed. This reform should only occur in concert with transparency, given the incentives toward corruption inherent in TIF laws.

Repeal Oklahoma's TIF Law

The best and ultimate reform regarding Tax Increment Financing would be to simply repeal the law. Though some reform-minded organizations that would support the recommendations above, seem to believe TIF laws serve a legitimate purpose, frankly, they are not needed.[37] It's only function is to create a level of insulation between elected officials and their constituents. This, in turn, allows decisions to provide crony benefits to the wealthy and well-connected with near impunity. Claimed TIF benefits are not substantiated, likely non-existent, and are likely even negative.

Oklahoma provides for many economic incentives, begging the question of why TIFs are needed from a purely "economic development" point of view.[38] If TIF-creating entities saw TIFs limited to funding from only the TIF-creating entities' tax base, and limited only to actual infrastructure, TIF creation would likely cease or reduce greatly. It's only advantage would possibly be speed for developing and paying for infrastructure in specific circumstances. The only other advantage to TIF is that it creates a sub-government within cities, town, and counties that have near autonomy in determining how a significant portion of general taxes are spent. City councils and county supervisors already have the ability to direct funding where it is truly needed, to borrow for specific purposes, and to target spending to remediation for public health and safety. Zoning within cities allows for the creation of special districts to which funding can be directed. Bricktown in Oklahoma City is one such example.

For TIF to be fully repealed, it would require a referendum since the Oklahoma Constitution was originally amended to allow the legislature to pass a TIF statute.[39]

Conclusion

Tax Increment Financing Districts are sold as a way to increase economic development in the state at public expense without costing taxpayers anything whatsoever. The evidence that this is not true, however, is clear. There is no solid evidence that TIFs, on net, increase economic activity. They do, however, allow for wealthy businesses to access public funds to make private investments. They allow the diversion of tax funds that TIF-creating entities would not normally be able to access. TIFs contribute to the creation of a crony economy that hurts, rather than enhances, economic growth. TIFs avoid the usual checks and balances that protect taxpayers from being fleeced and their TIF finances, in the vast majority of circumstances, are opaque.

Oklahoma's TIF laws should ideally be repealed. In the absence of repeal, other critical reforms should be passed. TIFs should be far more financially transparent. They should only have access to the tax base of the entities that create them. They should be limited to spending on legitimate publicly-financed infrastructure and to protect the public health and safety in cases of true blight. There should be greater state monitoring, with state-level final approval of new TIFs. In these ways, the public can be protected from abuse by an institutional structure that is not needed.

End Notes

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