



Robert F. McCarthy

Partner
Columbus
614.227.2308
rmccarthy@bricker.com

Pending legislation would revise Ohio TIF law, require township compensation under certain TIF arrangements

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Ohio municipalities that use tax increment financing (TIF) to support economic development should be aware of significant legislation that was recently approved by the Ohio House of Representatives. Under Ohio House Bill 69 (H.B. 69), authored by Representative Bob Cupp (R-Lima), municipalities would be required to compensate townships for tax revenue diverted through certain TIF incentive arrangements. The legislation would apply prospectively when a municipality creates an “incentive district” TIF over territory served by township fire and emergency medical services.

Municipalities across Ohio use TIFs to pay for critical infrastructure improvements that are necessary to support economic development. The tool requires no new taxes or assessments; instead, it uses rising property values resulting from economic development to pay for costs of public infrastructure. Under a TIF, as property values increase, taxing districts continue to receive property tax revenue based on the pre-existing property values. Increases in property value (or a portion thereof), however, are generally exempt from property taxation. Instead, property owners make payments (known as service payments) in lieu of taxation that are directed to pay public infrastructure costs. These service payments are paid at the same time and in the same manner as real property taxes and are subject to the same property liens.

This structure is effective for a defined period of time set forth by the municipal legislation. TIFs lasting longer than 10 years or exempting more than 75 percent of increases in assessed value require approval of the affected boards of education. Exemptions cannot, under any circumstances, be for more than 100 percent of the assessed value of the improvement or for a period longer than 30 years.

Under existing Ohio law, levies of certain taxing districts are insulated from the effects of incentive district TIFs. The municipality creating the TIF must make service payments to these taxing districts, effectively to reimburse them for revenues foregone because of the TIF exemption. These taxing districts include, for example, certain children's services levies, developmental disabilities levies and library levies. In other words, these taxing districts continue to receive property tax revenue, including property tax revenue derived from increased property values, while the TIF is in effect. H.B. 69 adds certain township fire and emergency medical services levies to the list of levies that incentive-district TIF incentives do not affect.

This new requirement, as drafted, is limited to TIFs with certain defined characteristics, including:

1. H.B. 69 applies only to incentive district TIFs. TIFs are generally separated into (i) project (or parcel) TIFs and (ii) incentive district TIFs. Project TIFs apply to specific parcels. Incentive district TIFs include larger areas and apply to all parcels within the specified area. H.B. 69 applies only to incentive district TIFs; cities that establish a parcel TIF will not be affected under the current version of H.B. 69.
2. H.B. 69 applies only where the affected township provides fire and emergency medical services to the territory of the TIF.
3. In addition, H.B. 69 applies only to TIFs created pursuant to municipal legislation adopted after the effective date of H.B. 69. As of August 17, 2017, H.B. 69 is currently pending before the Ohio Senate Ways and Means Committee. Depending on legislative activity, it could be effective later this year.
4. Finally, H.B. 69 applies only to levies approved by voters on or after January 1, 2006.

H.B. 69 permits a board of township trustees, by resolution, to waive the reimbursement requirement established by H.B. 69 as it applies to the township fire and emergency medical service levy. As a result, some municipalities may seek to negotiate with the township to obtain such a waiver, similar to the negotiations (and related compensation) that municipalities offer school districts in connection with certain TIFs.

H.B. 69 is unlikely to change the status of TIFs as one of Ohio's most common—and effective—local economic development tools. The legislation, however, will change the economics of certain TIF financing structures. It also will require township

involvement in many municipal economic development initiatives.