

Tax Increment Financing Reform and Reporting Requirements

MML Capital Conference
March 20, 2019

Jim Mills

Travis Bukovcik

Michigan Department of Treasury



Presentation Outline

- Background on Tax Increment Financing Reform
- Overview of Recodified Tax Increment Financing Act
 - New Plan Filing Requirements
 - New Public Meeting Requirements
 - New Website Posting Requirements
 - Treasury Report Filing and Enforcement

Tax Increment Reform

- **1994 – School Taxes**
- DDA, TIFA and LDFA cannot capture State (SET), local school or intermediate school taxes after 1994
- EXCEPT to extent necessary to repay eligible advances, eligible obligations and other protected obligations
- “Catalyst Development Project” added in 2012



Tax Increment Reform

- **1994 – Opt Out**
- If a public hearing is held after February 14, 1994 to create new DDA or LDFA (or expand district), governing body of taxing units can adopt resolution within 60 days to opt out of capture.
- Only applies to public hearing to establish DDA/LDFA or amend boundaries, not Plan amendment.
- Village of Holly v Holly Township, 267 Mich App 461 (2005)



Tax Increment Reform

- **2013 – Zoo and DIA taxes**

- Wayne Circuit Judge ruled in June 2013 Wayne County Zoo case that TIFs could capture zoo/DIA millages, but Legislature changed law to add exclusion effective in 2013.
- “Tax increment revenues” excludes Ad valorem property taxes levied under 1 or more of the following :
 - (I) The zoological authorities act,
 - (II) The art institute authorities act.



Tax Increment Reform

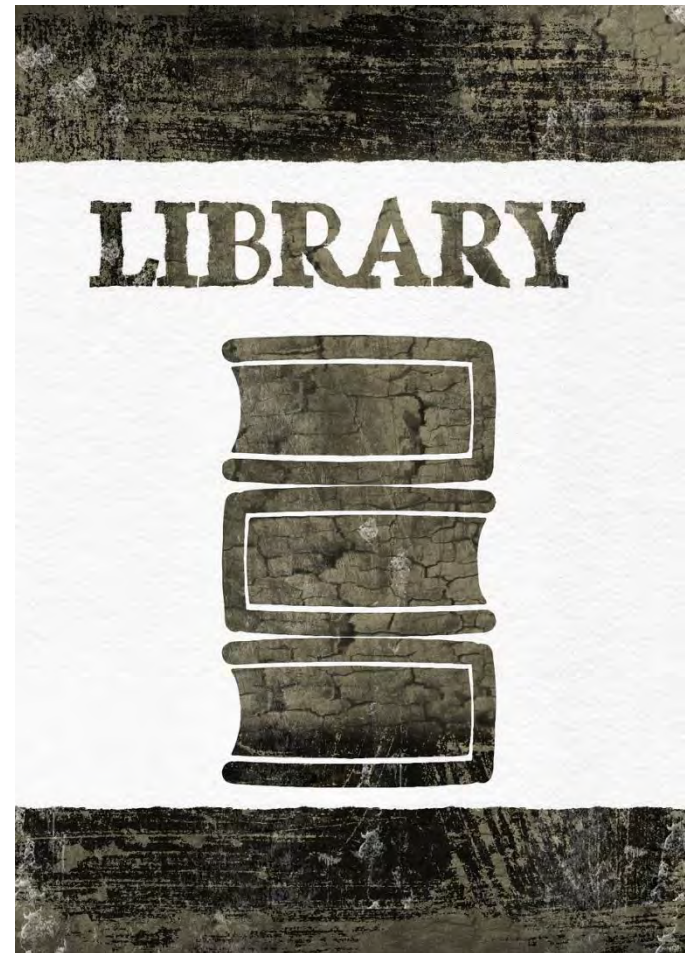
2016 – Judgment Tax Levy

- Amendment to Revised Judicature Act (not TIF Acts) prohibiting any judgment against governmental entity being “retained or captured by any other governmental entity.”
- Applied retroactively for all judgments entered after May 6, 2015.
- Wayne County judgment levy was ordered May 29, 2015.



Library Exemption/Opt Out Acts

- **2016 – Library Taxes**
- Exempts certain library millages from capture by TIFs
- Provides for libraries to opt out of capture if TIF boundaries expanded or Plan duration extended



2016 Legislative Reform Proposals

2016 Proposed Reform

- Prevent capture of any millage approved by voters after 2016 for all taxing units (including renewals)
- Duration limit on new plans – (20 years) limit extension of existing plans (5 years)
- Authorize State Tax Commission to cut off all TIR capture for violations of Act.



2017-18 Reform Issues

- Other taxing units (e.g. Counties) want opt out rights or exclusions from capture
- Complaints about lack of transparency and information
- Complaints about noncompliance with reporting
- Questions about how much is captured and spent by TIFs
- Issues with TIFs holding money without spending on projects



Recodified Tax Increment Financing Act

Public Act 57 of 2018 – Recodified Tax Increment Financing Act (MCL 125.4101)

- Signed by Governor on March 15, 2018
- Effective on January 1, 2019
- Repealed and recodified 7 TIF Acts – repealed 2 entirely
- Established reporting requirements for TIFs
- Require TIFs to hold 2 informational meetings per year
- Established penalties for noncompliance and enforcement by Department of Treasury



Tax Increment Financing Acts Repealed and Recodified

- **Downtown Development Authority Act** (PA 197 of 1975) – MCL 125.1651 et seq. now Part 2
- **Tax Increment Finance Authority Act** (PA 450 of 1980) – MCL 125.1801 et seq. now Part 3
- **Local Development Financing Authority Act** (PA 281 of 1986) – MCL 125.2151 et seq. now Part 4
- **Nonprofit Street Railways Act** (PA 35 of 1867) – MCL 472.1 et seq. now Part 5
- **Corridor Improvement Authority Act** (PA 280 of 2005) – MCL 125.2871 et seq. now Part 6
- **Water Improvement Tax Increment Financing Authority Act** (PA 94 of 2008) – MCL 125.1771 et seq. now Part 7
- **Neighborhood Improvement Authority Act** (PA 61 of 2007) – MCL 125.2911 et seq. now Part 8

Tax Increment Financing Acts Repealed

- **Historical Neighborhood Tax Increment Financing Authority Act** (PA 530 of 2004) – MCL 125.2841 et seq.
- **Private Investment Infrastructure Funding Act** (PA 250 of 2010) – MCL 125.1871 et seq.



Recodified Tax Increment Financing Act

- No substantive changes to provisions of TIF Acts
- Plans, notes, bonds, contracts and obligations incurred under prior Acts continue in force and effect
- DDA 2 mill taxing power is continuation of 1975 DDA Act for purposes of Headlee Amendment
- New transparency and reporting requirements added in **at Part 9**



Hold Two Informational Meetings Annually

- *When: Biannually beginning January 1, 2019*
- MCL 125.4910(4)
- The board of an authority shall hold at least 2 informational meetings each year (which may be held in conjunction with other public meetings of the authority or municipality).
- Notice must be published on the municipality's or authority's website not less than 14 days before the date of the informational meeting. Notice must also be mailed not less than 14 days before the informational meeting by the authority to the governing body of each taxing jurisdiction levying taxes that are subject to capture. As an alternative to mailing notice, the authority may notify the clerk of the governing body of each taxing jurisdiction by electronic mail.

Post TIF Information on Municipality Website

- *When: 180 days after end of current fiscal year after January 1, 2019*
- MCL 125.4910(1)
- The municipality shall create a website or utilize the existing website of the municipality that is operated and regularly maintained with access to authority records and documents, including all of the following:
 - (a) Minutes of all board meetings.
 - (b) Annual budget, including encumbered and unencumbered fund balances.
 - (c) Annual audits.

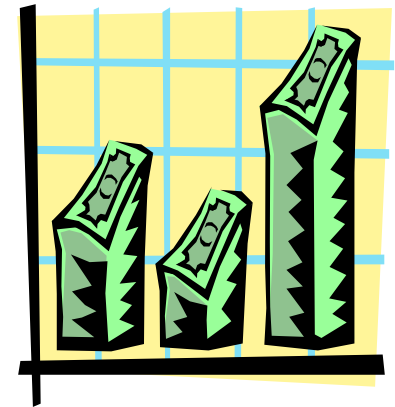
Post TIF Information on Municipality Website

- (d) Currently adopted development plan, if not included in a tax increment financing plan.
- (e) Currently adopted tax increment finance plan, if currently capturing tax increment revenues
- (f) Current authority staff contact information.
- (g) A listing of current contracts with a description of those contracts and other documents related to management of the authority and services provided to the authority.



Post TIF Information on Municipality Website

- h) An **updated annual synopsis of activities of the authority**, which includes all of the following, if any:
 - (i) For any tax increment revenues described in the annual audit that are not expended within 5 years of their receipt, a description that provides the following:
 - (A) The reasons for accumulating those funds and the uses for which those funds will be expended.
 - (B) A time frame when the fund will be expended.
 - (C) If any funds have not been expended within 10 years of their receipt, both of the following:
 - (I) The amount of those funds.
 - (II) A written explanation of why those funds have not been expended.



Post TIF Information on Municipality Website

- h) An **updated annual synopsis of activities of the authority**, which includes all of the following, if any:
 - (i) List of authority accomplishments, including progress made on development plan and tax increment finance plan goals and objectives for the immediately preceding fiscal year.
 - (ii) List of authority projects and investments, including active and completed projects for the immediately preceding fiscal year.
 - (iii) List of authority events and promotional campaigns for the immediately preceding fiscal year.

Post TIF Information on Municipality Website

- If the municipality does not have an existing website and chooses not to create a website, the municipality shall maintain the records at a physical location within the municipality that is open to the public.
- The requirements are required for records and documents related to fiscal years as follows:
 - (a) For the fiscal year 2019, the records and documents for that fiscal year.
 - (b) Each subsequent fiscal year add that fiscal year's records and documents to the existing documents until fiscal year 2024, at which point the website only needs the records and documents for the fiscal year and the 4 immediately preceding fiscal years.





STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

February 15, 2019

Manager, City of Brighton
200 North First Street
Brighton, MI 48116

Dear City Administrator:

As you may know, in 2018 the state legislature passed the Recodified Tax Increment Financing Act, 2018 PA 57, with an effective date of January 1, 2019. PA 57 combined Downtown Development Authorities (1975 PA 197); Tax Increment Finance Authorities (1980 PA 450); Local Development Finance Authorities (1986 PA 281); Nonprofit Street Railways (1867 PA 35); Corridor Improvement Authorities ((2005 PA 280); Water Resource Improvement Authorities (2008 PA 94); and Neighborhood Improvement Authorities (2007 PA 61) in a single act. Those former authorizing statutes, along with the statutes authorizing Historic Neighborhood Tax Increment Finance Authorities (2004 PA 530) and Private Investment Infrastructure Funding (2010 PA 250) were repealed. Brownfield Redevelopment Authorities (1996 PA 381) are not affected by PA 57 and continue to operate under the requirements of PA 381.

PA 57 requires TIFs to report financial and other information annually to the Department of Treasury. Those requirements will be addressed separately directly with the authorities. This letter is simply an attempt to get an accurate statewide accounting of the authorities and TIF plans governed by PA 57. Toward that end, could you please complete the enclosed survey informing Treasury of the TIF authorities in your city? Include them if they were ever created and not dissolved, whether or not they are currently active. The survey can be returned to either address on the survey form—an email box or a physical post office box. Since brownfield authorities are not included in PA 57, you do not need to report them on this survey.

If you have any questions, please call Travis Bukovcik at (517) 335-2532.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Jim Mills".

Jim Mills, Manager
Property Tax Accounting and Auditing

After completion:

1. Scan and email to Treas-StateSharePropTaxes@michigan.gov (preferred)
2. Mail to Michigan Department of Treasury
ATTN: Travis Bukovcik
PO Box 30760
Lansing, MI 48909-8260

Municipality _____

County _____

Please check the box for each type of 2018 PA 57 authority your municipality has created and which is still in existence. Do not include brownfield redevelopment authorities. In the parentheses, write in the number of TIF plans the authority has. You will have to file a separate annual financial report for each TIF plan.

- We do not have any PA 57 authorities
- Part 2 Downtown Development Authority ()
- Part 3 Tax Increment Finance Authority ()
- Part 4 Local Development Finance Authority ()
- Part 4 LDFA Tech Park or Energy Park "Smart Zone" ()
- Part 6 Corridor Improvement Authority ()
- Part 7 Water Resource Improvement TIFA ()
- Part 8 Neighborhood Improvement Authority ()

Send a Copy of Current TIF Plan to Treasury

- *When: No later than April 1, 2019*
- MCL 125.4912
- Each Authority must send a copy or an electronic mail link of its currently adopted development plan or its currently adopted tax increment finance plan, if separate from the development plan, to the Department of Treasury.





TAXES

UNCLAIMED PROPERTY

LOCAL GOVERNMENT

STATE AND AUTHORITY FINANCE

REPORTS & LEGAL

LOCAL GOVERNMENT

Local Gov Financial Services

Revenue Sharing

State Tax Commission

Local Fiscal Health

TREASURY / LOCAL GOVERNMENT / LOCAL GOV FINANCIAL SERVICES

Tax Increment Financing

New Tax Increment Finance Authority Reporting Requirements

New legislation has taken effect which creates reporting requirements for tax increment finance authorities in Michigan. The legislation combines most tax increment finance authorities in Public Act 57 of 2018, requires certain information be made available publicly and sets requirements for information that must be reported to the Michigan Department of Treasury. The seven original TIF statutes, as amended, which have been combined in [Chapters 2-8 of PA 57](#) have all been repealed. The notable exception is Brownfield Redevelopment Finance Authorities (BRFAs), which continue to be subject to 1996 PA 381. PA 57 has no effect on BRFAs.

New requirements include:

- **Public Reporting Requirements:** In Section 910, the new act describes the requirement that an authority create a website or use a municipal website for the posting of the information listed in this section including budgets, audits, adopted plans, and other information.
- **Treasury Reporting Requirements:** Section 911 of the new act describes annual reporting requirement to Treasury and the subsequent requirement that Treasury compile the information into a report which is to be submitted annually to the Michigan Legislature. Treasury is currently working on an electronic format for submission of the required information.

The new reporting requirements can be accessed at the following link: [PA 57 of 2018 Section 9](#)

The timeline below is provided to assist with planning for the necessary filings. Please note the first filing is due 180 days after a TIF's fiscal year ending after January 1, 2019. This means the earliest a report would be due is July 2019 for TIFs whose fiscal year ends in January 2019.

Contact Us

For **questions**, contact Travis Bukovcik at Bukovcikt@michigan.gov or 517-335-2532

Please forward any **documents** to Treas-StateSharePropTaxes@michigan.gov

TIF Reporting Timeline

Dates	Instructions
January 1, 2019	2018 PA 57 takes effect. The following acts are repealed: 1867 PA 35; 1975 PA 197; 1980 PA 450; 1986 PA 281; 2004 PA 530; 2005 PA 280; 2007 PA 61; 2008 PA 94; 2010 PA 250. (Enacting Sections 1 and 2) <i>Sections cited herein are from PA 57 unless otherwise noted.</i>
March 1, 2019 (Sec. 911 (5))	Department of Treasury must publish form to be used for reporting by authorities
April 1, 2019	Deadline for authorities to provide a copy, or a hyperlink to a copy, of the currently adopted TIF plan (or development plan/TIF plan, if a combined single document) to the Department of Treasury (Section 912).
180 days after authority FY19 ends (Sec. 910 (3))	Post on a municipal or authority website, (or if not on a website, maintained in a physical location within the municipality that is open to the public—Sec. 910 (5)) all items listed in Sec. 910 (1). Starting with FY19, each year’s data will be added through FY23 and beyond until the most recent five years’ data is available to view.
180 days after authority FY19 ends Sec. 911 (2) and 1968 PA 2 Sec. 4 (3))	Submit to the Department of Treasury, the governing body of the municipality, and the governing body of a taxing unit whose taxes are captured by the authority a report including all items listed in Sec. 911 (1).
Semi-annually beginning January 1, 2019 Sec. 910 (4)	Authorities must hold two “informational meetings.” Informational meetings are meetings for the purpose of informing the public of the goals and direction of the authority, including projects to be undertaken in the coming year. They are not for the purpose of voting on policy, budgets or other operational matters.

Send Annual Report to Treasury and Taxing Units

- *When: 180 days after end of current fiscal year after January 1, 2019*
- MCL 125.4911(1)
- An Authority that is capturing tax increment revenues must submit a report annually, on a form provided by the Department of Treasury, to the governing body of the municipality, the governing body of a taxing unit levying taxes subject to capture by an authority, and the Department of Treasury.
- **NEW: Report must also be filed with governing body of each taxing unit levying taxes subject to capture, but no longer needs to be published in newspaper.**

Send Annual Report to Treasury and Taxing Units

- The report shall include all of the following:
- **(a) The name of the authority.**
- **(b) The date the authority was formed, the date the tax increment financing plan is set to expire or terminate, and whether the tax increment financing plan expired during the immediately preceding fiscal year.**
- **(c) The date the authority began capturing tax increment revenues.**
- **(d) The current base year taxable value of the tax increment financing district.**

Send Annual Report to Treasury and Taxing Units

- The report shall include all of the following:
- **(e) The unencumbered fund balance for the immediately preceding fiscal year.**
- **(f) The encumbered fund balance for the immediately preceding fiscal year.**
- (g) The amount and source of revenue in the account, **including the amount of revenue from each taxing jurisdiction.**
- (h) The amount in any bond reserve account.
- (i) The amount and purpose of expenditures from the account.
- (j) The amount of principal and interest on any outstanding bonded indebtedness.

Send Annual Report to Treasury and Taxing Units

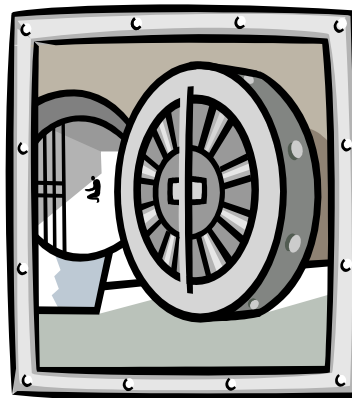
- The report shall include all of the following:
- (k) The initial assessed value of the development area or authority district **by property tax classification.**
- (l) The captured assessed value retained by the authority **by property tax classification.**
- (m) The tax increment revenues received **for the immediately preceding fiscal year.**
- **(n) Whether the authority amended its development plan or its tax increment financing plan within the immediately preceding fiscal year and if the authority amended either plan, a link to the current development plan or tax increment financing plan that was amended.**
- (o) Any additional information the municipality or the Department of Treasury considers necessary.

Does Treasury consider anything else necessary? - YES

- Transfers to/from other municipal funds.
- Whether the TIF plan has ever been amended to extend its duration.
- Debt other than bonded debt.
- Anything else the legislature wants to know.

What does Treasury do with reports?

- The Department of Treasury shall collect the reports and annually compile a combined report that summarizes the information reported and annually submit a copy of that combined report to each member of the Legislature (MCL 125.4911(3)).
- **NEW:** This is the first time Treasury has had all of this data or been required to do something with the reports.



Treasury Enforcement

- The Department of Treasury may institute proceedings to compel enforcement of this act and shall send written notification to an authority that fails to comply with the Act, to each taxing jurisdiction that has tax increment revenues captured by the authority, and to the governing body of the municipality that established the authority of a violation of any provision of this act. The written notification shall specifically detail the authority's noncompliance with this act. (MCL 125.4915(1)).

Treasury Enforcement

- If the Department of Treasury notifies an authority in writing that the authority failed to comply with any provision of the Act, and after 60 days following receipt of that notice the authority does not comply, that authority shall not capture any tax increment revenues that are in excess of amounts necessary to pay bonded indebtedness and other obligations for the period of noncompliance. (MCL 125.4915(2)).



Treasury Enforcement

- During the period of noncompliance, an authority cannot amend or approve a tax increment financing plan. However, if the period of noncompliance exceeds 2 consecutive years, that authority shall not capture any tax increment revenues that are in excess of amounts necessary to pay bonded indebtedness and other obligations without a resolution of authorization of the municipality that created the authority and each taxing jurisdiction whose ad valorem taxes are subject to capture by the authority. Any excess funds captured shall be returned to the taxing jurisdiction from which they were captured. (MCL 125.4915(2)).



Future TIF Reform?

- After reports are available, future reforms possible based on combined data reports.
- Other taxing units are still interested in opt out or exclusions from millage capture.
- To be continued. . .

