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State Auditor Mike Foley Issues Informative Letter to the Nebraska Legislature Regarding the Use of Tax Increment Financing (TIF) and Its Impact on Property Taxes

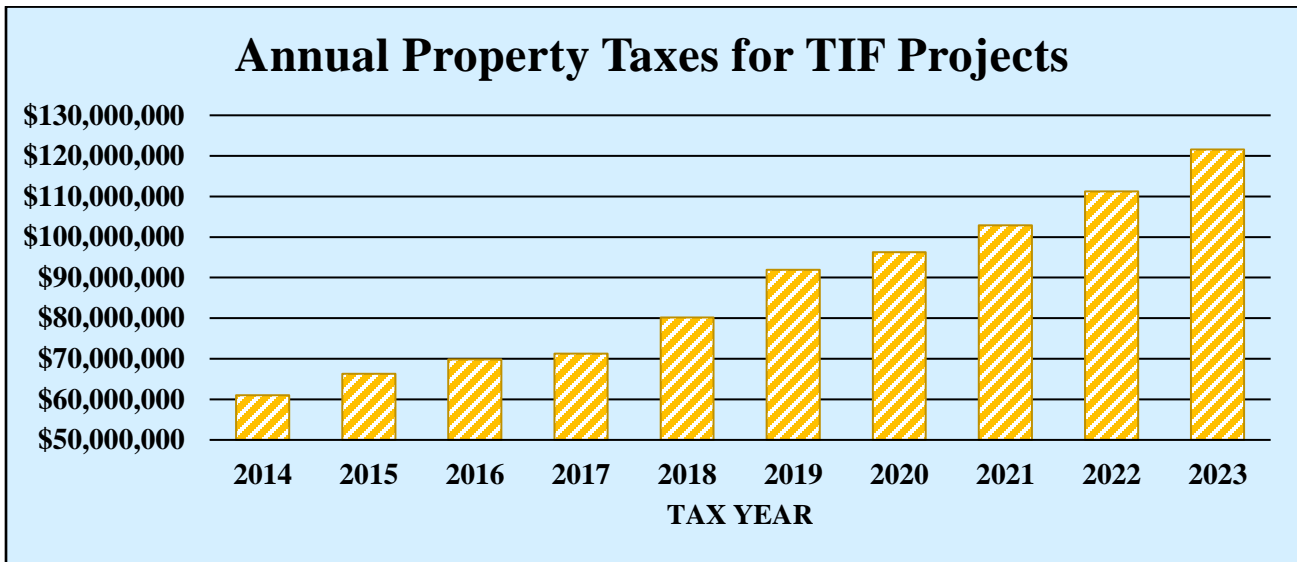
According to a 26 page advisory letter issued today by Nebraska State Auditor Mike Foley to the members of the Nebraska Legislature, the remarkable increase in the use of tax increment financing (TIF) by municipalities across the state risks increasing, in certain circumstances, upward pressure on local property taxes.

TIF, created through the Community Development Law, is a unique economic incentive that local governments may utilize to help developers pay the costs of redeveloping blighted areas. In a nutshell, any increased (“excess”) property tax revenues resulting from the higher valuations generated by the redevelopment projects are separated temporarily from the lower pre-redevelopment (“base”) tax rates, placed in a separate fund, and used to pay redevelopment expenses. The base property tax valuation remains frozen – meaning that, absent a change in levy, the revenue generated therefrom is also fixed – during the TIF period at the pre-redevelopment amount, and those taxes continue to be collected and distributed as usual.

Despite being touted by many as an important economic development mechanism for addressing urban blight, TIF is not without its critics. Some have gone so far as to describe TIF as an off-budget scheme creating an illusion of cost-free financing with no impact on property taxes or municipal revenues. Foley was quick to make clear regardless, “Taking sides on that long-running debate is not the aim of my letter. I am happy to leave all of that to the Legislature.”

Foley’s letter documents that, during the five-year period from 2019 to 2023, TIF projects resulted in over a half-billion dollars in property tax collections being used to fund urban redevelopment. “The positive impact of TIF financing on economic development is evident,” Foley observed. “When overused or misused, however, this popular financing tool risks undermining the interests of local property taxpayers.” Foley continued, “The core concern seems to be ensuring that TIF is applied properly, in strict accordance with the law and in a manner that properly balances economic development needs and reasonable property tax burdens on citizens.”

During 2023 alone, Foley’s letter noted, over \$121 million in property tax collections went to pay for TIF projects approved by municipal authorities – more than double the amount of such funding a decade earlier. Arguably, much of those resources could have gone to fund public education and local government obligations.

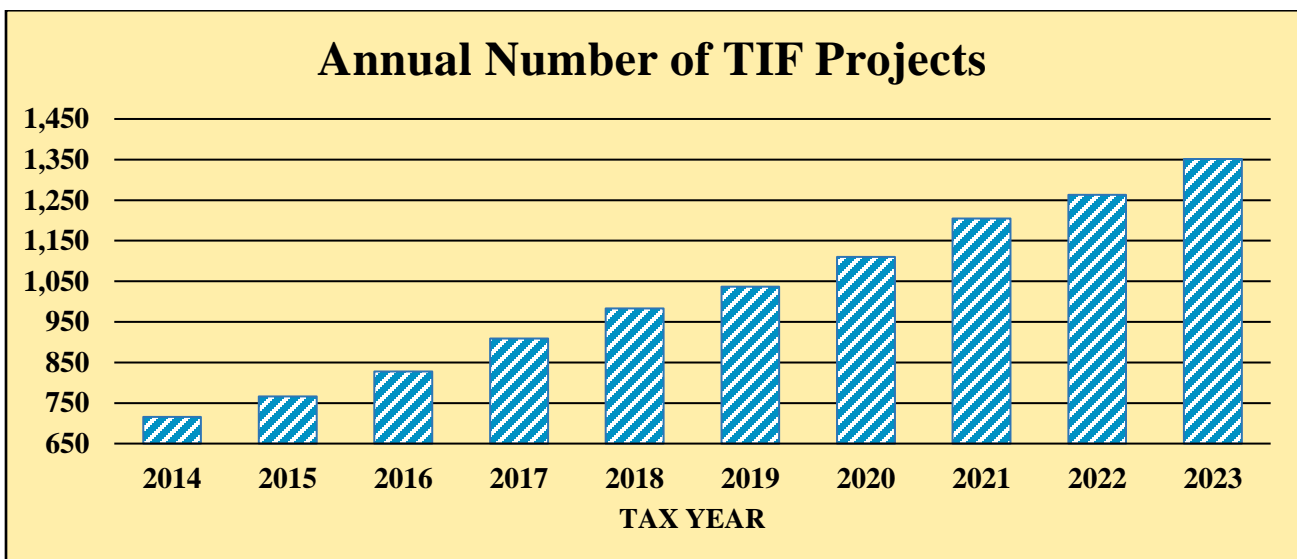


Throughout the decade examined, Foley emphasized, the rapidly growing amount of TIF funds set aside for redevelopment costs included revenues from the routine periodic valuation increases, which typically occur every year absent any improvements from a redevelopment project.

“Property taxes in Nebraska have been skyrocketing annually, even when the parcel of land subject to the levy has undergone no appreciable change,” Foley observed. “Without a levy increase, freezing the ‘base’ property valuation for the entire 15- or 20-year duration of the TIF project prevents the redeveloped property from generating, as a result of customary valuation growth unrelated to a project, any additional revenue during the TIF period that can be used to finance governmental functions. Consequently, more taxes may be required from surrounding non-TIF properties to make up the difference.”

“Count me a skeptic,” Foley concluded, “if anyone tries to claim that the rapid escalation in TIF-funded projects has nothing to do with the ever-higher property tax obligations in our state.”

According to Foley’s letter, the number of TIF projects in Nebraska has nearly doubled during the past decade, swelling to more than 1,350 separate ventures with over \$6 billion in increased property valuations.



Foley's letter is intended to inform the Legislature regarding the current status and implications of TIF usage in Nebraska without advocating for any specific legislative action. Nevertheless, Foley notes that state statute allows municipalities an inordinate degree of flexibility in implementing TIF. "The Community Development Law says expressly that 'all grants of power, authority, rights, or discretion' made under it are to be 'liberally construed,' which may be seen by some as an open invitation to push the boundaries of TIF beyond what is either ethical or beneficial to the citizens," Foley explained.

The letter summarizes some 44 TIF projects throughout Nebraska, offering examples of how sometimes loose and inconsistent interpretations of the governing laws have allowed municipalities not only to accumulate significant amounts of unwarranted TIF proceeds but also to engage in other activities that give rise to possible legal concerns.

One point of contention regarding the use of TIF pertains, for instance, to the proper classification of projects – a determination that has a substantial impact upon the amount of funding available to a redevelopment project. State statute permits "blighted" property to enjoy TIF financing for up to 15 years; however, the Legislature amended the law in 2021 to allow properties deemed "extremely blighted" to receive TIF money for up to 20 years. The Community Development Law appears unclear, though, whether a property can be reclassified as "extremely blighted" after many years of enjoying TIF benefits due to being merely "blighted." Two examples of such high-dollar reclassifications were found with both the Jackson Development and the Downtown Dodge Development projects in Omaha.

Another serious concern addressed by Foley's letter relates to apparent violations of the statutory time limit (15 or 20 years) for funding TIF projects. The Community Development Law requires the distribution of TIF monies to cease after the allowable costs of a redevelopment project are liquidated or the applicable deadline has lapsed. At that time, the diversion of "excess" property taxes should cease, and all taxes on the parcel of land, including both the pre-redevelopment "base" and subsequent "excess" revenues, should be remitted normally to the appropriate municipal recipient. As Foley's letter points out, however, the failure of several redevelopment projects to operate strictly within the statutory timeframe resulted in sizeable overcollections of TIF proceeds.

The Aksarben Apartments project is identified in Foley's letter as being emblematic of different Omaha redevelopment projects for which significant amounts of TIF proceeds continued to be collected after the statutory deadline had passed. The amount of property tax revenues received improperly for that one project alone totaled \$1,213,365.06 – all of which was withheld wrongly from other units of local government that could have used that money to pay for important citizen services. The availability of such improperly collected funds, totaling tens of millions of dollars for over a dozen TIF projects throughout Nebraska, might well have proven helpful in lowering property taxes in the affected communities, Foley believes.

Foley's letter addresses in some detail the planned use of TIF financing for the controversial "Streetcar Project" in downtown Omaha, which impacts a sprawling two-tiered (the "TIF District" and the "Influence Area") swath of city property comprising approximately 50 city blocks and stretching over three miles long. According to documentation received by Foley's office, the TIF District consists of 1,030 total parcels, which had a total "base" valuation of \$342,403,000 in tax year 2023. The Influence Area is comprised of 95 additional parcels and had in tax year 2023 a total "base" valuation of \$159,039,300.

Some of the locations included within Omaha’s financing area for the “Streetcar Project” are as much as six city blocks away from the proposed route of the line and do not appear sufficiently dilapidated to be considered “deteriorated or deteriorating,” which is required by statute for a “blighted area” designation. Nevertheless, those properties are also having a portion of their tax obligations diverted to provide TIF funding for the project.

The “Streetcar Project” is expected to be financed with over \$350 million in TIF proceeds, resulting in the largest diversion of property tax dollars for an economic development project in Nebraska history. The resulting impact upon the budgets of those governmental agencies reliant upon property tax revenues remains to be seen.

“My purpose for discussing the ‘Streetcar Project’ in the letter is not to criticize or pass judgement on this half-billion dollar undertaking, which uses TIF on over 1,100 parcels of prime real estate,” Foley stated. “It is merely to shed light on the potential impact of the financing techniques being employed to fund it. In the final analysis, construction of the ‘Streetcar Project’ will be anything but free.”

Foley closed his observations on these and other TIF-related matters addressed in his letter by urging, “As the Legislature continues to grapple with the high property tax burdens in our state, a thorough study of the use of TIF, along with the effectiveness of the Community Development Law’s many provisions, might be worth considering.”

Foley’s letter to the members of the Legislature regarding the use of TIF and its impact on property taxes is available on the Nebraska Auditor of Public Accounts’ web site (<https://auditors.nebraska.gov/>).

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