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Be There In a TIF: What is TIF and Missouri's Need of Reform

James Bernskoetter[*]

ABSTRACT

Tax Increment Financing ("TIF") is an economic development tool used by local municipalities to lure investment to areas that would not normally receive any. The process starts by having a local municipality or developer propose a redevelopment plan for a particular area. This area must fall into a statutory definition to be eligible for TIF and a "but-for" analysis is required, along with a proposal to a TIF commission. They then will move to approve or disapprove the proposal; if approved, the plan can be implemented for a defined duration. During the implementation, the purpose is for the investment plan to create property tax appreciation that will lead to higher tax revenue, thereby justifying the financing method.

Missouri has used TIF since it was first made available in 1982. There have been proposed changes, but none have passed the legislature. Missouri must better define the areas available for TIF plans and how the initial planning process functions. If it does, TIF will become more effective and serve as a model for other states looking to implement or improve their own TIF program.

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I. INTRODUCTION

The United States' economy relies on the nation's infrastructure. Roads, bridges, railroads, ports, dams, electrical grids, water and sewage treatment plants, internet structure, and many other systems create the vast network of infrastructure in the United States.[1] Despite heavy investments to the country's infrastructure throughout the mid-20th century, the now-aging system is holding the economic performance of the United States back, as it has deteriorated over the decades.[2] According to engineer and historian Henry Petroski, poor infrastructure can enact huge costs onto the United States' economy, while also costing billions of dollars through the loss of productivity.[3] The status of U.S. infrastructure has raised some serious concerns.[4]

Every four years, the American Society of Civil Engineering ("ASCE") releases a "report card," which provides an assessment of the United States' 16 major infrastructure categories using an "A to F" grading scale.[5] In their 2017 report, the ASCE gave the United States a "D+".[6] Along with the "grade," the ASCE also makes recommendations on how to improve the infrastructure.[7]

In the 2017 report card, ASCE recommended improvements in investment, leadership, planning, and preparing for the future.[8] The investment recommendations of the ASCE are based on an estimation of what is needed to move the 16 different categories of infrastructure to a "B" grade.[9] According to the ASCE, a $2 trillion, ten-year investment is necessary to achieve a satisfactory grade of "B,"[10] which would ultimately help restore the United States "global competitive advantage."[11]

In order to close the investment gap, there must be considerable effort by the government and the private sector, at all levels, towards funding infrastructure repair, maintenance, and improvements.[12] Currently, the federal government only

1. James McBride, *The State of U.S. Infrastructure*, COUNCIL ON FOREIGN REL. (Jan. 12, 2018), https://www.cfr.org/backgrounder/state-us-infrastructure.
2. *Id.*
3. *Id.*
4. *Id.*
5. *Making the Grade*, AM. SOC'Y OF CIVIL ENG'RS, https://www.infrastructurereportcard.org/making-the-grade/ (last visited Oct. 28, 2019).
6. *2017 Infrastructure Report Card*, AM. SOC'Y OF CIVIL ENG'S, https://www.infrastructurereportcard.org/ (last visited Oct. 28, 2019); Kavya Vaghul, *Is Tax Increment Financing the pathway to rebuilding blighted U.S. infrastructure?*, EQUITABLE GROWTH (Aug. 15, 2016), https://equitablegrowth.org/tax-increment-financing-and-u-s-infrastructure/.
7. AM. SOC'Y OF CIVIL ENG'RS, *supra* note 5.
8. AM. SOC'Y OF CIVIL ENG'RS, *supra* note 6.
9. *Id.*
10. *Id.*; Erik Sherman, *Infrastructure Spending Will Be Difficult With Massive State and Local Debt*, FORBES (Feb. 17, 2018), https://www.forbes.com/sites/eriksherman/2018/02/17/infrastructure-spending-will-be-difficult-with-massive-state-and-local-debt/#1b90bb396c9c.
11. *Investment*, AM. SOC'Y OF CIVIL ENG'RS, https://www.infrastructurereportcard.org/solutions/investment/ (last visited Oct. 28, 2019).
12. *Economic Impact*, AMERICAN SOCIETY OF CIVIL ENGINEERS, https://www.infrastructurereportcard.org/the-impact/economic-impact/ (last visited Apr. 18, 2019).

funds about 25% of the public infrastructure, leaving the rest to state and local governments.[13] Therefore, it is up to the state and local governments to ensure proper investment in the country's aging infrastructure.[14]

State and local governments have multiple weapons in their arsenal to combat the degrading infrastructure across the country.[15] One specific method, called Tax Increment Financing ("TIF"), remains among the most commonly-used economic developmental tools across the country.[16] With nearly every state having TIF at their disposal,[17] and the need for investment in infrastructure across the United States, TIF is an appealing and useful tool for local governments.[18]

TIF focuses on incentivizing private developers to undertake projects in areas where they would not typically build by providing subsidies to the developers.[19] However, TIF can vary in numerous aspects and, depending on how it is used, can potentially lead to imperfect outcomes like misallocation of tax revenue, misuse of area designation, lack of transparency, and others.[20] As a result, legislative reform is necessary to improve TIF in an effort to achieve the underlying goals of economic development and urban renewal.[21]

This article will first give an overview in Part II of how TIF works as a public finance tool for economic development in particular areas. Part III will break down the state of Missouri's current TIF program and explain possible concerns with the status quo. Finally, Part IV will explore how TIF should be properly structured in Missouri and the additional reforms needed to achieve a model for how other states should properly construct a TIF program.

II. WHAT IS TIF?

A. Purpose and Initial Planning

TIF is an economic development tool enacted by state statutes authorizing its use by state and local municipalities.[22] As a result, aspects of TIF can, and do, vary state-to-state; however, the central structure of TIF is typically uniform throughout

13. McBride, *supra* note 1.
14. Vaghul, *supra* note 6.
15. *See generally* Ralph Basile, Brain Dowling & Tory Salomon, *Financing Economic Development*, URBAN LAND (Oct. 12, 2011), https://urbanland.uli.org/industry-sectors/financing-economic-development/.
16. Sean Campion, *Tax Increment Financing: A Primer*, CITIZENS BUDGET COMMISSION (Dec. 5, 2017), https://cbcny.org/research/tax-increment-financing-primer.
17. Almost every state authorizes some type of TIF with Arizona being the one state to not have any laws on the books regarding TIF. *TIF State-By-State Map*, COUNCIL OF DEV. FIN. AGENCIES, https://www.cdfa.net/cdfa/tifmap.nsf/index.html (last visited Apr. 18, 2019).
18. Campion, *supra* note 16.
19. Will Jason, *Why Tax Increment Financing Often Fails and How Communities Can Do Better*, LINCOLN INST. OF LAND POL'Y (Sept. 11, 2018), https://www.lincolninst.edu/publications/articles/new-report.
20. *Id.*
21. Vaghul, *supra* note 6.
22. Paul F. Byrne, *Tax Increment Financing and Missouri: An Overview of How TIF Impacts Local Jurisdictions*, SHOW-ME INST. 3, 5 (Apr. 2012).

the United States.[23] First enacted in California during the 1950s, TIF has become a popular method of financing economic development in a particular area.[24] There are four main elements of well-designed TIF: (1) "[a] designated district with narrowly defined geographic boundaries; (2) a defined and limited operation period; (3) expenditures that encourage economic development; and (4) real estate appreciation that generates new property tax revenues."[25] Each element has requirements as defined by state law;[26] however, as the requirements vary considerably across the country, this section addresses each part generally.

TIF typically functions as follows: first, a government will allocate taxes, particularly property taxes, from designated "TIF districts" to private entities, in order to help fund development in that area.[27] Next, those subsidies will (ideally) induce investment by private entities in projects which will lead to additional tax revenue through the creation of new business. Finally, the new business will lead to new employment opportunities and potentially higher property values.[28] Because these societal benefits would likely not occur without some type of public subsidy to entice the initial private investment,[29] TIF is a useful tool to spur economic development in a specific area.

The initial planning of TIF will usually start with the recognition of a need for development in a specific area.[30] Alternatively, a private developer may approach the local government with a plan for a particular area which likely wouldn't be developed without public funding.[31] The most common criteria for an area to become a TIF district is whether it is considered "blighted".[32] Requiring an area to be blighted aligns with the underlying principles of the program: TIF would hopefully lure developers who would otherwise have no incentive to develop areas with decaying, unfavorable conditions.[33] Some examples that would lead to an area being considered blighted would be "property abandonment, building code violations, or aging housing stock."[34]

States have also expanded the criteria by allowing TIF use in "conservation areas," which are areas considered to be at a heightened risk of becoming blighted.[35] This gives more leeway as it expands on the term "blighted" and gives way to potential misuse of TIF discussed below in Part III. Some states have also created

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23. *Id.* at 5; *Creation, Implementation, and Evaluation of Tax Increment Financing*, GOV'T FIN. OFFICERS ASS'N, http://www.gfoa.org/creation-implementation-and-evaluation-tax-increment-financing (last visited Apr. 18, 2019).

24. Jason, *supra* note 19.

25. DAVID MERRIMAN, LINCOLN INST. LAND POL'Y, IMPROVING TAX INCREMENT FIN. FOR ECON. DEV. 6 (2018).

26. MO REV. STAT. § 99.810.1(1), (3), (5) (1997).

27. *Tax-Increment Financing*, GOOD JOBS FIRST, https://www.goodjobsfirst.org/accountable-development/tax-increment-financing (last visited Apr. 18, 2019).

28. Campion, *supra* note 16; *See* T. William Lester & Rachid El-Khattabi, *Does Tax-Increment Financing Pass the "But For" Test in Missouri?*, SHOW-ME INST. (Nov. 2017), https://showmeinstitute.org/file/4414/download?token=GC1t6tHP.

29. Lester & El-Khattabi, *supra* note 28, at 2.

30. Campion, *supra* note 16.

31. *Id.*

32. *Id.*; *Tax-Increment Financing*, *supra* note 28; *blight*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/blight (last updated Mar. 1, 2019) (defining "blight" as "a deteriorated condition").

33. Campion, *supra* note 16.

34. *Tax-Increment Financing*, *supra* note 27.

35. *Id.*

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another category of potential areas which allow TIF, called "economic development areas."[36] This category of TIF district expands beyond the previous two types by requiring an economic development area to be where local officials want to encourage development, create more employment, or increase the tax base in a particular area—nothing more.[37]

Another common requirement established in most states is known as the "but-for" analysis.[38] The first step in the "but-for" analysis is determining whether the potential TIF district meets the criteria laid out by state law.[39] The next step is determining whether the development proposed by the municipality or private developer would occur "but for" the publicly financed improvement through TIF.[40]

There has to be predicted causation between TIF and how states implement it.[41] There are other requirements at the initial planning stages, such as cost-benefit analysis and public hearings.[42] These requirements can be used together, or states can adopt one or two of them to filter projects down to the most beneficial.[43]

B. TIF Districts and How They Work

Once an area is deemed eligible for treatment as a TIF district, the next step is valuation and assessment of the properties within the district.[44] The initial assessment creates a baseline value used to calculate the increase in value of the properties and the corresponding potential increase in tax revenue.[45] That projected revenue increase, expected from the property tax in a TIF district, is called the "increment."[46] The baseline value of the properties in the TIF district allows local municipalities to have some idea of the potential future property tax revenue from the project. This enables officials to create a plan to fund a developer's initial expenditures in the project.[47]

The type of payment plans for the development project determines the operation period.[48] This is considered the second important element of well-designed TIF.[49] Some TIF districts will dissolve after the costs of the initial improvements are paid off,[50] while others exist as long as officials want to divert the tax increment of the district. However, state law sets a maximum length, and therefore TIF districts cannot exceeded the established statutory limit, which is normally between 20 to 30 years.[51]

Once these preliminary issues are sorted out, the next phase of a well-designed TIF program is securing public funding for the expenditures of the development

36. *Id.*
37. *Id.*
38. Campion, *supra* note 16.
39. *Id.*
40. *Id.*
41. *Id.*
42. COUNCIL OF DEV. FIN. AGENCIES, *supra* note 17.
43. *See id.*
44. Campion, *supra* note 16.
45. *Id.*
46. MERRIMAN, *supra* note 25, at 7.
47. Campion, *supra* note 16.
48. MERRIMAN, *supra* note 25, at 8.
49. *Id.* at 6.
50. Byrne, *supra* note 22, at 6.
51. *Id.*

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project. Municipal bonds are typically issued and, depending on how the TIF district is set up, the proceeds from those bonds will be used to fund upfront costs and other expenditures.[52] Alternatively, a developer can pay for the expenses and then be reimbursed by the proceeds from the issued bonds, or directly from created TIF revenue.[53] The difference in the distribution of proceeds will determine how the increased tax revenue will be allocated.[54]

The fourth element of TIF is the appreciation of the property in the TIF district as a result of the induced development.[55] This appreciation creates the difference between the baseline value described above and the incremental property tax revenue, generating funds used to pay for expenditures.[56] The tax revenue is collected and split into two streams.[57] One stream of revenue continues on to the original destination where it went before TIF at the "base rate," the original amount of the property value before any development took place.[58] The taxes, usually of the property or sales variety, are originally funneled to school districts and other general funding for public services.[59]

Another stream of revenue is the incremental tax revenue generated by the higher property value created by TIF. This stream is funneled into bond repayment if municipal bonds were issued to raise money.[60] If bonds were not used, and the TIF district was established as a pay-as-you-go district instead, then the tax revenue is given directly to developers to reimburse costs.[61] Either way, the incremental tax revenue is funneled into a TIF fund to be used as payments for the purpose established in the initial planning stages until the TIF district expires under its terms.[62]

These are the general four common elements of a well-designed TIF method, but each one will vary state by state. Such variety makes this financing method even more complicated and can bog down those trying to understand the details. However, in theory, TIF is meant to be a self-funding finance tool.

C. Hypothetical Example of TIF

Because TIF is a complex public financing method, a straightforward hypothetical may illustrate the mechanics and highlight its underlying purposes. Assume a specific area has been determined blighted, and, without TIF, developers would not invest in a project in that area. In this scenario, the common "blight" and "but-for" analysis requirements that most states employ are satisfied. The next step is determining the boundaries of the TIF district, properties that will be included in the area, and the incremental amount of tax revenue raised by the enabling of the TIF district.

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52. Campion, *supra* note 16.
53. *Id.*
54. *Id.*
55. MERRIMAN, *supra* note 25, at 6.
56. Campion, *supra* note 16.
57. *Tax-Increment Financing*, *supra* note 27.
58. *Id.*
59. *Id.*
60. Campion, *supra* note 16.
61. *Id.*
62. *Id.*

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Let us assume this selected TIF district was valued at $100 million six years ago and has since appreciated to $130 million.[63] Additionally, let us assume the area would grow in value to $200 million in 20 years regardless of the TIF district being established.[64] The present value of $130 million is the baseline value.[65] In 20 years, as a result of the development brought by TIF, the value of the area is estimated to be assessed at a value of $400 million.[66] The difference between the assessed value with TIF ($400 million) and without TIF ($200), or $200 million, is considered the increment value attributed to TIF. In this situation, the increment value would likely be deemed high enough to support the decision of proceeding with a development project. The local municipality would then issue bonds—interest-free for the purposes of this hypothetical—in the amount of $200 million and direct the proceeds to the private developer to help pay for the project, which is then completed.

The $200 million increment amount attributed to TIF is streamed into repayment of expenditures that result from development and, in this situation, the amount would go into a fund to pay back the issued bonds originally issued to fund the project. The baseline value amount is directed to the original designation, which could be a school district or a city's general fund.[67] The TIF district will continue until the bonds are repaid or until the predetermined time has ran its course.[68]

This hypothetical illustrates how a proper TIF comes into existence and demonstrates how, by generating funds to pay expenditures, a project does not "take up" any funds from other programs or areas, and therefore can be deemed a "self-funding" economic development. However, because TIF varies across the country, an explanation of Missouri's TIF program may provide insight into those variations and illuminate potential issues that may arise from legislative enactment.

III. TIF IN MISSOURI

A. Missouri Components

Enacted in 1982, the Real Property Tax Increment Allocation Redevelopment Act ("TIF Act") established Missouri's law on TIF.[69] The TIF Act lays out a set of minimum requirements that the redevelopment plan must include in order for the local municipality to accept and adopt the plan in the initial planning stages.[70] Specifically, the area deemed for TIF has to be a "blighted area", a "conservation area", or an "economic development area."[71] Additionally, the area has to lack "growth and development through investment by private enterprise and must not reasonably be anticipated to be developed without the adoption of tax increment financing";[72] this is an example of a "but-for" analysis.[73] To support these two determinations,

63. MERRIMAN, *supra* note 25, at 7.
64. *Id.* at 8.
65. *Id.*
66. *Id.*
67. *Tax-Increment Financing*, *supra* note 27.
68. *See* Campion, *supra* note 16.
69. MO REV. STAT. § 99.800 (1982).
70. § 99.810 (1997).
71. § 99.810.1(1).
72. *Id.*
73. Campion, *supra* note 16.

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the developer must provide both a detailed description of the factors that led to the classification of the area within the respective category, as well as an affidavit supporting the conclusions of both requirements.[74]

Additionally, the redevelopment plan must include the estimated dates of both the completion of the project as well as the satisfaction of the obligation incurred to finance the project.[75] In Missouri, 23 years is the maximum length the district can operate under TIF.[76] The redevelopment plan also has to include a cost-benefit analysis.[77] Missouri law requires the analysis to show the economic impact on the proposed TIF district, without regard to whether the project is completed.[78] The plan must also include a "fiscal impact study on every affected political subdivision" and sufficient information for the TIF commission to determine if the project is financially possible.[79]

Another requirement under Missouri's TIF Act, which is a common element of most states' TIF programs, is a mandatory public hearing to notify the "taxing district" in the TIF boundary of the proposal.[80] The hearing allows any individual or taxing district affected by the project to file any objections and comments regarding the proposed redevelopment plan with the TIF commission.[81] This is meant to allow Missouri's TIF plans be completed with full transparency.[82]

The TIF commission is an entity created by the local municipality to conduct the TIF district creation process and handle the initial planning stage.[83] The commission's number of members will vary depending on the size of the county in which the TIF is proposed, but the make-up of the members is generally the same.[84] The commission must include individuals appointed by the school boards whose districts are included within the proposed TIF district, by the affected districts and/or the cities and towns in the county, and by the chief elected officer of the municipality.[85] The TIF commission has to vote on the proposed TIF plan; at that point, it is the municipality's responsibility to approve or deny the project based on the information provided by the commission.[86]

B. Missouri's Issues

Concerns arise with the three definitions of the deemed areas available for TIF. There is great leeway with the statutory definitions, creating the opportunity for misuse. A "blighted area" is considered to be an area that lacks appropriate housing accommodations, "an economic or social liability," or a "menace to the public

74. § 99.810.1(1) (1997).
75. § 99.810.1(3).
76. *Id.*
77. § 99.810.1(5).
78. *Id.*
79. *Id.*
80. § 99.825.1 (2016).
81. *Id.*
82. § 99.820.
83. § 99.820.2.
84. *Id.*
85. § 99.820.
86. *Id.*

health, safety, morals, or welfare in its present condition and use."[87] These conditions can be shown through "predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes," or any combination of those factors.[88] This definition is extremely broad; the words used to describe the present condition of the area are vague and can cover many different situations.[89]

Missouri's definition of a "conservation area" is also vague. A "conservation area" must meet three requirements.[90] First, 50% of the structures in the determined area must be at least 35 years old.[91] Second, if the area is not blighted, it must still be considered "detrimental to the public health, safety, morals, or welfare."[92] Third, the area may become blighted because of certain other factors.[93] The only difference between a blighted area and a conservation area is the percentage-of-aged-buildings requirement.[94] Therefore, the definition of a conservation area suffers from the same vague and open-ended wording as the definition of "blighted."

The third area qualifying for TIF in Missouri is an "economic development area," a term whose definition creates its own issues.[95] The economic development category is for areas that do not fall into the other two categories.[96] For an area to be considered an economic development area, it must be shown to be in the public's interest, either by discouraging the commerce, industry, or manufacturing from moving to another state, increasing employment in the area, or sustaining (or increasing) the tax base of the municipality in which the TIF district sits.[97] A limitation is placed on economic development areas, by prohibiting their use for any business that will unfairly compete in the area.[98]

This definition eliminates the requirement that an area be blighted. As such, this standard could be characterized as focusing on the preservation of the economic status of a particular area. An area could be deemed an economic development area depending not on its decaying condition but, instead, on its potential to retain businesses in Missouri and increase employment in a particular area. This may create a motivation to use TIF in order to improve the condition of certain areas for commercial purposes, instead of to alleviate decay. Both goals can be accomplished by TIF, but this definition leaves a large door open for inappropriate and unintended use.

87. § 99.805(1).
88. *Id.*
89. In 2001, less than half of 21 cities in the St. Louis area using TIF were considered disadvantaged or "at-risk." THOMAS LUCE, RECLAIMING THE INTENT: TAX INCREMENT FINANCE IN THE KANSAS CITY AND ST. LOUIS METROPOLITAN AREAS V (Brooking Institution Center on Urban and Metropolitan Policy 2003). Only seven of 20 suburban areas using TIF were in the "at-risk" category. *Id.* at 13.
90. § 99.805(3).
91. *Id.*
92. *Id.*
93. *Id.* (requiring the following factors: "dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning").
94. *Id.*
95. § 99.805(5).
96. *Id.*
97. § 99.805(5)(a)-(c).
98. § 99.805(5).

Another area of concern regarding Missouri's TIF Act is the operation of TIF commissions. The commissions provide a form of gatekeeping on potential TIF projects, but there is no oversight in the initial planning stages.[99] The TIF commission votes on approval based on the information provided by the developer of the project, particularly the determination of the "but-for" analysis.[100] Therefore, approval goes to the respective city council based on the TIF commission's vote alone, and the city council reviews the proposal.[101] This process lacks any kind of checks and balances. The possibility of development occurring elsewhere, or the surrounding area being negatively affected by TIF, would not be considered by a local decision-making body.[102] There is no incentive for the TIF commission to consider concerns outsides of the municipal boundary.[103]

The combination of the broad definitions used in TIF and the process of approval for a redevelopment plan can lead to potential problems.[104] Additionally, Missouri law allows up to 50% of the local income and sales tax revenue created in a TIF district to be allocated to the special reserve fund for the repayment of developers' costs.[105] The combination of Missouri law permitting tax revenue to be allocated to repay developers costs with the problematic definition of economic development area molds TIF in Missouri into a "tool in inter-jurisdictional tax competition."[106] This competition is created by municipalities having the ability to offer businesses tax incentives to entice movement into different jurisdictions.[107]

These laws have helped make St. Louis an epicenter of TIF-financed projects in the United States.[108] By 2016, there were over a 160 different TIF projects in the city, and approximately $2 billion dollars of public funding had been diverted to developers through TIF.[109] A study in 2011 "reported that 80% of [all] TIF districts in the St. Louis metropolitan area supported retail development."[110] In comparison, Kansas City had implemented 80 TIF districts since 1998.[111] TIF use in Missouri has produced some positive results. One of the largest TIF-supported projects in the St. Louis Area, the Cortex Redevelopment Plan ("Cortex Plan"), was approved in 2012.[112] In an area left vacant in part from loss of jobs and a decrease in population, the Cortex Plan was to develop offices, some "research facilities, stores, a healthcare facility, [an open space for] recreational activities, and a new public transit station."[113] The Cortex Plan was expected to be completed in 2024 at a cost of $2 billion, with $158.2 million generated by TIF.[114] The project is set to last for 25 years and is expected to create an estimated 2,400 jobs.[115] By the end of "Phase

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99. LUCE, *supra* note 89, at 7.
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*
104. *See infra* pp. 16-17.
105. MO REV. STAT. § 99.845.2 (2018).
106. Byrne, *supra* note 22, at 20.
107. *Id.* at 4.
108. MERRIMAN, *supra* note 25, at 22.
109. *Id.*; Lester & El-Khattabi, *supra* note 28, at 5.
110. Byrne, *supra* note 22, at 20.
111. Lester & El-Khattabi, *supra* note 28, at 5.
112. MERRIMAN, *supra* note 25, at 22.
113. *Id.*
114. *Id.*
115. *Id.*

I" of the project, $10 million of TIF funds were used to create $155 million of investment and spur the creation of 955 jobs in the project area.[116] At the end of 2016, 4,100 people were employed by 260 companies in the Cortex District, with new economic activity being continuously added.[117]

However, not all TIF use in Missouri has been successful. Of the more than 160 TIF districts in the St. Louis area, about 20 have been terminated before completion, and 16 failed to get approved.[118] Projects can obtain approval and then fail soon afterwards due to poor financing, such as the Grand and Shenandoah District in St. Louis.[119] That plan failed after the developer could not secure proper leasing commitments, leading to a lack of financing for the project.[120]

In addition to the practical issues that affect the success of a TIF development, consideration must be given to how the distribution of taxes will affect those areas. For example, the Hickman Mills School District in the Kansas City area decided to close two elementary schools and reconfigure grade levels.[121] The school district was faced with needing to make budget cuts, in part from receiving minimal payments from a large complex in its boundary.[122] Cerner Corporation was awarded a TIF project in which $8 million would be set aside for the surrounding community for eight years with $6 million going to the Hickman Mills school district. [123] After an updated evaluation and an appeal to the Missouri State Tax Commission by Cerner, the TIF district's reserve amount was reduced by $40 million, resulting in the school district losing $2.4 million from the original $8 million.[124] Hickman Mills did not anticipate this payment cut and therefore had to deal with the outcome of fewer funds from property taxes in its district boundary.[125]

An overview of Missouri TIF law shows a need for improvement of the current legislative requirements. There is possible abuse with the current statutory language employed by Missouri. Simple actions can be taken by elected officials that would transform Missouri into a model for other states to follow as TIF continues to be used.

IV. What Should Be Done?

Both the current definition of TIF-viable areas as well as the commission approval process need to be reformed to ensure that implemented TIF plans are consistent with Missouri's intended goals of TIF, as well as to prevent the potential for abuse. Recently, there have been efforts to change the current TIF landscape by

116. *Id.*
117. *Id.*
118. *Id.* at 23.
119. *Id.*
120. *Id.*
121. Barbara Shelly, *Hickman Mills Will Close Two Schools And Move Some Grades To New Locations*, KCUR (Mar. 7, 2019), https://www.kcur.org/post/hickman-mills-will-close-two-schools-and-move-some-grades-new-locations#stream/0.
122. *Id.*
123. *KCMO incentives study finds growth, but do school districts bear the burden?*, NORTHEAST NEWS (Aug. 21, 2018), http://northeastnews.net/pages/kcmo-incentives-study-finds-growth-school-districts-bear-burden/.
124. Shelly, *supra* note 121; Dave D'Marko, *Hickman Mills School District considers closing schools and budget crunch*, FOX4KC (Dec. 19, 2018), https://fox4kc.com/2018/12/19/hickman-mills-school-district-considers-closing-schools-amid-budget-crunch/.
125. *See* Shelly, *supra* note 121.

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elected officials, such as Missouri State Senator Andrew Koenig, who proposed a bill which highlights the areas most in need of change.[126]

Currently, the definition of TIF-appropriate areas is vague and broad. The list of factors to be considered for whether an area is blighted or a conservation area is not exhaustive.[127] In order for TIF to be most effective, it needs to be used in areas where development would not likely occur without public funding.[128] To help accomplish this goal and satisfy the first element of a well-designed TIF program, the definition of blight should incorporate some requirements regarding unemployment and poverty.[129] Establishing a minimal rate of unemployment and poverty needed in blighted areas would encourage the use of TIF in areas determined to be in need of some private-public investment.[130] This change in definition would naturally apply to blighted areas and conservation areas.

To go even further, the economic development category of TIF areas should be eliminated altogether. The disadvantages of having TIF employed in so-called economic development areas outweigh the benefits. This category could create tax competition in local jurisdictions in Missouri as well as on the state's border.[131] Using the two largest cities in Missouri as examples, an area could fit into this category by being in St. Louis or Kansas City and have a redevelopment plan show that it can discourage businesses from moving to Illinois or Kansas, respectively. Subsection (a) of an economic development area should, at the very least, be stricken from the definitions in the TIF Act.[132] The other two requirements—showing increased employment or maintaining or improving the tax base—fit more squarely in the common goal of TIF. However, municipalities on the Missouri border will encourage the use of TIF, as the state is allowed to maintain commerce if there is a chance of movement outside of the state. Additionally, this area category should also include some requirements that certain unemployment and poverty levels must be present to be considered for TIF eligibility.[133]

The last major need for reform is in the initial planning stage. The TIF commissions established by city councils do not have any oversight to ensure accuracy.[134] The developer submitting the redevelopment plan includes the "but-for" analysis with the category of area chosen.[135] This analysis is provided along with

126. Joe Gamm, *Economic development topics dominate proposed legislation at Capitol*, NEWS TRIBUNE (Feb. 11, 2019), http://www.newstribune.com/news/business/story/2019/feb/11/economic-development-topics-dominate-proposed-legislation-at-capitol/765180/ ("requiring a study, conducted by a party other than the redevelopment plan proponents, detailing how the TIF area meets the definition of an area eligible to receive tax increment financing; modifying the definitions of "blighted area" and "conservation area;" prohibiting some retail areas from receiving a TIF unless the financing is used exclusively to pay for infrastructure projects").

127. *See* MO REV. STAT. § 99.805(1) & (3) (2016).

128. MERRIMAN, *supra* note 25, at 14–16.

129. Julie A. Goshorn, *In a TIF: Why Missouri Needs Tax Increment Financing Reform*, 77 WASH. U. L. REV. 919, 944 (1990).

130. *See id.* at 945.

131. *See* Byrne, *supra* note 22, at 20.

132. *See generally* MO REV. STAT. § 99.805(5)(a) (2016) ("[d]iscourage commerce, industry or manufacturing from moving their operations to another state").

133. Goshorn, *supra* note 129, at 944.

134. MERRIMAN, *supra* note 25, at 58.

135. *See generally* § 99.810.1(1).

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an affidavit to show validity, but nothing else exists to ensure that the second requirement is truly met.[136] As proposed by Sen. Koenig, there needs to be an independent study to determine if an area fits into one that may receive TIF funding.[137] A third-party study of the area and production of additional information for the TIF commission will give a less biased look at the area's potential and ensure that the first element of a well-designed TIF program is accomplished.[138]

These proposals do not create an exhaustive list; there are additional legislative reforms or different variations that may be enacted in order to achieve the most effective TIF program. However, the main changes need to be made to the areas actually available to receive TIF and the process of approval for development plans.

V. CONCLUSION

TIF is frequently used by municipalities across the United States and will continue to be a predominately private-public investment method to help the crumbling infrastructure of the country. A well-designed TIF consists of a proper district established narrowly, a defined and limited operational period, funding to encourage economic development, and property appreciation to create greater tax revenue.[139] The foundation of TIF is the district, and requirements should reflect the common goal of TIF plans for improving an area which would normally not receive any investment "but for" the TIF incentives. Missouri's statutory definitions of its TIF eligibility requirements are currently vague, and the initial planning stages can be enhanced to ensure the goal is met while limiting potential abuse. If Missouri can pass appropriate legislative reform, then other states can look to it for guidance and ensure TIF is not abused anywhere in the United States.

136. *See generally id.*
137. Gamm, *supra* note 126.
138. *See id.*
139. MERRIMAN, *supra* note 25, at 6.

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