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Little-Noticed Change to TIF Law Allows Ohio Municipalities and Townships to Redirect up to 25 percent of their TIF Funds to Public Safety, Road and Bridge Maintenance During FY 2020 & 2021.

This month, the Ohio General Assembly fast-tracked a school construction finance measure as a mini-capital appropriations bill. Amended Senate Bill (Am. SB) 4 was signed into law by Governor DeWine on July 24, 2020, after the measure was prioritized by leaders in the Ohio House and the Senate. A provision included in Am. SB 4 deserves attention among municipal and township officials and economic developers.

Am. SB 4 became the legislative vehicle of choice for state lawmakers to insert a key change in municipal and township tax increment financing (TIF) law. With this amendment, municipalities and townships can ostensibly “borrow” from their respective TIF funds to cover certain costs unrelated to underlying TIF projects.

Contained in so-called uncodified language (i.e., a legislative directive neither published nor otherwise to appear in the Ohio Revised Code), Section 17 of Am. SB 4 states that municipalities or townships may do either or both:

- *During their fiscal year ending in 2020.* Appropriate and expend the sum of (1) up to 25 percent of the unencumbered moneys on deposit in the subdivision’s TIF fund as of October 12, 2020 (Am. SB 4’s effective date); plus (2) up to 25 percent of the amounts to be deposited during the remainder of the 2020 fiscal year. The legislative authority must act between Oct. 12 and the last day of its 2020 fiscal year.
- *During their fiscal year ending in 2021.* Appropriate and expend the sum of (1) up to 25 percent of the unencumbered balance of the TIF fund as of fiscal year 2021’s first day; plus (2) up to 25 percent of the amounts to be deposited during fiscal year 2021. The legislative authority must act during the 2021 fiscal year.

A simple mathematical example may be helpful. A municipal TIF fund with \$500,000 on-deposit as of Oct. 12, of which \$200,000 is unencumbered, and that receives another \$500,000 during the remainder of fiscal year 2020 would have \$175,000 in TIF fund moneys that could be redirected.

If it chooses to act during these periods, a municipality or township may use such TIF fund moneys “solely to pay current public safety expenses or road and bridge maintenance expenses” of the subdivision that are not eligible to be reimbursed by its CARES Act – Coronavirus Relief Fund payment (e.g., Ohio House Bill 481).

Note, however, that moneys in the TIF fund to be redirected to public safety, road and bridge maintenance must be unencumbered. In other words, TIF fund moneys cannot be redirected if they are otherwise spoken for (i.e., encumbered) to pay debt service on TIF bonds or other contractual obligations.

A key feature of this uncodified law change is that the redirected TIF fund moneys are treated as a (forgivable) loan. That is, a municipality or township must reimburse the TIF fund, but only so long as and to the extent that federal funds are received by the subdivision “that may be used to pay for or reimburse those expenses[.]” Put another way, a municipality or township that chooses to redirect its unencumbered balance of TIF fund moneys this year and/or next may not have to replenish its TIF fund by the amount of the loan if federal funds for public safety, road and bridge maintenance are not received before the TIF exemption period expires.

Although initial reporting on this amendment to Am. SB 4 emphasized the loan nature of these redirected TIF fund moneys, payments from a TIF fund can be used for public safety, roads and bridges without need for repayment from the subdivision’s local revenue sources; any such repayment would be sourced from the federal government, if future Congressional legislation were to allow. Such repayment may not be required if the federal funds never materialize.

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