

## MEMORANDUM

DATE: January 8, 2016

TO: Public Policy Committee, Illinois Library Association

FROM: Kiplund R. Kolkmeier

RE: Reimbursement to Public Library Districts serving Residential Tax Increment Financing (TIF) districts

### Issue

Members of the ILA Public Policy Committee have requested an interpretation of the current State law regarding reimbursement to Public Library Districts serving residents in tax increment financing (TIF) districts. This memorandum outlines the legal requirements for a Public Library District to seek reimbursement, and the obligations of a local municipality to provide reimbursement.

### Answer

Public Library Districts are entitled to reimbursement for residents in a TIF district created after January 1, 2005, and any TIF district created before January 1, 2005 altered to add residents after January 1, 2005. The reimbursement must be based on the number of residents *eligible* for library cards, and not the number of actually issued library cards. The best practice by a municipality would be to adopt the established impact fee formula for determining residents. The statute requires that the per patron cost be based on the total per capita cost of the library district from the previous year, but is capped at a maximum of \$120 per patron.

### History of Tax Increment Financing (TIF) Statute

TIF districts are established by municipalities to encourage redevelopment of blighted areas. The municipality designates an area to be redeveloped, and approves a redevelopment plan. The property taxes on the blighted area are essentially frozen and local taxing districts do not receive property tax revenues resulting from an increase in property tax assessments on new development in the TIF district. Property tax revenues from new development, called the ‘tax increment’, are used to further redevelopment in the area. The law allows certain costs to be paid from this increment. Typically, those

costs are expenses that a private developer would not be willing to pay. Under the law, “but for” payment of these costs, the blighted area would not be redeveloped.

Originally, TIF districts were utilized to redevelop abandoned, obsolete and even contaminated industrial sites. Over time, TIF districts were established to redevelop commercial and business areas, and ultimately new residential uses became a part of many TIF redevelopment plans. Without a residential component, local governments such as schools and libraries saw little impact from the redevelopment area, and in theory would eventually benefit from the higher property tax revenues once the TIF district was fully returned to the property tax rolls. However, with a residential component, schools and libraries would be required to provide services to additional residents without additional property tax revenues.

#### Statutory Requirement to Reimburse Schools and Library Districts for Residents in TIF Districts

The TIF statute was first amended to provide a formula and process for schools to be reimbursed from TIF districts including residential development. Legislation approving school reimbursement was enacted in 1999. Applying the same rationale, the TIF statute was then amended in 2004 to provide reimbursement to public library districts as well.

The current law states in pertinent part:

*(65 ILCS 5/11-74.4-3) (from Ch. 24, par. 11-74.4-3)*

*Sec. 11-74.4-3. Definitions. The following terms, wherever used or referred to in this Division 74.4 shall have the following respective meanings, unless in any case a different meaning clearly appears from the context...*

*...(7.7) For redevelopment project areas designated (or redevelopment project areas amended to add or increase the number of tax-increment-financing assisted housing units) on or after January 1, 2005 (the effective date of Public Act 93-961), a public library district's increased costs attributable to assisted housing units located within the redevelopment project area for which the developer or redeveloper receives financial assistance through an agreement with the municipality or because the municipality incurs the cost of necessary infrastructure improvements within the boundaries of the assisted housing sites necessary for the completion of that housing as authorized by this Act shall be paid to the library district by the municipality from the Special Tax Allocation Fund when the tax increment revenue is received as a result of the assisted housing units. This paragraph (7.7) applies only if (i) the library district is located in a county that is subject to the Property Tax Extension Limitation Law or (ii) the library district is not located in a county that is subject to the Property Tax Extension Limitation Law but the district is prohibited by any other law from increasing its tax levy rate without a prior voter referendum.*

*The amount paid to a library district under this paragraph (7.7) shall be calculated by multiplying (i) the net increase in the number of persons eligible to obtain a library card in that district who reside in housing units within the redevelopment project area that have received financial assistance through an agreement with the municipality or because the municipality incurs the cost of necessary infrastructure improvements within the boundaries of the housing sites necessary for the completion of that housing as authorized by this Act since the designation of the redevelopment project area by (ii) the per-patron cost of providing library services so long as it does not exceed \$120. The per-patron cost shall be the Total Operating Expenditures Per Capita for the library in the previous fiscal year. The municipality may deduct from the amount that it must pay to a library district under this paragraph any amount that it has voluntarily paid to the library district from the tax increment revenue. The amount paid to a library district under this paragraph (7.7) shall be no more than 2% of the amount produced by the assisted housing units and deposited into the Special Tax Allocation Fund.*

*A library district is not eligible for any payment under this paragraph (7.7) unless the library district has experienced an increase in the number of patrons from the municipality that created the tax-increment-financing district since the designation of the redevelopment project area.*

*Any library district seeking payment under this paragraph (7.7) shall, after July 1 and before September 30 of each year, provide the municipality with convincing evidence to support its claim for reimbursement before the municipality shall be required to approve or make the payment to the library district. If the library district fails to provide the information during this period in any year, it shall forfeit any claim to reimbursement for that year. Library districts may adopt a resolution waiving the right to all or a portion of the reimbursement otherwise required by this paragraph (7.7). By acceptance of such reimbursement, the library district shall forfeit any right to directly or indirectly set aside, modify, or contest in any manner whatsoever the establishment of the redevelopment project area or projects;...*

*(Source: P.A. 96-328, eff. 8-11-09; 96-630, eff. 1-1-10; 96-680, eff. 8-25-09; 96-1000, eff. 7-2-10; 97-101, eff. 1-1-12.)*

The legislation adding the right to library reimbursement was Senate Bill 2158 (Public Act 93-961), effective January 1, 2005. The legislation was approved by both chambers of the General Assembly unanimously, and signed by the Governor on August 20, 2004. The final legislation was a result of more than a year of negotiation involving all interested stakeholders including the Illinois Library Association, the Illinois Tax Increment Financing Association, and the Illinois Municipal League.

There are no published court decisions interpreting the library section of the statute, and no record of any litigation seeking an interpretation. There are also no published Illinois Attorney General opinions regarding the library provision of the statute, and no proposed or adopted administrative rules. There is very little information of legislative intent as

evidenced through floor debates in the General Assembly. (See Senate Transcript 3/25/2004 page 45; House Transcript 5/12/2004 page 35-36; and Senate Transcript 5/25/2004 page 6).

### Interpretation of the Statutory Right of Reimbursement

In discerning the meaning of a statute, the primary goal is to ascertain and give effect to the intent of the Legislature. *DeLuna v. Burciaga*, 223 Ill.2d 49, at page 59 (2006). The most reliable indication of legislative intent is the plain language of the statute itself. Where the enactment is clear and unambiguous, a court is not at liberty to depart from the plain language. *Kraft, Inc. v. Edgar*, 138 Ill.2d 178, at page 189 (1990). A statute must be construed so that no word or phrase is rendered superfluous or meaningless.

Under the law, the following is clear from the plain language of section 7.7:

1. Library Districts are entitled to reimbursement if serving an area containing TIF assisted housing units in TIFs created after January 1, 2005, and existing TIFs that add assisted housing after January 1, 2005;
2. The amount paid to a library district shall be based on the number of persons eligible to obtain a library card based on the assisted housing units;
3. The amount of reimbursement shall be the per-patron cost of providing library services. The per-patron cost shall be the Total Operating Expenditures Per Capita for the library in the previous fiscal year, but cannot exceed \$120 per patron based on this formula;
4. There is no right to reimbursement unless the Library District is in a “tax capped” area or cannot increase property taxes without a referendum; and
5. A library district must provide convincing evidence to support its request for reimbursement, and must do so after July 1 and before September 30 of each year.

Based on the entire record and a reading of the plain language of the statute, it is clear that public library district reimbursement must be based on the number of persons **eligible** for library cards in the residential TIF, and not the number of actual library cards issued to persons in the TIF. The word **eligible** necessarily means more than those who applied for and received library cards. To require reimbursement for only the number of actually issued cards would be directly contrary to the plain language of the law.

This is consistent with other provisions of Illinois State law that apply a mere residency requirement to the provision of library service. For example, 75 ILCS 5/1-3 requires that every library shall be forever for use of residents and taxpayers, and must provide the greatest benefit to the greatest number of residents and taxpayers. The Illinois

Administrative Code also provides guidance for determining eligibility for library cards based on residency. Significantly, State grant funding for libraries is allocated on a per capita basis, and not based on the number of library cards issued. All of these provisions, consistent with the TIF statute, recognize that demand on library services is always greater than is evidenced merely by the number of library cards issued. Finally, the statute expressly provides for calculation of reimbursement based on per capita operating expenses.

The only real question is what would be the best evidence of eligible residents in a TIF. Municipalities have correctly adopted what is commonly known as the “Naperville formula”. This formula determines the anticipated number of residents based on the number of housing units and the number of bedrooms per housing unit. This is the simplest and most commonly utilized approach in Illinois for determining the impact of new residents. Indeed, Illinois courts, the Illinois Municipal League, Illinois statutes and law review articles all regularly and consistently reference this formula for determination of anticipated residents.

The Village of Mundelein, for example, formally adopted this approach in the specific instance of determining library district reimbursement under the TIF statute. See Village of Mundelein Resolution Adopting Policy Regarding Reimbursement to School and Library Districts for Increased Costs Attributable to Assisted Housing Units within Mundelein TID District, approved and dated March 22, 2010. There is no compelling reason for a municipality to deviate from this longstanding and uniform approach.

### Conclusion

Public Library Districts are entitled to reimbursement for residents in a TIF district created after January 1, 2005, and any TIF district created before January 1, 2005 altered to add residents after January 1, 2005. The reimbursement must be based on the number of residents eligible for library cards, and not the number of actually issued library cards. The best practice by a municipality would be to adopt the established impact fee formula for determining residents. The statute requires that the per patron cost be based on the total per capita cost of the library district from the previous year, but is capped at a maximum of \$120 per patron.

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