

April 4, 2016

Tax Increment Finance (TIF) Update

HB 15-1348 Technical Corrections Bill Introduced

Last year's HB 15-1348 created consternation among the lending community—and thus, in the private sector developer community—due to the uncertainty of whether and how the legislation could affect urban renewal plans and projects that had already been adopted, approved or financed, among other issues. In the Governor's signing statement, he noted these issues and appointed a working group of practitioners to propose changes to the legislation. [Carolynne White](#) participated in this working group.

Consensus was recently reached on a package of changes, although the fundamental issue of applicability remains unresolved. The consensus bill, [SB 16-177](#), was introduced on March 30, 2016. If it remains truly a consensus bill as it makes its way through both chambers, it is expected to pass and be signed into law by the Governor.

Below is a list of the key changes in the consensus bill.

Key changes:

1. Corrects and substitutes the term "authority" for "governing body" or "municipality" and "taxing entity" for the term "public body."
2. Defines "taxing entity" to mean any county, special district, or other public body that levies an ad valorem property tax on property within the urban renewal area subject to a tax allocation provision.
3. Clarifies the subject of the negotiation between the authority and the taxing bodies to be the sharing of incremental property tax revenue allocated to the special fund of the authority.
4. Clarifies that the shared tax revenues are limited to incremental revenue generated by the taxes levied upon taxable property by the taxing entity within the area covered by the urban renewal plan, in addition to any incremental sales tax if, at the option of the taxing entity, incremental sales tax revenues of the taxing entity are included in the agreement.
5. Removes the ability of the municipality to delegate the negotiation with other taxing entities to the authority.
6. If negotiation is unsuccessful, clarifies the subject of any binding mediation, the process to select a mediator, establishes mediator qualifications, and outlines a method to pay the fees and costs of the mediation.
7. Describes the options available to the municipality once the mediator issues findings as to the appropriate sharing of costs and incremental property tax revenues.
8. Affirms that the 2015 legislation was not intended to impair, jeopardize, or put at risk any existing bonds, investments, loans, contracts or financial obligations of an urban renewal authority outstanding as of December 31, 2015, or the pledge of pledged revenues or assets to the payment thereof that occurred on or before December 31, 2015.

Property Tax Administrator Halts Proposed Changes to how Tax Increment is Calculated

In the summer of 2015, Colorado's property tax administrator, JoAnn Groff, proposed changes to Chapter 12 of the Assessor's Reference Library (ARL), the manual which, among other things, instructs

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county assessors throughout the State how to calculate tax increment. Several rounds of stakeholder meetings, written comments and revised drafts have since occurred.

On March 30, 2016, the day before the State Board of Equalization (SBOE) was scheduled to hear a presentation of the final proposed changes to the ARL, the Property Tax Administrator announced that they are not moving forward with the changes for the time-being.

Many stakeholders representing cities, urban renewal authorities, downtown development authorities and developers had submitted comments indicating concerns regarding what appears to be a general trend toward more authority for individual county assessors to engage in subjective decision making regarding the appropriate allocation of value as between base and increment, which in turn results in an overall reduction in the amount of incremental revenues available for urban renewal and downtown development projects. Initial review of the third draft that was anticipated to be presented to the SBOE indicated that some of the changes BHFS and other stakeholders raised which were most problematic had been modified or removed, but other key issues remained.

We will continue to monitor the status of the ARL proposed changes and will send an update if they are revived and scheduled for a hearing before the SBOE.

Please contact Carolynne White (cwhite@bhfs.com, 303.223.1197), Sarah Clark (sclark@bhfs.com, 303.223.1139) or Caitlin Quander (cquander@bhfs.com, 303.223.1233) to get an expanded analysis of SB 16-177 or the proposed ARL changes in relation to a specific project or matter, or if you'd like assistance with preparing testimony or comments.

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