

MUNICIPAL**AMENDMENTS TO LIBRARY TIF LEGISLATION**

by Roger A. Swets

At the end of 2016, a series of bills were enacted into law that allowed library tax increments to be excluded from tax increment capture with respect to a number of authorities. However, the language of the bills was flawed. For example, the bills attempted to allow libraries to exempt their tax increments from capture when a development plan and tax increment financing plan is amended to extend the term of the plan, but the opt out right for this action was tied to a 60 day period from the date of the public hearing that created the authority. Almost always a practical impossibility. Instead, the opt-out right should have been tied to the 60 day period from the date of the public hearing on the plan adoption or amendment.

A new series of bills has now been introduced to correct this mistake. They are:

SB 0305 of 2017 for Tax Increment Finance Authorities
 SB 0306 of 2017 for Downtown Development Authorities
 SB 0307 of 2017 for Corridor Improvement Authorities
 SB 0308 of 2017 for Water Resource Improvement Authorities
 SB 0309 of 2017 for Local Development Financing Authorities
 SB 0310 of 2017 for Historic Neighborhood Tax Increment Financing Authorities

The bills were introduced by Senators Brandenburg, Robertson, Jones and MacGregor and referred to the Committee on Finance.

The language of these bills appears to correct this mistake. However, they also contain additional changes that go beyond just fixing this mistake and significantly restrict the situation in which authorities with existing obligations can continue to collect tax increments from library millages approved prior to or in existence on January 1, 2017. The bills enacted last year provided that existing library millages are only automatically exempt from capture as of the effective date of the legislation if all outstanding obligations of the authority are satisfied. "Obligations" under the statutes is a broadly defined term. An obligation is any written promise to pay or a requirement to pay imposed by law. Written promises include bonds, notes, contracts, agreements, and leases. Obligations may include chargebacks owed to counties for delinquent property taxes and gain sharing agreements.

The new bills add a definition of Library Capture Obligation, which reads

(s) "Library capture obligation" means a bond, note, or similar instrument evidencing debt for borrowed money issued by the authority before January 1, 2017, which pledges payment of the debt by the authority from an identified source of revenue.

Under these new bills existing library millages are only automatically exempt from capture if all outstanding Library Capture Obligations of the authority are satisfied. While the term obligation used in the bills

enacted late last year is a broad term, this new defined term of Library Capture Obligation is very narrow, including only bonds, notes and instruments, and only if issued by the authority. This will impair the ability of authorities to pay many types of obligations, including:

- Most DDA bonds. While a DDA can itself issue a tax increment revenue bond, almost all bonds issued pursuant to the DDA Act to fund the development program in the last 20 years are bonds issued by the incorporating municipality under the DDA Act with the DDA approving a tax capture estimate and agreeing to contribute tax increment revenues by the adoption of a resolution.
- General Obligation and other forms of bonds that are issued by the incorporating municipality, which are used in part to fund the development program and which the tax increment authority by contract has agreed to pay a portion of the debt service on the bonds.
- Reimbursement agreements where the authority has contracted with a developer to fund portions of the program and the authority has agreed to pay the costs of a portion of this development back to the developer with tax increments over time.
- Development agreements where the authority is funding development obligations over time.
- Any other contractual commitment the authority may have to fund the development program.
- Chargebacks owed to counties with respect to delinquent taxes.

This overly narrow definition of obligations ignores the fact that tax increment authorities are granted many different methods of funding the development program, and the new definition radically narrows the concept of obligations in these acts.

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FOR MORE INFORMATION CONTACT:



Roger A. Swets is a Member in Dickinson Wright's Grand Rapids office. He can be reached at 616.336.1043 or rswets@dickinsonwright.com.