

January, 25, 2016

Tax Increment Finance (TIF) Update

1. **HB 15-1348 Technical Correction Bill**
2. **New “1348 for DDAs” Bill**
3. **Property Tax Administrator Changes How Increment Is Calculated**

The 2016 Colorado General Assembly convened on Jan. 13, 2016, and, as with years past, tax increment will be on the agenda. This client update highlights three issues affecting tax increment financing that are likely to occur over the next several months. First, a bill will be introduced containing technical fixes to HB 15-1348 from the 2015 legislative session. Second, a bill will be introduced applying the principal provisions of HB 1348 to downtown development authorities (DDAs). And finally, changes will be adopted to the Assessor’s Reference Library (ARL) Chapter 12, which governs how county assessors throughout the state calculate tax increment.

All of these changes have the potential to significantly affect how the public and private sectors use tax increment to support redevelopment and infrastructure projects. This client alert provides a brief overview of each of these processes. For more information, please contact one of the Brownstein professionals listed below.

Technical Fix – HB 15-1348

As most practitioners are aware, several provisions of HB 1348 as signed by the governor 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. In his signing statement, the governor noted this issue, and stated his intention to appoint a working group of practitioners to propose changes to the legislation to be considered by the 2016 General Assembly that would address this problem.

Additionally, the leadership of three of the four major stakeholder trade associations (Colorado Municipal League, Colorado Counties Inc., and the Special District Association) convened a working group to discuss the applicability issue noted above, and several other technical issues of concern to practitioners of urban renewal.

As an outcome of these meetings over the late summer and early fall of 2015, it appears that consensus has emerged among most, if not all, of the stakeholders, around a package of changes to the legislation that would address some of the major concerns.

As of this writing, the fundamental issue of applicability remains unresolved. It is our understanding that the governor and the speaker of the House intend to convene further meetings with stakeholder representatives to attempt to resolve this issue. If resolved, it is possible that this language could be added to a consensus bill for the General Assembly’s consideration. If not resolved, any of the stakeholders could decide to introduce legislation on the applicability issue.

In the meantime, however, it can be expected that a consensus bill containing the agreed-upon technical changes to HB 15-1348 will be considered by the 2016 General Assembly. If it remains truly a consensus bill as it makes its way through both chambers, it can be expected to pass and be signed into law by the governor.

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1348 for DDAs

Meanwhile, Colorado Counties Inc. has announced its intention to initiate legislation to apply the main provisions of HB 15-1348 (addition of county representatives to the board, and a consent/negotiation/mediation/arbitration process) to downtown development authorities. (See the CCI Legislative Agenda at <http://ccionline.org/download/CCI%202016%20Legislative%20Agenda.pdf>.)

This legislation is likely to be less far-reaching than HB 15-1348, simply because there are only about 16 DDAs in the state, compared to more than 40 urban renewal authorities. However, there are some fundamental differences between DDAs and URAs that make this legislation even more unnecessary than was HB 15-1348. For example, DDAs are formed by a vote of the people, not by resolution of the governing body of a municipality. The financing powers, governance procedures and underlying authority of a DDA are also fundamentally different from those of an urban renewal authority. These differences will make it even more difficult to craft a bill that meshes correctly with the existing statute than in the case of urban renewal authorities and HB 15-1348.

Changes to TIF Calculation Methodology

Finally, the property tax administrator, JoAnn Groff, has announced that she is proposing changes to Chapter 12 of the Assessor's Reference Library (ARL), which instructs county assessors throughout the state how to calculate tax increment. The first 11 chapters of the ARL instruct the assessors how to value property; Chapter 12 instructs them how to allocate that value between the base (which revenues are then distributed to the various taxing bodies) and the increment (which revenues would have been distributed to the urban renewal authority or downtown development authority prior to HB 15-1248, but which will now be distributed between the various taxing bodies based on the outcome of the negotiations and mediation/arbitration in HB 15-1348).

The original draft of the proposed changes was issued in August of 2015, and a stakeholder meeting was held on Aug. 20, 2015, to discuss the proposed changes. Many stakeholders representing cities, urban renewal authorities, downtown development authorities and developers indicated concern over what appeared to be a general trend toward more subjective decision making by individual county assessors, and an overall reduction in the amount of incremental revenues available for urban renewal and downtown development projects.

Following a stakeholder meeting and submittal of written comments by interested stakeholders attending the Aug. 20, 2015, meeting, the property tax administrator's office has issued a new draft. (The original draft, stakeholder comments, and the current draft, are available on the property tax administrator's website: <https://www.colorado.gov/pacific/dola/tax-increment-financing>.)

A second stakeholder meeting has been announced, from 10:30 a.m. to 12 p.m. on Thursday, Jan. 28, in room 220 at 1313 Sherman St., Denver, Colo. Written comments will be accepted until noon on Feb. 15, 2016. A new draft of the proposed revisions has been released, which will be discussed in more detail at this meeting. Initial review of the second draft indicates that some of the changes that were most problematic for urban renewal authorities, downtown development authorities and developers have been modified or removed. Further analysis is necessary to determine the impact of the proposed changes on existing and proposed urban renewal and downtown development projects.

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Following the conclusion of the property tax assessor's drafting process, the draft revisions will be presented to the Statutory Advisory Committee (SAC) at their meeting on March 17, 2016. Date and location for this meeting are not yet available.

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Our [Brownstein State & Local Legislation & Policy Group](#) team is pleased to provide you with updates on legislative topics on as frequent a basis as would be useful for you. The updates include committee actions, record of votes and testimony before committees. These can be sent on a weekly basis or as action takes place on a bill and would be in addition to these updates. Please contact a member of our team for further information.

Join us:

New Frontiers in Urban Renewal

Feb. 5, 2016

Metro North Chamber of Commerce
Development Council, Westminster, Colo.

Carolynne White will moderate a discussion about the ways Metro North Denver cities are using urban renewal to maximize opportunities.

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Urban Renewal as a Tool for Downtown Revitalization

Feb. 2, 2016

Economic Development Breakfast:
Mapping the Dollars & Sense of Land
Use, Lakewood, Colo.

Carolynne White will discuss economic development in the context of land use decisions.

This document is intended to provide you with general information regarding Colorado Tax Increment Finance legislation. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions