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As TIF: Missouri’s Misguided Attempt to Reform Tax Increment Financing Deepens the Education Resource Gap

Mark Ficken†

Introduction

As the old adage goes, “the road to Hell is paved with good intentions.” So too is with Tax Increment Financing (TIF) funding. Local municipalities intended that TIF would grant them greater control of their own economic development.¹ Municipalities could incentivize development of so called “blighted” land without raising taxes.² As federal funds were no longer flowing to cities, the idea of local control grew in popularity in the 1970s and 1980s,³ and forty-nine states and the District of Columbia currently have TIF-authorizing statutes.⁴ On its face, TIF appears to accomplish its stated goal of economic development—TIFs have been used to build affordable housing,⁵ revitalize neighborhoods,⁶ and develop

†. J.D. Candidate 2020, University of Minnesota Law School; B.S. Journalism & Political Science 2017, Northwestern University. I’d like to thank Prof. Jill Hasday, Anna Barton, and the JLI staff for their help making my Note as strong as possible. I’d also like to thank my parents, brother, and friends for enduring my many rants, complaints, and explanations as I wrote this Note. And, as always, to Missouri.

1. Jeffrey I. Chapman, *Tax Increment Financing as a Tool of Redevelopment*, in LOCAL GOVERNMENT TAX AND LAND USE POLICIES IN THE UNITED STATES: UNDERSTANDING THE LINKS 182, 182 (Helen F. Ladd & Wallace E. Oates eds., 1998).

2. *Id.*

3. J. Drew Klacik & Samuel Nunn, *A Primer on Tax Increment Financing*, in TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT: USES, STRUCTURES, AND IMPACT 15, 18 (Craig L. Johnson & Joyce Y. Man eds., 2001).

4. Council of Dev. Fin. Agencies, TAX INCREMENT FINANCE STATE-BY-STATE REPORT: AN ANALYSIS OF TRENDS IN STATE TIF STATUTES 2 (2015) [hereinafter STATE-BY-STATE REPORT].

5. See Andrea Elson et al., *Using TIF to Provide Affordable Housing: A Fiscal Impact Analysis of the King Park TIF District in Urbana, Illinois*, in TAX INCREMENT FINANCING AND ECONOMIC DEVELOPMENT: USES, STRUCTURES, AND IMPACT 193, 193 (Craig L. Johnson & Joyce Y. Man eds., 2001) (analyzing the use of TIF to redevelop an area in Urbana, Illinois).

6. MO. DEP’T OF REVENUE, 2017 TAX INCREMENT FINANCING IN MISSOURI: LOCAL TIF PROJECT INFORMATION AND FINANCIAL DATA 607 (2018) (stating development at St. Charles Plaza at Noah’s Ark would be “for high density planned mixed use and commercial purposes”).

entertainment complexes.⁷ In the ensuing half-century, however, systematic flaws stemming from the vagueness of TIF statutes led politicians of all political stripes to call for reform.⁸

Missouri's TIF statute was passed in 1982 and most recently amended in 2016.⁹ In 2018, the Missouri General Assembly considered a slate of commonplace and inventive reforms in Missouri House Bill 1236 (H.B. 1236).¹⁰ This bill died with the end of the 99th General Assembly, but the reforms were reintroduced with minor changes as Missouri House Bill 31 (H.B. 31) at the start of the new session.¹¹ The most inventive proposed reform, H.B. 31, would amend Mo. Stat. 99.845(5) to allow school boards to "elect to have fifty percent of the portion of property tax revenue allocated to the school district by a county or municipality excluded from a tax increment allocation financing project . . ." ¹² In essence, it would allow schools to opt-out of a proposed TIF district, thus withholding part of their budget from the TIF district pool.¹³ This seems reasonable; who doesn't like stable, adequate public-school funding?

However, a deeper look into the potential consequences of this reform shows it only exacerbates the problems this reform is meant to fix. School-opt out could effectively veto any TIF proposal, or force developers to craft their proposals solely with the school district in mind.¹⁴ In addition, it would further fracture regional development at a time when many agree regional unity is necessary.¹⁵ Finally, this opt-out power varies drastically depending on the financial

7. *Id.* at 265.

8. *See, e.g.*, LINCOLN INST. OF LAND POLICY, IMPROVING TAX INCREMENT FINANCING (TIF) FOR ECONOMIC DEVELOPMENT 38 (2018) [hereinafter LINCOLN REPORT] (outlining the reform efforts regarding Chicago's use of TIF districts).

9. MO. ANN. STAT. § 99.820.1(2) (West 2016).

10. H.B. 1236, 99th Gen. Assemb., 2d Reg. Sess. § 99.485(5) (Mo. 2018).

11. *Compare* H.B. 1236, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018), *with* H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019).

12. H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. § 99.845.1(c)(5) (Mo. 2019).

13. *Id.*

14. *See, e.g.*, Roxie Hammill, *Shawnee Mission School Board Allows Meadowbrook TIF*, KAN. CITY STAR (Sept. 7, 2015), <https://www.kansascity.com/news/politics-government/article38071458.html> [<https://perma.cc/GV8A-ZJXM>] (detailing how a TIF proposal was approved only after several concessions were made to the local school district).

15. *See, e.g.*, Tim Logan, *Area Stunts Growth by Feeding on Itself*, ST. LOUIS POST-DISPATCH (Nov. 15, 2010), https://www.stltoday.com/business/local/area-stunts-growth-by-feeding-on-itself/article_644ee8ee-d6da-57fc-9714-a7fb95619fa1.html [<https://perma.cc/MUM4-ZH6K>]

(recounting the St. Louis region's propensity to detrimentally compete for development deals).

stability of each school district.¹⁶ One of the few states with a similar TIF statute as Missouri's proposal is bordering-state Kansas,¹⁷ where the mere threat of veto has radically changed TIF proposals.¹⁸

Giving schools the chance to opt-out of TIF districts allows affluent schools to reap the benefits of TIF developments without the pain of a frozen budget during the life of the TIF. Meanwhile, distressed schools, like those in the Normandy School District, have no such luxury, needing to immediately attract any TIF development without regard for future economic impact. As such, this Note argues that the reforms proposed in H.B. 31 will accelerate the known consequences of the current TIF statute in Missouri. The Note will compare TIFs from the Kansas City, Kansas metropolitan region and the St. Louis, Missouri metropolitan region to show the potential impacts of school opt-out on the TIF decision-making process as well as any potential school resource impacts.

This Note begins with a brief explanation on the focus on Missouri. Section II provides a primer on the history of TIF districts and how TIFs operate, while Section III introduces the proposed reforms within H.B. 1236 and H.B. 31 and places them in context with Kansas' existing TIF statute. Section IV argues school opt-out provisions incentivize schools to only approve TIFs that benefit them and why that could actually lead to long-term economic distress and disparity. Section V argues that, even if it were prudent to grant schools veto power, school opt-out further and unnecessarily complicates the geopolitical tension of the St. Louis metropolitan region. Section VI briefly discusses the role of state aid in mitigating the losses suffered by schools while a TIF district is active and Section VII presents an alternative solution to the problem school opt-out attempts to solve.

This Note proposes two reforms. The first modifies and expands the use and power of the county TIF commissions introduced in 2008, by redistributing who chooses members of the commission and weakening municipalities' ability to veto their decision. The second implements school opt-out, albeit in a significantly narrower sense than that included in H.B. 31, by only allowing schools to opt-out of primarily residential TIF districts.

16. Phuong Nguyen-Hoang, *Tax Increment Financing and Education Expenditures: The Case of Iowa*, 9 EDUC. FIN. & POL'Y 515, 536 (2014).

17. KAN. STAT. ANN. § 12-1771(d) (2018).

18. Hammill, *supra* note 14.

I. Why Missouri?

The Midwest in general, with the exception of California, more eagerly designates areas as TIF districts than any other region in the United States.¹⁹ While Missouri does not utilize TIFs nearly as much as neighboring Illinois,²⁰ there are two characteristics to Missouri that make it more interesting to study. First, the St. Louis metropolitan area is wildly fragmented, which presents unique challenges to any TIF statute.²¹ At the same time, Missouri's TIF statute currently typifies many across the country. Like many states,²² one way to achieve TIF district designation in Missouri is through a definitive finding of blight.²³ In addition, Missouri authorizes these districts to last up to 23 years,²⁴ which is near the length of an average TIF district in the United States.²⁵ This tension between the unique fragmentation of the St. Louis metropolitan region and a relatively generic TIF statutory framework better exposes the limitations and flaws of TIFs in general and makes it easier to hypothesize any statutory change's impact to the region.

Second, and more importantly, Missouri legislators have expressed a sustained interest in reforming Missouri's TIF statute, making it far more likely for Missouri to experiment with new proposals and mechanisms to accomplish TIF's goals.²⁶ The legislation at the heart of this Note is merely an example of this willingness to experiment.²⁷ The ultimate question is whether the experiment will prove successful or disastrous. In the case of H.B. 31, it is likely to be the latter.

19. Tanvi Misra, *The Trouble with TIF*, CITYLAB (Sept. 12, 2018), <https://www.citylab.com/solutions/2018/09/the-trouble-with-tif/569815/> [<https://perma.cc/N4ZL-6HKF>].

20. *Id.*

21. Susan G. Mason & Kenneth P. Thomas, *Exploring Patterns of Tax Increment Financing Use and Structural Explanations in Missouri's Major Metropolitan Regions*, 20 CITYSCAPE: A J. OF POL'Y DEV. & RES. 203, 207 (2018).

22. STATE-BY-STATE REPORT, *supra* note 4, at 5.

23. Mason & Thomas, *supra* note 21, at 208.

24. MO. ANN. STAT. § 99.810.1(3) (West 2016).

25. STATE-BY-STATE REPORT, *supra* note 4, at 7.

26. *E.g.*, H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019); H.B. 1236, 99th Gen. Assemb., 2d Reg. Sess. § 99.485(5) (Mo. 2018); MO. ANN. STAT. § 99.820.1(2) (West 2016).

27. H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019).

II. A Brief Primer on TIF Districts

Before assessing how H.B. 31 would change Missouri's TIF statute, it is important to understand the policy rationales behind TIFs as well as Missouri's current statutory framework. Post-World War II, states desiring to redevelop urban areas and facilitate the expansion of the burgeoning suburbs encouraged land development through creative means. The states drove development of this solution, as the austerity measures of the Great Depression and wartime years led to a decline in federal funds for municipal economic development.²⁸ In 1952, California, seeking the "elimination of blight and blighted areas" without resorting to the controversial and oft-litigated eminent domain, passed the first TIF statute.²⁹ In the decades that followed, forty-eight states other than California and the District of Columbia passed TIF statutes,³⁰ primarily in response to a lack of federal funding.³¹ These TIF authorizing statutes vary broadly, but each utilize the same primary mechanism to fuel economic development.³²

A. *How Do TIFs Work?*

TIFs are a classic redistribution scheme—municipalities preemptively take from government agencies and other services that receive property tax revenues (police, fire departments, and school districts) and funnel that prospective revenue into a fund to offset the cost of an approved development project.³³ In practice, this redistribution is far more complex and depends on the standards and requirements put in place by each state's TIF authorizing statute. For the sake of this section, however, many of these complexities are irrelevant and add confusion.³⁴ Instead, this section provides a basic explanation on how TIF districts operate, and, because the focus of the Note is a proposed Missouri reform,

28. Mason & Thomas, *supra* note 21, at 205.

29. Todd A. Rogers, *A Dubious Development: Tax Increment Financing and Economically Motivated Condemnation*, 17 REV. LITIG. 145, 164 (1998).

30. STATE-BY-STATE REPORT, *supra* note 4, at 2.

31. Mason & Thomas, *supra* note 21, at 205.

32. Klacik & Nunn, *supra* note 3, at 17.

33. LINCOLN REPORT, *supra* note 8, at 6–7.

34. The scope of this Note is only on a proposed TIF reform in Missouri that would allow school districts to opt-out of proposed TIF districts. The subtle nuances that govern TIF districts and other agencies receiving property tax revenues are beyond that scope. This Note will discuss the role of state aid to school districts in TIF districts in Section VI.

this explanation utilizes the applicable Missouri statutes, namely the Real Property Tax Increment Allocation Redevelopment Act.³⁵

TIFs operate on two basic premises: (1) that property value will always increase and (2) economic development on that land accelerates that increase in value.³⁶ Typically, property taxes are collected and divided among the various departments and districts in which the property resides.³⁷ When a municipality passes an ordinance that designates a new TIF district, several things happen to that property tax revenue. First, a new district is drawn that is significantly larger than the approved redevelopment project.³⁸ At that time, the property value of all the land comprising the new district is assessed.³⁹ This assessment determines the “base value” of the TIF district.⁴⁰ During this assessment, the municipality also determines the amount of property tax that base value generates and predicts the natural increase of property tax revenue over the life of the TIF.⁴¹ Then, any additional increase in property tax revenues beyond the predicted increase over the life of the TIF district (or, the incremental value) is set aside into a separate fund.⁴² This fund reimburses some or all of the redevelopment costs.⁴³

For example, St. Charles, Missouri approved a TIF on the site of a former restaurant and hotel in 2007.⁴⁴ This TIF was to develop a multi-use entertainment district with apartments and restaurants.⁴⁵ At the time the TIF was designated, the land valued \$6.5 million.⁴⁶ Ten years later and halfway through the project, the

35. MO. REV. STAT. § 99.800, *et. seq.* (West 2016).

36. LINCOLN REPORT, *supra* note 8, at 6.

37. Klacik & Nunn, *supra* note 3, at 17.

38. LINCOLN REPORT, *supra* note 8, at 6–7.

39. *Id.*

40. *Id.* at 7.

41. Chapman, *supra* note 1, at 183.

42. DENNY COLEMAN & BRIAN MURPHY, BETTER TOGETHER, ECONOMIC DEVELOPMENT 10 (2014).

43. Herein lies one major structural flaw with TIFs. In order for the TIF district to create enough of an incremental value to pay off the cost of the redevelopment, the land being redeveloped must already be of some value. This structural flaw, as Section IV explains, funnels TIF districts into affluent communities and neighborhoods.

44. MO. DEP'T OF REVENUE, *supra* note 6, at 607–08.

45. Rachel Kaatmann, *Decision Looms for Noah's Ark Project TIF in St. Charles*, ST. LOUIS POST-DISPATCH (Dec. 9, 2006), https://www.stltoday.com/suburban-journals/decision-looms-for-noah-s-ark-project-tif-in-st/article_f6a8958c-e408-59e9-b356-7e447dd54c45.html [<https://perma.cc/JV5V-UYTG>].

46. *Behind the Scenes: Economic Development in St. Charles*, ST. LOUIS

land is valued at \$88 million.⁴⁷ All the increased property tax revenue caused by the rise in property value is placed into the TIF redevelopment fund to help finance the rest of the development. In addition, Missouri law allows up to fifty percent of all sales tax revenue generated by new economic activity in the TIF district to be placed into this redevelopment fund.⁴⁸

TIF districts last a long time. In Missouri, they can last up to twenty-three years.⁴⁹ During those twenty-three years, the base value never changes and slows the economic growth of other districts, like schools, that depend on property taxes.⁵⁰ These districts fail to see any of the increased revenue that comes with TIF redevelopment.⁵¹ Even worse, schools may see increased pressure on their existing budget if more individuals move into their district boundaries *because of* the TIF, thus increasing enrollment without increasing their budget.⁵²

TIF districts were and remain popular among municipalities for two main reasons. First, they allow significant local control over economic development projects.⁵³ This local control allows municipalities to aggressively compete for new property and sales tax bases.⁵⁴ Second, and perhaps more importantly, they are a

BUSINESS JOURNAL (Apr. 21, 2017), <https://www.bizjournals.com/stlouis/news/2017/04/21/behind-the-scenes-economic-development-in-st.html> [https://perma.cc/2HHN-F3D7].

47. *Id.*

48. The statute provides that

fifty percent of the total additional revenue from taxes, penalties[,] and interest which are imposed by the municipality or other taxing districts, and which are generated by economic activities within the area of the redevelopment project over the amount of such taxes generated by economic activities within the area of the redevelopment project in the calendar year prior to the adoption of the redevelopment project by ordinance, while tax increment financing remains in effect, [taxes exempt from this provision], shall be allocated to, and paid by the local political subdivision collecting officer to the treasurer or other designated financial officer of the municipality, who shall deposit such funds in a separate segregated account within the special allocation fund.

MO. ANN. STAT. § 99.845.3 (West 2016).

49. MO. ANN. STAT. § 99.810.1(3) (West 2016) (“The estimated dates, which shall not be more than twenty-three years from the adoption of the ordinance approving a redevelopment project within a redevelopment area . . .”).

50. Chapman, *supra* note 1, at 183.

51. *Id.*

52. See discussion *infra* Section IV.B.

53. Rachel Weber et al., *The Effect of Tax Increment Financing on School District Revenues: Regional Variations and Interjurisdictional Competition*, 40 ST. & LOC. GOV'T REV. 1, 28–29 (2008).

54. *Id.*

golden combination of what politicians love: they provide typically popular economic developments (who doesn't love a new grocery store or movie theater?) without raising taxes.⁵⁵ Yet TIFs also are inherently paradoxical. In order to see a high enough return on investment, municipalities must select projects not because the land is truly blighted but because the project promises some glistening new retail development. The City of St. Louis alone has more than 100 active TIF projects, and more than \$2 billion of property tax revenue has been diverted into TIF-funded redevelopment projects.⁵⁶ This activity is impressive considering the relative-youth of Missouri's TIF authorizing statute.⁵⁷

III. Missouri Loves Company: Establishing the Link Between Missouri and Kansas

This Section is divided into two subsections. The first introduces the reforms within H.B. 31. The second explains why Kansas provides an ideal analogue to Missouri, and therefore how example TIFs in Kansas can be used as evidence that school opt-out accelerates the already widening resource gap.

A. *H.B. 1236, H.B. 31, and Missouri's Most Recent TIF Reform Effort*

In March 2018, the Missouri General Assembly considered a new slate of TIF reforms, focusing on three proposals. These reforms were later reintroduced with minimal changes in January 2019 as H.B. 31. First, the proposal would cut the duration of TIF districts, limiting them at fifteen years, instead of the current twenty-three years.⁵⁸ Second, it would modify the timing of the required notice and comment period—allowing residents within the proposed TIF district thirty days to voice concerns.⁵⁹ Finally, it would implement the reform that is the topic of this Note: school opt-out. H.B. 31 would modify Mo. Stat. section 99.845 to allow applicable school boards to vote, with a two-thirds majority, to

55. See Chapman, *supra* note 1, at 184 (describing TIF funding as “self-financing”).

56. LINCOLN REPORT, *supra* note 8, at 22 (noting that, as of 2016, \$2 billion of public tax dollars were diverted to developers through TIF).

57. MO. DEP'T OF REVENUE, *supra* note 6, 1–2.

58. Compare H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019), with MO. ANN. STAT. § 99.845.10(5) (West 2016).

59. H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. § 67.1431.4 (Mo. 2019).

withhold half of their property tax revenue from the proposed TIF district.⁶⁰ The previous iteration of this bill, H.B. 1236, was introduced with bipartisan sponsors and was voted out of committee before the bill died on the floor of the Missouri House of Representatives.⁶¹

The reforms in these bills are fairly popular.⁶² More specifically, it was popular among everyone but the cities of St. Louis and Kansas City.⁶³ St. Louis even sent a lobbyist to the state capitol in Jefferson City to argue against the bill.⁶⁴

B. Jayhawkers and Bushwhackers; Not So Different Anymore

This Note uses TIF districts in both Missouri and Kansas to add color to each of the supporting arguments of this Note's thesis. These illustrative cases serve as easy-to-understand examples of arguments that delve into the intricacies of municipal land use. In order to determine whether school opt-out actually accelerates the resource gap among schools, it is important to eliminate as many variables as possible. Kansas, whose TIF statute includes school opt-out, is a perfect candidate.⁶⁵

Missouri and Kansas have not always been the best of neighbors.⁶⁶ Yet, the two states are sufficiently analogous demographically and economically to be a useful comparison.⁶⁷

60. H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. § 99.845.1(c)(5) (Mo. 2019).

61. H.B. 1236, 99th Gen. Assemb., 2d Reg. Sess., (Mo. 2018) (showing the bill passed committee vote 8-2), <https://house.mo.gov/BillContent.aspx?bill=HB1236&code=R&style=new&year=2018> [<https://perma.cc/5N9D-8BLK>].

62. Sarah Fenske, *TIF Reform Gets a Thumbs Up in House Committee*, RIVERFRONT TIMES (Mar. 29, 2018), <https://www.riverfronttimes.com/newsblog/2018/03/29/tif-reform-gets-a-thumbs-up-in-house-committee> [<https://perma.cc/2733-QFAY>].

63. *Id.*

64. This action was not well received. Sarah Fenske, *St. Louis is Fighting TIF Reform in Jefferson City. That's BS*, RIVERFRONT TIMES (Mar. 21, 2018), <https://www.riverfronttimes.com/newsblog/2018/03/21/st-louis-is-fighting-tif-reform-in-jefferson-city-that-should-make-us-mad> [<https://perma.cc/8M3Z-2B6H>].

65. KAN. STAT. ANN. § 12-1771(d) (2018).

66. Missouri residents, hoping to make Kansas a slave state, stormed Kansas when Kansas' status as a free or slave state was to be determined by popular sovereignty according to the Kansas-Nebraska Act. The ensuing deadly conflict between the Bushwhackers (Missourians) and the Jayhawkers (Kansans) is known as Bleeding Kansas, *Bleeding Kansas*, KAN. HISTORICAL SOC'Y. (Sept. 2016), <https://www.kshs.org/kansapedia/bleeding-kansas/15145> [<https://perma.cc/3QPH-L8HC>]. Today this bloody conflict manifests itself through the (usually) bloodless rivalry between the University of Missouri and the University of Kansas.

67. Each state's demographics are similar. U.S. Census QuickFacts on the

While some individual Missourians and Kansans may disagree, the U.S. Census Bureau lists both states as falling within the Midwestern region of the United States.⁶⁸ Both states place a heavy emphasis on agriculture.⁶⁹ In addition, each state's demographics are similar.⁷⁰ The political leanings of each state is not a major factor in this Note's analysis, as TIF funding and reform is traditionally a bipartisan process.⁷¹

C. The Relevant Difference Between Missouri and Kansas' TIF Statutes

Understandably, Missouri and Kansas utilize different procedures in designating TIF districts. However, only one of these differences is relevant. Under the procedures in Mo. Stat. section 99.820, there is no opportunity for the school district to weigh in on the municipality adopting a new TIF district. Once the municipality adopts the TIF proposal, the school district's funding is simply frozen for the life of the TIF.⁷²

Not so in Kansas. Under Kan. Stat. section 12-1771(d), school districts have thirty days after the required public hearing to veto any proposed TIF district.⁷³ Ostensibly, this veto signals that the

populations of Kansas and Missouri, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/ks,mo/PST045218> [<https://perma.cc/8N5G-ZAZ6>]. The biggest difference between the two states is Missouri has a larger percentage of Black residents (11.8%) than Kansas (6.2%), whereas Kansas has a larger percentage of Latino residents (11.9%) than Missouri (4.2%). *Id.* This difference likely has little impact on the thesis, provided the demographics of the sample school districts align. The states are similar economically as well. The average income of Kansas is \$55,477 while in Missouri it is \$51,542; further, the poverty rates are 11.9% and 13.4% respectively. *Id.*

68. CENSUS REGIONS AND DIVISIONS OF THE UNITED STATES, https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf [<https://perma.cc/P643-YV6M>].

69. In a ranking by the Department of Agriculture of the fifty states by cash receipts by commodity, Kansas ranks 7th while Missouri ranks 12th. *Cash Receipts by Commodity, State Ranking, 2017*, U.S. DEPT OF AGRIC. (Nov. 30, 2018), <https://data.ers.usda.gov/reports.aspx?ID=17844> [<https://perma.cc/D4AE-ZH3Z>].

70. U.S. Census QuickFacts on the populations of Kansas and Missouri, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/ks,mo/PST045218> [<https://perma.cc/8N5G-ZAZ6>].

71. See H.B. No. 1434, 98th Gen. Assemb., 2d Sess. (Mo. 2016) (showing the bill passed 145-12 in the House and unanimously in the Senate).

72. Mo. Stat. section 99.820 outlines the procedures for a municipality to adopt a TIF proposal after the required public hearing in Mo. Stat. section 99.825. MO. ANN. STAT. § 99.820.1 (West 2016).

73. KAN. STAT. ANN. § 12-1771(d) (2018) ("No privately owned property subject to ad valorem taxes shall be acquired and redeveloped under the provisions of K.S.A. 12-1770 et seq. [which outline the designation of the TIF district], and amendments

school district feels “that the proposed redevelopment district or bioscience development district will have an adverse effect on such . . . school district,” but there is no requirement that the school district disclose the reasoning behind their decision.⁷⁴ While the phrasing of the Kansas statute and H.B. 31 are different, their impact should be similar.⁷⁵ The means of vetoing may be different, but a veto is still a veto and there is still no TIF district.

H.B. 31 allows the school district to prevent the inclusion of fifty percent of their property tax revenue from inclusion in the proposed TIF district.⁷⁶ While this allowance is not the same as an explicit veto, the effects are the same. School districts tend to receive more property tax revenue than any other service,⁷⁷ and, withholding such a substantial chunk of potential TIF funding would be detrimental to any TIF project. This result means that, while H.B. 31 does not *explicitly* give school districts the power to veto proposed TIF districts, it *implicitly* gives them that power. Therefore, while the power given to school districts under Kan. Stat. section 12-1771(d) is different than those given to school districts if H.B. 31 were enacted, the effect is the same. The impacts of this kind of power are relatively unknown. The rest of this Note uses examples of Kansas school districts merely threatening to veto TIF districts to illustrate potential impacts in Missouri.

IV. School Opt-Out and H.B. 31 Incentivize Schools to Reject TIFs that Don’t Increase Property Tax Revenue

It should come as no surprise that certain kinds of municipalities pursue different kinds of TIF projects.⁷⁸ After all, a major rationale behind TIF districts was to allow municipalities to

thereto, if . . . the board of education levying taxes on such property determines by resolution adopted within 30 days following the conclusion of the hearing for the establishment of the redevelopment district or bioscience development district required by subsection (b) that the proposed redevelopment district or bioscience development district will have an adverse effect on such . . . school district.”)

74. *Id.*

75. Compare KAN. STAT. ANN. § 12-1771(d) (2018), with H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. § 67.1431.4 (Mo. 2019).

76. H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. § 67.1431.4 (Mo. 2019).

77. Daphne A. Kenyon, *The Property Tax School Funding Dilemma*, LINCOLN INST. LAND POLICY 4 (2007), https://www.lincolnst.edu/sites/default/files/pubfiles/the-property-tax-school-funding-dilemma-full_0.pdf [<https://perma.cc/U8MD-6VMB>].

78. Sarah L. Coffin, *The Promises and Pitfalls of TIF in the St. Louis Metropolitan Region: A Look at Neighborhood Disparities*, 33 ST. LOUIS U. PUB. L. REV. 57, 77–78 (2013).

pursue hyper-local funding to meet their individual needs in the face of declining federal money for redevelopment.⁷⁹ This difference in the type of TIF pursued by municipalities is caused primarily by a difference in motive.⁸⁰ Distressed municipalities tend to focus on single-use housing or residential redevelopment while more affluent municipalities focus on entertainment and multi-use retail developments.⁸¹ This difference makes sense. Affluent municipalities need no help getting middle- and upper-class residents to move within their borders. The allure of prestige and strong schools (and racially motivated homogeneity) draws these families like flies to a light.⁸² There is an economic interest in fighting off the smallest whiffs of blight or economic distress. Instead, these municipalities want to keep their residents (and their money) within their borders when they go grocery or clothes shopping, or when they decide to go to the movies or out to eat.

A. *The TIF Approval Process Already Favors the Voices of the Wealthy*

The Missouri TIF statute puts in place a lengthy process to get a proposal approved. This process is remarkably similar to formal notice-and-comment rulemaking.⁸³ Unfortunately, this process already favors affluent municipalities. When a developer in

79. See Chapman, *supra* note 1, at 182.

80. See Coffin, *supra* note 78, at 78.

81. *Id.* at 73 (“The more distressed municipalities do appear to focus more of their TIF efforts on projects that promote residential uses, yet they also focus considerable attention to single use retail.”). Coffin’s 2013 article compared the City of St. Louis’ use of TIF with the surrounding St. Louis County. *Id.* at 78. She found that the City focused on housing redevelopments while the County focused on retail as “all communities around the region tend to depend on retail sales as a primary economic development strategy.” *Id.* at 73. One of Coffin’s conclusions was that “this finding indicates that the city of St. Louis is not competing with the surrounding municipalities in Missouri for TIF projects and that there is an opportunity for regional cooperation.” *Id.* at 78. The impact of factionalism in the St. Louis region on TIFs is discussed in detail in Section V.

82. Alana Semules, *White Flight Never Ended*, ATLANTIC (July 20, 2015), <https://www.theatlantic.com/business/archive/2015/07/white-flight-alive-and-well/399980/> [<https://perma.cc/BU6P-ZSKP>] (“‘People know what is a white suburb and what is a black suburb,’ [Daniel] Lichter says. ‘Whites are still attracted to those suburbs that are white.’”).

83. Generally, under the guidelines set forth in Section 553 of the Administrative Procedure Act, agencies implementing new regulations or rules must: (1) provide the public notice of a proposed regulation or rule through publication, (2) accept written and, potentially, verbal feedback from the general public regarding the proposed rule, and (3) publish of the final rule at least thirty days before the rule is implemented. Administrative Procedure Act § 553, 5 U.S.C. § 553 (2012).

Missouri wants to begin a TIF-based redevelopment project, the developer presents a proposal to the municipality.⁸⁴ This proposal outlines a basic description of the program, the proposed boundaries of the district, estimated costs, outside funding that might be necessary, and the expected duration of the TIF district.⁸⁵ In addition, the plan must include a “cost-benefit analysis showing the economic impact of the plan on each taxing district The analysis shall show the impact on the economy if the project is not built, and is built pursuant to the redevelopment plan under consideration.”⁸⁶ In theory, municipalities must demonstrate the TIF will actually increase property tax revenue in a worthwhile way. Finally, the proposal must explain why the TIF is necessary and what qualifies the land for TIF redevelopment under a “but for” test.⁸⁷ This is notoriously easy to meet. All that must be demonstrated is that the *specific* developer presenting the proposed development would not undertake the project without the TIF funding.⁸⁸

i. The Missouri Blight and “But For” Tests Present No Barrier to a TIF’s Approval

As referenced above, TIFs necessarily contain a paradox. They were originally used as a tool in the fight against blight, but the principles underlying each TIF district’s success requires municipalities to consider them primarily as a tool of economic development.⁸⁹ Because of this paradox, the administration of TIFs are rife with opportunities for fraud and abuse.⁹⁰ Much of the literature on Missouri’s TIF laws bemoans the almost non-existent blight and “but for” requirements.⁹¹ Recent TIFs in the St. Louis

84. MO. ANN. STAT. § 99.810.1 (West 2016).

85. *Id.*

86. *Id.* § 99.810.1(5).

87. *Id.* § 99.810.1(1) (requiring that the redevelopment area take place on a “blighted” area where economic redevelopment would not “reasonably be anticipated to be developed without the adoption of tax increment financing.”).

88. Joe Wilson, *Given a Hammer: Tax Increment Financing Abuse in the St. Louis Region*, 34 ST. LOUIS U. PUB. L. REV. 83, 91 (2014).

89. Chapman, *supra* note 1, at 183.

90. *See id.* at 185–88 (listing four potential issues that arise when municipalities use TIFs for economic development).

91. *See* Josh Reinert, *Tax Increment Financing in Missouri: Is It Time for Blight and But-For to Go?*, 45 ST. LOUIS U. L.J. 1019, 1050–51 (2001); Gil Williams, *Specificity, Blight and Two Tiers of TIF: A Proposal for Reform of Tax Increment Financing Law*, 33 ST. LOUIS U. PUB. L. REV. 255, 272–74 (2013); Wilson, *supra* note 88, at 91–92.

region include the building of high-end lofts with an attached Whole Foods in the trendiest area of St. Louis City,⁹² a shopping center in an upper-middle class suburb,⁹³ and the aforementioned entertainment, dining, and shopping destination complete with luxury apartments in St. Charles County.⁹⁴ Drive twenty minutes away from any of these developments towards North St. Louis County and you enter the boundaries of the Normandy School District.⁹⁵ Normandy made national news in the wake of the Ferguson unrest as the poster district for the resegregation of American public schools after the district lost its accreditation.⁹⁶ While Normandy has regained provisional accreditation,⁹⁷ clearly TIFs are not being used to correct truly blighted areas and instead used to benefit already wealthy communities.

92. Tim Bryant, *St. Louis Panel Approves TIFs for Apartments and Mercedes Dealership*, ST. LOUIS POST-DISPATCH (Oct. 31, 2012), https://www.stltoday.com/news/local/metro/st-louis-panel-approves-tifs-for-apartments-and-mercedes-dealership/article_1a0c57f8-93d2-56c8-bb6c-1f65f52f948b.html [https://perma.cc/X95N-4W8B] (“Bruce Mills, the company’s president, told commissioners the City Walk on Euclid project will have 176 market-rate apartments on six floors above the Whole Foods grocery and a 458-car garage.”).

93. Laurie Skrivan, *City of Manchester TIF Incentives Attract Wal-Mart*, ST. LOUIS POST-DISPATCH (May 22, 2015), https://www.stltoday.com/news/multimedia/city-of-manchester-tif-incentives-attract-wal-mart/image_1015d609-1794-59a1-b19c-6b84dd554902.html [https://perma.cc/F9KA-7RT4] (“[Walmart] chose to reopen a larger store about a mile westward in the new Manchester Shopping Center due to the tax increment financing incentives (TIF) offered by the City of Manchester.”).

94. Kaatmann, *supra* note 45 (“Plans include an 18-story high-rise residential complex, an outdoor ice rink, a movie theater, a 150-room upscale hotel, restaurants and a parking garage that could include 1,827 spaces.”).

95. *School Districts St. Louis County, Missouri*, ST. LOUIS COUNTY, MO. (Sept. 2013), <https://www.stlouisco.com/Portals/8/docs/document%20library/maps%20and%20gis/maps%20for%20download/School%20Districts.pdf> [https://perma.cc/JRJ5-LD59] [hereinafter School District Map].

96. Nikole Hannah-Jones, *School Segregation, The Continuing Tragedy of Ferguson*, PROPUBLICA (Dec. 19, 2014), <https://www.propublica.org/article/ferguson-school-segregation> [https://perma.cc/R2HW-85LC] (“The Normandy school district from which Brown graduated [the police killing of Michael Brown sparked the Ferguson protests] is among the poorest and most segregated in Missouri. It ranks last in overall academic performance. Its rating on an annual state assessment was so dismal that by the time Brown graduated the district had lost its accreditation.”).

97. Kristen Taketa, *Normandy Schools Get Good News—And Provisional Accreditation*, ST. LOUIS POST-DISPATCH (Dec. 1, 2017), https://www.stltoday.com/news/local/education/normandy-schools-get-good-news-and-provisional-accreditation/article_693d9b70-e821-5b76-9709-ca2e1c9d2901.html [https://perma.cc/8CNL-UPVF] (revealing continuing issues with the district as “[l]ast school year, 34[%] of Normandy students scored proficient or advanced on state tests in English and 19[%] did so in math, up from 24[%] and 12[%] respectively in 2015. Its four-year graduation rate increased from just 53.6[%] in 2013 to 81[%] this year.”).

Approved TIFs can be controversial, and this controversy frequently leads to litigation. However, Missouri courts at every level tend to defer to the judgment of the municipality.⁹⁸ More extreme decisions claim that courts are not permitted to overturn the decision of the municipality unless the decision was “arbitrary.”⁹⁹ There are procedural requirements before municipalities can establish TIF districts.¹⁰⁰ Unfortunately, the decision of each municipality is *de facto* unreviewable by Missouri courts provided they follow the statutory requirements.¹⁰¹ This incentivizes bad behavior by developers.¹⁰² Instead of utilizing TIFs for their original purpose, developers can seize upon the “meaningless” blight standard and argue some of the most affluent and developed regions are actually blighted.¹⁰³

Some authors also focus on Missouri’s use of a but-for test when analyzing potential TIFs. This “but for” test, as explained above is fairly straightforward. The evidence needed to satisfy this test include: analyses of potential returns on investment, evidence of prior redevelopment efforts that stalled, or any other financial records or evidence that indicate the property is unlikely to be developed.¹⁰⁴ Like the definition of blight, this fairly simple but-for test is open to abuses that the Missouri courts have yet to address.¹⁰⁵ As Reinert noted, this standard makes it difficult to prevent a municipality from enjoining a TIF as “the plaintiff would

98. *JG St. Louis West LLC v. City of Des Peres*, 41 S.W.3d 513, 517 (Mo. Ct. App. 2001) (“In reviewing the trial court’s decision, we make our own independent determination of whether the legislative body’s decision was *fairly debatable*.”) (emphasis added).

99. *See, e.g., Crestwood Commons Redevelopment Corp. v. 66 Drive-In, Inc.*, 812 S.W.2d 903, 910 (Mo. Ct. App. 1991) (“Judicial review is limited to whether the legislative determination was arbitrary or was induced by fraud, collusion or bad faith, or whether the City exceeded its powers.”). The issue of judicial review of each municipalities’ TIF approvals is not addressed in H.B. 31. *See* H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019).

100. *See* MO. ANN. STAT. § 99.825 (West 2016) (outlining the procedural requirements for establishing a TIF district in Missouri).

101. *Id.* (omitting a provision for challenging the municipality decisions); *see also* Williams, *supra* note 91, at 265 (“The court must confine itself to determining if procedural mandates have been observed, necessary findings have been made, and whether the municipality’s ordinances are arbitrary . . .”).

102. *Id.* at 273.

103. *Id.* at 272 (quoting Reinert, *supra* note 91, at 1050); *see also supra* text accompanying notes 91–94.

104. Reinert, *supra* note 91, at 1048.

105. *JG St. Louis West LLC v. City of Des Peres*, 41 S.W.3d 513, 520 (Mo. Ct. App. 2001); Cory C. VanDyke, *Fields of Dreams: The Expectation and Common Reality of Tax Increment Financing*, 79 UMKC L. REV. 791, 805 (2011).

have to show that there was some evidence of fraud or misdealing, or that the finding of blight is ‘so arbitrary and unreasonable as to amount to an abuse of the legislative process.’”¹⁰⁶ Thus, changes to TIF standards will not come from the courts; they must come through from the Missouri General Assembly.

These lax blight and “but for” standards, in addition to economic considerations baked into TIFs, lead developers to forgo the areas TIF laws were meant to help and instead focus on areas with the largest return on investment.¹⁰⁷ This abuse in turn prompts developers in affluent municipalities to focus on retail while economically distressed municipalities focus instead on housing.¹⁰⁸ This effect is not necessarily *bad*; after all, the point of TIFs was to allow local control over economic development.¹⁰⁹ Developers look to find the best return on their investment and, naturally, focus on retail development.¹¹⁰

An example of an affluent municipality focusing on entertainment and multi-use developments is the Meadowbrook Redevelopment Project in Prairie Village, Kansas.¹¹¹ Meadowbrook was originally a golf course, but in 2016 was designated a TIF district.¹¹² The approved project would redevelop the old golf course into a regional “park,” “luxury” housing ranging from single-family homes to assisted living for the elderly, and 5,000 square feet of commercial space.¹¹³ The designation of the Meadowbrook Redevelopment TIF was remarkably controversial and, as explained below, the school district for the proposed TIF district

106. Reinert, *supra* note 91, at 1048–49 (quoting Tierney v. Planned Indus. Expansion Auth. of Kan. City, 742 S.W.2d 146, 150 (Mo. 1988)).

107. Wilson, *supra* note 91, at 90 (citing Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 317 (2004)).

108. See Coffin, *supra* note 78, at 78.

109. Klacik & Nunn, *supra* note 3, at 15.

110. Mason & Thomas, *supra* note 21, at 217 (stating the majority of TIFs in the St. Louis suburbs tend to be retail establishments).

111. See *Meadowbrook Redevelopment*, CITY OF PRAIRIE VILLAGE, KAN., <https://www.pvkansas.com/city-government/projects/meadowbrook-redevelopment> [<https://perma.cc/33DH-2E89>].

112. *Id.*

113. David Twiddy, *Prairie Village Clears Path Toward Meadowbrook Park Reality*, KAN. CITY STAR (Apr. 25, 2016), <https://www.kansascity.com/news/local/communit/joco-913/northeast-joco/article73883787.html> [<https://perma.cc/2HXD-CSRR>] (discussing and detailing the City Council’s approval of the Meadowbrook TIF).

threatened to veto the project.¹¹⁴ The project was eventually approved and the district was created.¹¹⁵

A natural reaction to this lax blight and “but for” standard is to call for either greater judicial oversight of the TIF approval process or a better statutory definition of what blight actually means. These options may be beneficial and would potentially remedy some of the issues identified in this Note. However, this Note does not advocate for this reform for two reasons. First, the focus of this Note is not on the maligned blight and “but for” standard, but rather on the impact of the proposed school opt-out provision in H.B. 31. Second, and more importantly, this Note advocates for more politically practicable reforms that remedy some of the issues created by these lax blight and “but for” standards.¹¹⁶ Small municipalities and local control are deeply imbedded into the United States’ system of governance,¹¹⁷ and maintaining that system while advancing the need for regional governance is a tricky balance. The proposals advocated by this Note attempt to maintain that balance.

ii. The County Commission Weighs In and Is (Potentially) Ignored

After meeting the incredibly easy blight and “but for” standards as mandated by Missouri state law, certain counties appoint a commission with at least twelve members to conduct a study of the proposal.¹¹⁸ The statute attempts to allow interested parties to have representation on the commission. For example, two members of the commission are appointed by the school boards within the proposed TIF district.¹¹⁹ This commission then conducts a public hearing with specific notice requirements.¹²⁰ At the hearing anyone can submit written or oral comments regarding the proposal

114. Hammill, *supra* note 14 (“Superintendent Jim Hinson told board members he would not recommend a veto of the financing . . .”).

115. *Id.*

116. See discussion *infra* Section VII.

117. Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1124 (1996) (“By shrinking the population denominator, boundaries give those remaining in the numerator that greater share of power and influence in the polity seen as crucial in increasing the propensity to participate. Boundaries, in other words, are what make possible the enhanced sense of citizen-effectiveness so essential for participation.”).

118. MO. ANN. STAT. § 99.820.3 (West 2016).

119. *Id.* § 99.820.3(1)(c).

120. *Id.* § 99.825.1.

before the hearing and the hearing can be extended as long as necessary.¹²¹

After the hearing, the commission votes on the proposal.¹²² However, a rejection at this point is not binding.¹²³ Finally, the municipality, through an ordinance, either denies the request or approves it and establishes a new TIF district.¹²⁴ Once this district is approved, more than one redevelopment project may be implemented within the approved district without undergoing the notice and comment period again.¹²⁵

iii. H.B. 31 Overinflates the Importance of School Boards in the TIF Approval Process

Under H.B. 31, this process changes. After the municipality approves the TIF, the school board would have sixty days to determine whether they want to withhold fifty percent of their property tax revenue from the approved TIF district.¹²⁶ This vote must pass the school board with a two-thirds majority and may occur any time before the municipality approves the TIF district.¹²⁷

H.B. 31 grants school boards far too much power in the TIF approval process and layers another approval vote over an already contentious and drawn out process. It is important to proceed with caution when spending public funds, but too much caution leads to gridlock and indecision. This Note instead proposes a different solution that would increase school district influence without allowing the school board to unilaterally kill a TIF proposal they do not like. School boards currently appoint two seats to the county commissions, which range from nine to twelve members depending on the size of the municipality.¹²⁸ Instead, this Note argues, they should appoint four members to adequately represent the stake school districts have in any new TIF district. In addition, some of these seats should be filled by school districts classified as “distressed” by the Missouri General Assembly. This proposal gives

121. *Id.*

122. *Id.* § 99.825.2.

123. Under section 99.825.2, if the commission rejects the proposal as a whole or in part, the municipality can override the commission with a two-thirds vote. *Id.* § 99.825.2.

124. *Id.* § 99.820.1(1).

125. COLEMAN & MURPHY, *supra* note 42, at 11.

126. H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. § 99.845.1(5) (Mo. 2019).

127. *Id.*

128. MO. ANN. STAT. § 99.820.2(1) (West 2016).

schools more influence but keeps that influence in proportion to the potential impact any TIF has on their district.

B. Affluent School Districts Will Focus on TIFs that Increase Tax Revenue

Retail developments have a greater chance of increasing property tax revenue than residential developments.¹²⁹ School districts know that. Municipalities know that. Developers know that. Allowing school districts to opt-out of TIF districts and effectively kill any project they do not like would allow school districts to assert their interests against the interest of the municipalities and developers. They could use their ability to veto or opt-out of a TIF development to allow only TIF developments that increase property tax revenue, and, by proxy, school district revenue, to a level of their choosing. That is not to say that school districts looking out for their interests would be an altogether bad thing. What it does mean, however, is developers and municipalities—faced with a school district threatening to opt-out of a potential TIF district—must craft their proposals with increased emphasis on the needs of a school district.

Again, that is not necessarily a bad thing. Quality education is critical and a common criticism of TIF districts is that they unnecessarily strain the resources of schools without producing much benefit.¹³⁰ What is more concerning is, as multi-use retail based TIFs tend to focus on more affluent areas, only affluent school districts have the option to assert their power and force negotiation for a more favorable TIF package. Simply put, it is a tool for the rich alone.

Distressed municipalities have the opposite problem of affluent municipalities. They need residents, or, at the very least, they need to maintain their population in the face of families moving—typically to the more affluent municipality down the road. Of the two models of TIF development, the rationale used by distressed municipalities is more in line with the original intent of

129. See Rachel Weber, *Equity and Entrepreneurialism: The Impact of Tax Increment Financing on School Finance*, 38 URB. AFF. REV. 619, 620 (2003) (arguing that municipalities use “entrepreneurial strategies” to focus primarily on priorities outside of traditional “redistributive functions” like housing).

130. See Phuong Nguyen-Hoang, *Tax Increment Financing and Education Expenditures: The Case of Iowa*, 9 EDUC. FIN. & POL’Y 515, 536 (2014) (finding that “greater use of TIF is associated with reduced education expenditures.”).

TIF funding.¹³¹ TIFs that include affordable housing help attract new residents and provides a tax revenue increase, albeit smaller, that can stave off further distress.

With the understanding that more economically distressed municipalities focus on residential TIFs, how then would allowing school districts to opt-out of proposed TIFs accelerate the resource gap between these schools? Two reasons: first, successful retail developments raise property tax revenue more than the building of an apartment or single-family home.¹³² Second, because distressed municipalities are focused on increasing their population with the approval of residential development TIFs, distressed school district enrollment would increase, and this increase could outpace any increase in revenue the school would receive when the TIF expired.¹³³ More affluent schools with stagnant enrollment will have more resources due to increased property taxes, while distressed districts will enroll more students with less of a property tax increase simply based on the type of TIF each area pursues.

Some states, like Minnesota, allow school districts to formally veto a proposed TIF district if the proposed district involves housing redevelopment.¹³⁴ A similar scheme can be implemented in Missouri as well. As explained above, TIFs for housing development are primarily centered in distressed municipalities.¹³⁵ This means a provision modeled after Minnesota's would give the power to opt-out of TIFs primarily to distressed school districts—the reverse of what might happen if H.B. 31 were enacted. This reversal also prevents the widening of the resource gap. Instead of funneling much needed resources into a TIF district, the Normandy School District, for example, could use that money to provide counseling to students suffering the effects of trauma, grant stability to students constantly in transition—be it from home to home or district to district—and continue increasing the academic standards of the district. These are all goals articulated by the district.¹³⁶ Tailoring a school opt-out provision to only apply to TIFs traditionally within

131. See Chapman, *supra* note 1, at 182.

132. See Weber, *supra* note 129, at 620.

133. See *id.* at 634.

134. MINN. STAT. § 469.176, subd. 4c(d)(3) (2019).

135. Coffin, *supra* note 78, at 77–78.

136. See Charles J. Pearson, Opinion, *In Normandy District, All Our Children Deserve the Best*, ST. LOUIS POST-DISPATCH (June 20, 2018), https://www.stltoday.com/opinion/columnists/in-normandy-district-all-of-our-children-deserve-the-best/article_17c18eb8-b3d1-5ef3-9c64-d6f00ebfff71.html [https://perma.cc/CE8G-UNU4]. Pearson is the superintendent of the Normandy School District. *Id.*

their borders allows them to stabilize their financial resources and pursue those goals.

TIFs are, and always have been, about power and the transfer of power to different communities. Originally, TIFs took power usually reserved for the federal government and returned it to state and local governments.¹³⁷ Local governments controlled their own redevelopment plans without much external influence. In the ensuing half-century, however, this power has been co-opted by wealthy developers looking to funnel TIF funds into grand multi-use redevelopments in already economically stable and affluent areas.¹³⁸ This practice runs afoul of the original intent of TIF funding and is made possible through vague and malleable approval standards.

i. School-Opt Out Takes that Power and Amplifies It Further

School districts facing a new TIF development have a baked-in incentive to maximize their return on their forced investment in the TIF district. There is evidence that not all TIF districts guarantee school district revenue will increase in any substantial way.¹³⁹ This result is especially true in more suburban or rural school districts.¹⁴⁰ Scholars have argued school opt-out, like that proposed in H.B. 31, fails to consider the simple fact that a TIF's "effect is not consistent across the board."¹⁴¹ This opt-out gives schools the incentive to ensure their concerns are noted and considered throughout the TIF approval process, and, in states that allow it, opt-out of the TIF district if these concerns are not addressed. In theory this practice should apply to all school districts, both affluent and distressed. Yet, as explained above, developers' economic goals must be met as well. As such, larger TIF districts with greater returns on investment tend to pop up in more affluent regions.¹⁴² It is impossible for distressed school districts to oppose proposed TIF districts if few developers want to begin a TIF development within their district. While school opt-out nominally applies to all school districts regardless of economic health, practically, it is only a tool for affluent districts.

137. See *supra* text accompanying notes 28–31.

138. See *supra* text accompanying notes 89–97.

139. *Id.*

140. Weber et al., *supra* note 53, at 35–36.

141. *Id.* at 39.

142. Coffin, *supra* note 78, at 78.

ii. Kansas Schools Have Been Eager to Use Their Veto Power

The Meadowbrook Redevelopment TIF provides an example of an affluent school district using the clout of a potential veto to seek a more favorable TIF development plan. Meadowbrook sits within the district boundaries of Shawnee Mission, an affluent school district primarily in Johnson County that encompasses part of fourteen municipalities to the southwest of Kansas City.¹⁴³ The district is predominately White.¹⁴⁴ As of late, Shawnee Mission has become more willing to exercise, or at the very least threaten use of, their power under Kan. Stat. section 12-1771(d).¹⁴⁵ This veto threat was the case during the approval of the Meadowbrook Redevelopment TIF. Then superintendent Jim Hinson stated the district would oppose any TIF development that would “drive up enrollment and put a strain on the district’s budget”¹⁴⁶

The school district eventually relented and allowed the Meadowbrook Redevelopment, as well as other development projects, to proceed.¹⁴⁷ However, in order to gain the school district’s support, the developers negotiated with the school district.¹⁴⁸ These negotiations ensured the TIF would end as soon as the financing for the park was paid off, which developers expect to be sooner than the approved twenty years.¹⁴⁹ In addition, developers left open the possibility of an “environmental lab” in the park for use by district schools.¹⁵⁰ These concessions from the developer highlight that only an affluent school district like Shawnee Mission has the ability and clout to utilize the power under section 12-1771(d) of the Kansas Code.¹⁵¹

143. *About*, SHAWNEE MISSION SCH. DIST., <https://www.smsd.org/about> [<https://perma.cc/LLD6-PN83>] (“The district is consistently ranked among the finest school districts nationwide for its high student performance. Shawnee Mission serves a diverse student population from 14 cities within northeast Johnson County, Kansas.”).

144. *See Education Demographics and Geographic Estimates*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/Programs/Edge/ACSDashboard/2011640> [<https://perma.cc/8S2P-WYUY>] (stating that the Shawnee Mission School District is 81% White).

145. *See Hammill*, *supra* note 14. (noting that the Shawnee Mission School District had met twice to discuss vetoing a TIF).

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. KAN. STAT. ANN. § 12-1771(d) (2018).

To be fair, some Missouri schools have used their clout to pressure developers of proposed TIF districts for more favorable development plans.¹⁵² For example, in St. Charles, a middle-class suburb to the northwest of St. Louis, the St. Charles School District raised concerns about increased enrollment due to a twenty-seven-acre proposed TIF development near the banks of the Missouri River.¹⁵³ To assuage concerns, representatives of both the city TIF commission as well as the developer of the site met with school board officials to understand their concerns and seek their input.¹⁵⁴ The St. Charles School District's actions arguably undermine the thesis of this Note as it shows school districts in Missouri are already using their clout to seek more desirable TIF developments, therefore rendering Missouri H.B. 31 useless.¹⁵⁵

Yet this argument misses the point. This Note argues that Missouri H.B. 31 would *accelerate* the resource gap between affluent and distressed school districts.¹⁵⁶ It is one thing for the St. Charles School District to raise concerns about a proposed TIF development without any real power to do something about it. It is another thing altogether for the school district to threaten to opt-out of the TIF development completely. Further, if Missouri school districts could opt-out of TIF districts, it would be reasonable to assume more school districts would follow the lead of the St. Charles School District and be more vocal about their concerns.

C. *Distressed Municipalities Focus on TIFs that Increase Population Without Increased School Funding*

Less consequentially, as distressed municipalities are focused on residential TIFs, the number of students in distressed school districts will increase.¹⁵⁷ This increase in enrollment will likely outpace any increase in school funding through increased property tax revenue. As stated above, more distressed municipalities tend to focus on residential development.¹⁵⁸ These distressed municipalities aim to use TIFs to either ease a trend of people

152. Kaatmann, *supra* note 45. (“[T]he developer would give the St. Charles School District \$1.25 million in lieu of new tax revenue that would be diverted to the TIF fund.”).

153. *Id.*

154. *Id.*

155. H.B. 31, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019).

156. See discussion *supra* Section IV.B.

157. This is a concern for affluent schools as well.

158. Coffin, *supra* note 78, at 77–78.

moving out of the municipality, or, more importantly, attract new residents. At least some of these new residents will likely have school-age children, thus increasing enrollment.

The concern for increased enrollment was part of the reason Shawnee Mission threatened to veto the Meadowbrook TIF.¹⁵⁹ This increase in enrollment because of a residential TIF development comes at a time when school funding is frozen. This means that schools must do more with the same amount of revenue. This might not impact affluent schools, but for distressed schools barely hanging on it could lead to disastrous consequences.¹⁶⁰ While affluent school districts see their revenues increase without any corresponding enrollment increase, distressed schools *might* see their revenues increase while their enrollment increases. Assuming that school opt-out is practically a tool for affluent school districts alone, these distressed districts are unable to adequately assert their economic needs while affluent districts are able to haggle with developers.¹⁶¹ This, again, would grant economic power to affluent school districts at the expense of distressed districts, further accelerating the resource gap.

V. Missouri H.B. 31 Fails to Address Regional Division and the Underlying Structural Problems of Missouri's TIF Statute

As explained in the section above, TIFs generally exacerbate the resource gap between affluent and distressed school districts.¹⁶² A second argument against the proposed school opt-out in Missouri H.B. 31 is that the proposal simply layers another decision-making body on top of the already complex and fractured TIF approval process, while ultimately doing nothing to address this byzantine maze.

A. *The Mini-Municipality Problem*

This Note focuses on TIF use in Missouri, and, in particular, the St. Louis metropolitan area. This is for two reasons. First, the

159. Hammill, *supra* note 14 (noting that Superintendent Hinson said that the financing arrangement will increase enrollment, straining the school district's budget).

160. See Weber, *supra* note 129, at 634 (stating that school districts "starting off with more poor children enrolled in a district slows the growth in property tax revenues" that come with a TIF redevelopment).

161. See discussion *supra* Section IV.B.i.

162. See discussion *supra* Section IV.B.

St. Louis region utilizes TIFs far more than anywhere else in the state.¹⁶³ Second, the proposed changes to Missouri's TIF statute would have the greatest impact on the St. Louis region. This is primarily due to St. Louis' mini-municipality problem. After the City of St. Louis split from St. Louis County during political uncertainty following the Civil War, small municipalities began popping up throughout the region.¹⁶⁴ The number of municipalities peaked at ninety-eight in 1952 and has since fallen to eighty-eight.¹⁶⁵ This may not seem that extreme, but, in comparison, Johnson County, Kansas (where Kansas City, Kansas is located) contains twenty municipalities in only a slightly smaller area.¹⁶⁶

In an effort to increase their tax bases, these small municipalities must fight with each other to attract new developers. Recognizing that anything can be considered "blighted" under section 99.810.1(1) of the Missouri Code, municipalities turn to TIFs.¹⁶⁷ Far too often, Luce explains, municipalities view TIFs as a "zero-sum" competition—if I get the new Walmart development then my neighbor will not.¹⁶⁸ This fuels unnecessary competition

163. THOMAS LUCE, RECLAIMING THE INTENT: TAX INCREMENT FINANCING IN THE KANSAS CITY AND ST. LOUIS METROPOLITAN AREAS 12 (2003).

164. See *St. Louis County Sees Dwindling Number of Municipalities*, U.S. NEWS & WORLD REP. (July 1, 2018), <https://www.usnews.com/news/best-states/missouri/articles/2018-07-01/st-louis-county-sees-dwindling-number-of-municipalities> [<https://perma.cc/9L3S-2PTK>], and Tim O'Neil, *Aug. 22, 1876: How the "Great Divorce" of St. Louis City and St. Louis County Started*, ST. LOUIS POST-DISPATCH (Aug. 22, 2016), https://www.stltoday.com/news/local/aug-how-the-great-divorce-of-st-louis-city-and/article_3e93fa29-7d01-570d-94f2-31eca08a9378.html [<https://perma.cc/RD8L-UMUA>]. Post-Civil War, the City of St. Louis was growing at a much faster pace than the rest of St. Louis County. To avoid county taxes and "redundant" government, the City proposed becoming independent. *Id.* After going to the polls, and then to court to contest supposed irregularities, the measure passed. *Id.* At the time the City was economically superior. *Id.* Today, after several failed attempts at reconciliation, the City is attempting to rejoin St. Louis County. Jack Grone, *City, Meet County: St. Louis Weighs Historic Merger*, CITYLAB (Jan. 30, 2019), <https://www.citylab.com/equity/2019/01/st-louis-missouri-city-county-consolidation-vote-2020/579436/> [<https://perma.cc/5ULV-AT3Y>]. For a whole host of reasons (many economic, but also racial) County citizens are vehemently opposed to such a merger. *Id.*

165. *St. Louis County Sees Dwindling Number of Municipalities*, *supra* note 164.

166. Johnson County, Kansas has an area of 477 square miles. *Fast Facts*, JOHNSON COUNTY KAN. (2018), <https://www.jocogov.org/government/about-johnson-county/fast-facts> [<https://perma.cc/G53P-7XKG>]. St. Louis County, Missouri has an area of 507 square miles. U.S. Census QuickFacts on St. Louis County, *Missouri*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/stlouiscountymissouri> [<https://perma.cc/ML5V-GT45>].

167. MO. ANN. STAT. § 99.810.1(1) (West 2016); LUCE, *supra* note 163, at v.

168. LUCE, *supra* note 163, at v.

between municipalities and only serves to further fracture the region.

These mini-municipalities are so small that the “copycat” syndrome that so-often plagues states with TIF statutes is made even worse.¹⁶⁹ Briffault likened this copycat syndrome to the political science classic Prisoner’s Dilemma.¹⁷⁰ It is in the region’s best interest if each municipality coordinates with each other regarding economic development. This cooperation ensures that municipalities receive necessary property tax revenue while preventing unnecessary competition over proposed redevelopment projects. Regional cooperation would also cull the race to the bottom wherein municipalities offer unsustainable, unreasonable, and unpopular incentives along with the proposed TIF district to entice companies to move within their borders.¹⁷¹

Redevelopment, for good or (mostly) for ill, is seen as a zero-sum game.¹⁷² One store usually can service the needs of several municipalities. This is especially so the more fractured the region is. The market simply cannot support a Walmart or Target in *each* of the eighty-eight municipalities in St. Louis County, but can reasonably support around a dozen stores.¹⁷³ The competition for these stores leads to humorous results. In 2010, a Walmart location straddling the boundary of St. Ann and Bridgeton moved two miles

169. Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 90 (2010) (“Even if it is not clear how well TIF works, if other localities are already using it, any locality also interested in promoting tax base growth is likely to be drawn to it, and to use it in areas where it is most likely to add to the tax base.”).

170. *Id.* at 92. The Prisoner’s Dilemma is a political science thought experiment illustrating that two rational actors will not necessarily cooperate with each other even when it is in their best interests to do so. Jim Chappelow, *Prisoner’s Dilemma*, INVESTOPEDIA, <https://www.investopedia.com/terms/p/prisoners-dilemma.asp> [https://perma.cc/R9AT-939P].

171. While not directly analogous, look only to Wisconsin’s ludicrous tax rebate offer to Foxconn for their U.S. headquarters. Andrew Liptak, *Foxconn Might Slow Hiring at its Wisconsin Plant*, VERGE (Jan. 19, 2019), <https://www.theverge.com/2019/1/19/18189480/foxconn-wisconsin-plant-possible-hiring-slowdown-jobs> [https://perma.cc/8VZ6-ZN78].

172. LUCE, *supra* note 163, at v.

173. There are currently ten Target stores and ten Walmart stores in St. Louis County. Number of Target locations in St. Louis County, Missouri, GOOGLE MAPS, <http://maps.google.com> (follow the hyperlink, then search “Target near St. Louis County, Missouri” and then count the number of Target stores within the boundaries of St. Louis County) [https://perma.cc/WHX5-4XG8]; Number of Walmart locations in St. Louis County, Missouri, GOOGLE MAPS, <http://maps.google.com> (follow hyperlink, then search “Walmart near St. Louis County, Missouri” and then count the number of Walmart stores within the boundaries of St. Louis County) [https://perma.cc/CU26-MN8N].

down the road to a new location completely within Bridgeton.¹⁷⁴ The impetus for the move? Bridgeton set up a TIF in the new location.¹⁷⁵

School districts, especially in the St. Louis region, necessarily overlap municipal boundaries. The above-described Walmart moved from one municipality to another but remained within the boundaries of the Pattonville School District.¹⁷⁶ The Pattonville School District could not care less which municipality has the nearest Walmart, and the infighting between the two municipalities cost the district millions of dollars over the life of the TIF.¹⁷⁷ This infighting lead one municipality to offer TIF funding to lure the Walmart fully within their borders,¹⁷⁸ which led to less money being directed to the school district.

To be fair, many of these smaller municipalities in St. Louis County are relatively inconsequential. For example, the city of Champ, Missouri boasts thirteen residents¹⁷⁹—hardly making it a redevelopment juggernaut. However, the sheer number of municipalities fuels factionalism in the region and intensifies the competition for big box stores, shopping malls, and office space.¹⁸⁰ Overlay one school district's boundary lines, which in St. Louis County necessarily contains pieces of sometimes as many as a dozen municipalities,¹⁸¹ and you are left with a school district being held hostage as municipalities race to the bottom in order to score a new development through TIF funding. While TIFs already cause conflict over what is typically seen as a zero-sum game,¹⁸² the sheer number of actors in the St. Louis region intensify this competition.¹⁸³ Any TIF reforms in Missouri must take this mini-municipality problem into account. Missouri already attempted to

174. Logan, *supra* note 15.

175. *Id.*

176. District Boundaries, PATTONVILLE SCH. DIST, <https://www.psd3.org/district> [<https://perma.cc/M2DC-7ZDX>].

177. MO. DEP'T OF REVENUE, 2016 TAX INCREMENT FINANCING IN MISSOURI: LOCAL TIF PROJECT INFORMATION AND FINANCIAL DATA 108–09 (2017) (listing the amount of revenue in the Manchester Highlands TIF fund as \$7,892,078.00).

178. Logan, *supra* note 15.

179. U.S. Census Community Facts for Champ, Missouri, U.S. CENSUS BUREAU, https://factfinder.census.gov/bkmk/cf/1.0/en/place/Champvillage, Missouri/POPULATION/DECENNIAL_CNT [<https://perma.cc/KPC6-L3ML>].

180. See Coffin, *supra* note 78, at 61; Mason & Thomas, *supra* note 21, at 55.

181. Interactive Map of the Parkway School District, PARKWAY SCH. DIST., http://www.pkwy.k12.mo.us/map/parkway_Map.cfm [<https://perma.cc/6CKF-KMVD>].

182. See LUCE, *supra* note 163, at v.

183. Logan, *supra* note 15.

do this through the establishment of the county TIF commissions,¹⁸⁴ but these commissions have fatal flaws that undermine their positive benefit.¹⁸⁵

B. Missouri House Bill 1, Missouri House Bill 1434, and Missouri's Attempt to Rectify the Mini-Municipality Problem

In spite of growing bipartisan calls to reform Missouri's underlying TIF statutes, the Missouri General Assembly has been slow to address the serious concerns regarding the lax TIF standards outlined above. To date there have been two major TIF reform bills passed in Missouri since the original bill was passed in 1982.¹⁸⁶ The Missouri General Assembly passed House Bill 1 (H.B. 1) in 2008, which attempted to provide additional oversight and stifle the growing competition for TIF redevelopment projects between municipalities.¹⁸⁷ The bill took the power to appoint TIF commissions out of the hands of municipalities in three counties (St. Louis, St. Charles, and Jefferson) and created county-wide commissions instead.¹⁸⁸ The rationale appears sound—a county-wide commission has no allegiance to a specific municipality and should approve TIFs that have the greatest positive impact on the region as a whole. This plan, however, had serious shortcomings.

The most serious—the municipality's veto power—was briefly explained above in the procedural requirements to approve a TIF district.¹⁸⁹ After the commission makes their recommendation, municipalities can veto their findings with a two-thirds vote.¹⁹⁰ Municipalities have not been shy in exercising this override power.¹⁹¹ What is the point of a county-wide TIF commission if you allow the municipality to simply override any decision they make with an easily attainable majority? As Coleman and Murphy explain, the average number of members in a municipality's

184. See discussion *supra* Section IV.A.ii.

185. *Id.*

186. H.B. 1, 94th Gen. Assemb., 1st Sess. (Mo. 2008); H.B. 1434, 98th Gen. Assemb., 2d Sess. (Mo. 2016); H.B. 1600, 98th Gen. Assemb., 2d Sess. (Mo. 2016).

187. Mo. Governor's Message (June 29, 2016).

188. H.B. 1, 94th Gen. Assemb., 1st Sess. §§ 99.820.2(7)–(8) (Mo. 2008).

189. See Hammill, *supra* note 14.

190. *Id.*

191. Mason & Thomas, *supra* note 21, at 227 (“The city of Ellisville did override the county TIF Commission in 2012 adopting an \$11 million TIF for a Wal-Mart store.”).

governing body in St. Louis County is six.¹⁹² To attain a two-thirds majority, all the average municipality needs are four votes instead of the usual three. And this vote would “override a 9- or 12-person panel charged with watching over interests larger than those of a single county or municipality.”¹⁹³ Yet, ten years after this reform was passed, there has been no new legislation significantly reforming this veto system, even as calls for abolishing this veto power—by academics and politicians alike—have grown.¹⁹⁴

Second, and more substantially, in 2016, Missouri House Bill 1434 (H.B. 1434) authorized consequences for municipalities that went against the recommendation of the county-wide TIF commission.¹⁹⁵ These punishments are relatively severe and were passed with widespread bipartisan support.¹⁹⁶ If a municipality overrides the TIF commission’s rejection, the TIF funding will be limited to “acquisition of land and other property, real or personal, or rights or interests therein . . . [d]emolition of buildings; and [t]he clearing and grading of land.”¹⁹⁷ These restrictions greatly limit where TIF money can go and, in theory, should prevent municipalities from simply overriding the county TIF commissions without recourse. Because this reform is still relatively new, it is hard to study its impact, but there are some signs the reforms are effective. The Municipal League of St. Louis, which represents most municipalities in St. Louis County, opposed this reform, stating it would usurp the power of municipalities and undermine the original intent of TIF funding.¹⁹⁸ Yet, that seems to be the point. This reform might address the issues of competition that authors like Weber believe “strain[s] interjurisdictional relations because it grants one taxing body (the municipality) the authority to deny

192. COLEMAN & MURPHY, *supra* note 42, at 11.

193. *Id.*

194. COLEMAN & MURPHY, *supra* note 42, at 11–12; Mason & Thomas, *supra* note 21, at 226–27; *cf.* VanDyke, *supra* note 105, at 805–06 (arguing that TIF commissions must be more selective in their approvals to ensure they are not “swayed by the glitz and glamour of major developers or franchise operations that promise hundreds of jobs and millions of sales.”).

195. Mo. Governor’s Message (June 29, 2016).

196. MO. H. JOURNAL, 98th Gen. Assemb., 2d Sess. 3601–03 (2016) (indicating the bill passed 114-37).

197. H.B. 1434, 98th Gen. Assemb., 2d Sess. § 99.825.2 (Mo. 2016); H.B. 1600, 98th Gen. Assemb., 2d Sess. § 99.825.2 (Mo. 2016)

198. Mark Schlinkmann, *Legislature Passes New Restrictions on TIF Incentives to Developers*, ST. LOUIS POST-DISPATCH (May 13, 2016), https://www.stltoday.com/news/local/govt-and-politics/legislature-passes-new-restrictions-on-tif-incentives-to-developers/article_937ff4eb-9330-5c75-bed4-3873ff1dc3ec.html [<https://perma.cc/2GRQ-UUF5>].

other taxing bodies access to new property value growth.”¹⁹⁹ This Note argues, and some concur,²⁰⁰ that no TIF reform is more important than further curtailing municipalities’ veto power.

C. *Missouri H.B. 31 Attempts to Solve This Issue, but Once Again Misses the Mark*

Proponents of the reforms in H.B. 31 argue this is exactly the situation that school opt-out is meant to rectify. Yet, looking at the history of TIF laws in Missouri shows this is a misguided assumption. To see this, one only needs to look to the other veto already in place.²⁰¹ Municipalities already have the power to veto the decision of the county TIF commissions with a two-thirds vote of the city council.²⁰² While there are consequences in place for municipalities that exercise this option, this veto power has been widely criticized and other papers have called for its elimination.²⁰³ The goal of the county TIF commissions was to curb unnecessary competition between small, symbiotic municipalities by placing some of the TIF decision making process in the hands of a regional body. There, the commission could consider regional factors and utilize TIFs in a way more in line with their original intent. These commissions were also designed to comprise representatives from all concerned parties.²⁰⁴

If there are calls to abolish the veto power of *municipalities*, it therefore makes little sense that, in order to reform Missouri’s TIF system, the state needs to expand the use of one of the most maligned aspects of the current statutory scheme to schools.²⁰⁵ This can lead to one of two situations.

199. Weber et al., *supra* note 53, at 37.

200. See Nguyen-Hoang, *supra* note 130, at 537 (suggesting reforming TIF programs by allowing school districts to opt in or out of TIF plans as well as reinstating the “but-for” test as a condition for TIF program approval); COLEMAN & MURPHY, *supra* note 42, at 14 (advocating for more stringent approval requirements for TIF program implementation and elimination of sales tax revenues for TIF programs); Logan, *supra* note 15 (arguing that instead of bringing retail stores and jobs to communities, TIF programs can and should incentivize constructing office buildings and factories, which would bring new and better paying jobs to communities).

201. H.B. 1, 94th Gen. Assemb., 1st Sess. §§ 99.820.2(7)–(8) (Mo. 2008).

202. *Id.*

203. Mason & Thomas, *supra* note 21, at 225.

204. MO. ANN. STAT. § 99.820.2(1) (West 2016).

205. Mason & Thomas, *supra* note 21, at 227 (“Several St. Louis interviewees suggested that these county TIF Commissions should be strengthened to make it even more difficult for a city to adopt a TIF proposal that the commission has ruled against.”).

First, if H.B. 31 is adopted it would layer another map of school district boundaries on top of the municipal map. This in turn would lead to increased fracturing of the region, which can only make the mini-municipality problem worse.²⁰⁶ There is an argument that this would require the building of greater consensus and this kind of system—with municipalities and schools able to check each other and the county commission—encourages more mundane TIF districts. However, this consensus must come on a regional (either county or joint-county) level. This kind of system might work in a more unified region with fewer municipalities and school districts, but given the sheer number of municipalities and school districts, this layering will simply pit municipalities against the county, or against school districts and so on.²⁰⁷ If the factionalism built into Missouri's TIF scheme fuels the resource gap between affluent and distressed schools, increased factionalism will make it worse.

An example TIF from Missouri that illustrates this conundrum is the Manchester Highlands TIF.²⁰⁸ In 2005, the City of Manchester, Missouri, designated the “Highway 141/Manchester Road Redevelopment Area.” This TIF was ultimately approved because the “[p]roject had unusual/extraordinary costs that made the project financially unfeasible in the market place [and] required significant public infrastructure investment.”²⁰⁹ The Manchester Highlands TIF poached a Walmart from a different municipality a few miles away.²¹⁰ In addition to the Walmart, there are several other big box and multi-use stores, including a Nordstrom Rack and Best Buy.²¹¹ As of publication, there are seven years left before the TIF district expires.²¹²

This TIF district sits within the boundaries of the Parkway School District that is fairly analogous to the Shawnee Mission School District discussed in the subsection above. Parkway School District primarily covers the St. Louis suburbs of Chesterfield, Creve Coeur, Manchester, Maryland Heights, and Town and

206. Coffin, *supra* note 78, at 61.

207. *Id.* at 61.

208. *Manchester Highlands*, VEREIT, <http://www.shopmanchesterhighlands.com/> [<https://perma.cc/WE49-P98M>].

209. MO. DEP'T OF REVENUE, *supra* note 177.

210. This behavior seems to be a recurring theme. See Logan, *supra* note 15.

211. The development site lists each of the stores in the development on their home page. *Manchester Highlands*, VEREIT, <http://www.shopmanchesterhighlands.com/> [<https://perma.cc/WE49-P98M>].

212. At the time the 2016 TIF report was published the TIF still had 11 years until retirement. MO. DEP'T OF REVENUE, *supra* note 177.

Country.²¹³ Each of these suburbs is located in what is colloquially called “West County,” a well-to-do business hub of the St. Louis region.²¹⁴ The district is primarily White (80%), with a sizeable Asian student population (9%) as well, and a median household income of \$115,947 for households with children in public school.²¹⁵

The Manchester Highlands TIF was not approved without controversy.²¹⁶ As the TIF was approved in 2005 and later amended in 2007, the county TIF commissions were not yet in place.²¹⁷ However, the controversy over the Manchester Highlands TIF approval illustrates how a fractured region leads to unnecessary competition and animosity.

Second, allowing school districts to opt-out—and essentially kill TIF projects—negates any improvement that could be made by eliminating municipalities’ ability to veto the county TIF commission’s recommendations. While not nearly as numerous as the number of municipalities in St. Louis County, there are still twenty-four school districts within the county boundaries.²¹⁸ Even worse, some school districts like the Parkway School District cover wide swaths of land while others like the Bayless School district cover small parcels of land.²¹⁹ Any increase in regional cooperation brought about by removing the municipal veto would simply be

213. Interactive Map of the Parkway School District, PARKWAY SCH. DIST., http://www.pkwy.k12.mo.us/map/parkway_Map.cfm [<https://perma.cc/6CKF-KMVD>].

214. *West County*, URBAN DICTIONARY, <https://www.urbandictionary.com/define.php?term=west%20county> [<https://perma.cc/4PWH-6LP4>] (“The suburban region west of the city of St. Louis. Includes the municipalities of Clayton, Ladue, Creve Coeur, Olivette, University City, Chesterfield, Ballwin, Wildwood.”).

215. *ACS-ED: District Demographic Dashboard 2013–17 for Parkway School District*, NAT’L CTR. FOR EDUC. STAT, <https://nces.ed.gov/programs/edge/acsdashboard/#> (to see specific district data type “Parkway C-2” into the search bar labeled “Begin Your Search”) [<https://perma.cc/JTC4-5JY3>].

216. *See Adams v. City of Manchester*, 242 S.W.3d 418 (Mo. Ct. App. 2007) (affirming a grant of summary judgement in favor of the City of Manchester in a dispute over whether the City accurately applied the statutory cost-benefit analysis in approving the Manchester Highlands TIF); *see* Mary Shapiro, *Board Approves Revised Plan for Manchester Highlands*, ST. LOUIS POST-DISPATCH (May 13, 2007), https://www.stltoday.com/suburban-journals/board-approves-revised-plan-for-manchester-highlands/article_e4012c87-76e9-5b5a-873a-052e8f916487.html [<https://perma.cc/J5US-6TX9>] (“However, the [Manchester Highlands] project has been delayed by lawsuits filed by a handful of residents, as well as efforts to complete land acquisitions.”).

217. H.B. 1 was passed in 2008. H.B. 1, 94th General Assemb., 1st Sess. §§ 99.820.2(7)–(8) (Mo. 2008).

218. School District Map, *supra* note 95.

219. *Id.*

absorbed by the school districts if they gain the ability to opt-out of any proposed TIF.

VI. State Funding Fails to Fill in the Gaps Left by TIF Districts

Before addressing any proposed solution, it bears quick mention of one complicating factor not addressed thus far in this Note. Many states, but not Missouri, allow for increased school aid to fill in the funding gaps left by open TIF districts.²²⁰ This would seem to solve the problem as it gives schools no monetary incentive to opt-out of proposed TIFs. Yet, this temporary aid does not matter for the thesis of this Note. School aid to fill funding gaps is great and used in many locations.²²¹ This school aid can offset the short term lost revenue from TIF projects, but TIF districts are, by design, temporally limited. The TIF district will eventually expire and this increased school aid will vanish along with it. At that point the school district will need to rely on whatever property tax revenue is brought in by the finished TIF development, and, as explained repeatedly throughout this Note, TIFs often do not create new property tax revenue.

VII. Proposed Solution: Appointments Reallocation and Narrow School Opt-Outs

There is no silver bullet to solve all of TIF's problems. Hundreds of pages have been written on various issues with the current structure of TIFs in Missouri.²²² Yet, Missouri has already demonstrated a willingness to meaningfully reform TIFs in a way

220. *Schools Historically Have Little Power in TIF Decisions*, JEFFERSON CITY NEWS TRIB. (Apr. 10, 2016), <http://www.newstribune.com/news/story/story/2016/Apr/10/schools-historically-have-little-power-tif-decision/546916/> [<https://perma.cc/D5QG-S5XG>] (“Some states provide additional state aid to districts with TIFs to replenish some of the revenue the district would otherwise receive from property taxes. However, Missouri does not make up for the revenue lost from TIFs, said Department of Elementary and Secondary Education spokesperson Sarah Potter.”).

221. Missouri Courts interpret the legislative intent of these state aid statutes to “at least partially equalize the relative disparity in wealth between affluent and less affluent school districts.” *State ex rel. Sch. Dist. v. Young*, 519 S.W.2d 328, 333 (Mo. Ct. App. 1975).

222. *See, e.g., Reinert, supra* note 91, at 1019; *Williams, supra* note 91, at 255 (discussing different issues plaguing Missouri’s TIF statute).

that bring them more in line with their original purpose.²²³ However, the current reforms don't go far enough. Furthermore, the proposed reforms in H.B. 31, in particular school-opt out, will further fuel unnecessary competition between municipalities, breed hostility between municipalities and school districts, and increase the resource gap between affluent and distressed school districts.²²⁴

The 94th Missouri General Assembly clearly wanted to stifle competition between municipalities for TIFs when they instituted county-wide TIF commissions in the St. Louis metropolitan area.²²⁵ However, the breakdown of the membership of these commissions skews heavily towards the county and municipalities, with few members coming from school districts or other services that receive property tax income.²²⁶ As it stands, these county TIF commissions have twelve members.²²⁷ The appointment of commissioners is as follows: six by the county executive, three by municipalities that utilize TIFs, two by the school boards of the county, and one by other agencies that receive property tax revenue.²²⁸

Instead of adding more seats, appointments to the county TIF commissions should merely be reallocated. The county school boards should appoint four members instead of two, with the additional two seats being taken from the seats allocated to the county executive. This allocation more accurately recognizes the role of all of the interested players. The county is important and, as such, has the most seats. If going any further, one runs the risk of weakening the influence of the county too much, negating the entire purpose of the county TIF commission. Public schools receive most of their funding through property taxes.²²⁹ It makes sense, then, that when discussing the allocation of property tax revenue, the schools should have quite a bit of say. Having a full third of the county TIF commission seats grants them that authority while not allowing them to simply veto any TIF with which they disagree.

Further, the seats allocated to the school districts should be split. Two of the seats should be appointed by affluent school

223. See discussion *supra* Section I.D.

224. See discussion *supra* Section IV.A.i.

225. H.B. 1, 94th General Assemb., 1st Sess. §§ 99.820.2(7)–(8) (Mo. 2008).

226. MO. ANN. STAT. § 99.820.3(1) (West 2016).

227. *Id.* §§ 99.820.3(1) (a)–(d).

228. *Id.*

229. See, e.g., PARKWAY SCH. DIST., COMPREHENSIVE ANNUAL FINANCIAL REPORT 7 (2015) (“The largest source of revenue for the District continues to be locally assessed property taxes.”).

districts and two by distressed school districts. How to demarcate “economic distress” would be up to the state. This increased school district representation, with increased diversity in who occupies the seats allocated to the school board, will give the schools increased say in how TIFs are administered while considering the needs of different kinds of school districts. This theory appears to be the rationale behind the school opt-out proposal in H.B. 31.

This reallocation, however, does not share the same negative consequences of school opt-out.²³⁰ Reallocation provides school districts with more influence over how TIFs are approved while preventing them from single-handedly preventing any TIF they do not like. In addition, by ensuring there is diversity in *type* of school district represented, the county TIF commissions consider the needs of both affluent and distressed school districts without allowing one kind of district to overpower the other.

Next, the ability of municipalities to veto the decision of a TIF commission should be further curtailed. If the municipality can easily veto a decision by the county TIF commission, then what’s the point? The Missouri General Assembly has already limited the power of the municipal veto by curtailing the use of TIF funds in the event a municipality vetoes.²³¹ Simply abolishing the veto altogether would prove deeply controversial and appears to undermine TIF’s goal of local control over land redevelopment. Instead, keeping in mind Coleman and Murphy’s observation that the current two-thirds majority is too easy to attain, the bar for a municipality to veto the commission should be raised.²³² Instead of a two-thirds majority, the municipality’s governing body must unanimously vote to override the county TIF commission’s recommendation. This structure makes overriding the county TIF commission’s recommendation difficult but not impossible. It also ensures that there is still a sense of local control over the TIF approval process.²³³

230. Weber et al., *supra* note 53, at 35–36; see discussion *supra* Sections I.D, IV.A.i; see KAN. STAT. ANN. § 12-1771(d) (2018).

231. H.B. 1434, 98th Gen. Assemb., 2d Sess. § 99.825.2 (Mo. 2016); H.B. 1600, 98th Gen. Assemb., 2d Sess. § 99.825.2 (Mo. 2016).

232. COLEMAN & MURPHY, *supra* note 42, at 11.

233. This reform might also persuade the county commissions to implement, without statutory changes, an increased blight standard for their own internal review of TIF proposals. This unilateral change in approval standards seems to be the underlying purpose of the county commissions in general. Message from Jay Nixon, Governor of Missouri, to the East-West Gateway Council of Governments (June 29, 2016) (on file with author). It is true that the county commissions could

Finally, county TIF commissions should be expanded to the Kansas City Metropolitan Area, in particular Jackson, Clay, and Platte counties. These three counties comprise most of the urban and suburban core of Kansas City within Missouri. As explained above, Kansas City has been less enthusiastic in their use of TIF funding for redevelopment which led to their exclusion from the 2008 bill instituting county TIF commissions.²³⁴ It makes sense, though, for there to be consistency in Missouri's TIF laws. In addition, a change in municipal governance might lead to more aggressive use of TIF districts in the Kansas City area.

The second recommendation is to implement school opt-out in a far narrower sense than that proposed by H.B. 31. States like Minnesota grant only schools a veto power for only TIF proposals involving housing redevelopments.²³⁵ As these types of TIFs tend to be proposed in distressed municipalities, the power would primarily be wielded by distressed school districts.²³⁶ As such, this reform might *narrow* the resource gap. It would allow distressed school districts to forgo further economic development while using a steady stream of property tax revenue to improve the fiscal condition of their school district. Simply put, it gives fiscal control back to distressed school districts.

It is important to emphasize what this Note is *not* advocating for. It is not advocating for the outright abolition of TIFs. TIFs, when done well, can make a marked change to an otherwise abandoned piece of property.²³⁷ They are intended to provide the

simply do this now without the reform, but increased pressure from school-district-appointed commission members might make it politically viable for the commission to adopt new standards when they review proposed TIFs. Under Mo. Stat. Section 99.824.4(3), the county commission is either tasked with an up or down vote on the proposed TIF. There is no requirement to give a formal reason for the rejection. *Id.* While this meeting must be public, it allows for a potential solution to the tax blight and "but for" tests within the current statutory framework. *Id.* However, there is no current pressure for these commissions to change these standards. With more members appointed by school boards—in particular from distressed school districts—there might be enough internal and external pressure on the commissions to adopt new standards.

234. H.B. 1, 94th Gen. Assemb., 1st Sess. §§ 99.820.2(7)–(8) (Mo. 2008).

235. *See supra* text accompanying notes 134–136.

236. *See Coffin, supra* note 78, at 78.

237. *See generally*, ST. LOUIS INNOVATION DIST., ST. LOUIS INNOVATION DISTRICT TAX INCREMENT FINANCING (TIF) REDEVELOPMENT PLAN 3 (2012) ("Not only are structures in the Redevelopment Area old, but many are functionally obsolete. These structures were built when the Area was largely a warehousing and manufacturing area supported by rail service, which no longer exists."). Today this district has been transformed into a biotech research hub. *The District*, CORTEX INNOVATION CMTY., <https://cortexstl.com/the-district/> [<https://perma.cc/5H9A-MRXT>].

necessary economic spark to help areas grow and redevelop to suit the current economic environment. Yet, more often than not, TIFs are not done well. They have been abused by developers and municipalities stifling economic development in truly distressed areas. This abuse, though, does not warrant an extreme reaction like doing away with TIFs in general. In addition, TIFs are too popular with developers and municipalities to eliminate them.²³⁸ Instead, it demands logical, simple reforms to the underlying TIF statutes that redistributes power from those with means to those without. Missouri has shown a desire to do this plan and the reforms proposed in this Note help further that goal.

Conclusion

TIFs are not inherently bad. They have been used for valid and important redevelopment projects.²³⁹ However, like many good things in the United States, municipalities and developers with deep pockets have exploited loopholes in the current statutes to their benefit. This practice comes at the expense of both economically distressed municipalities and school districts. There is no question Missouri's TIF laws need reform, especially when it comes to the amount of say school districts have in the TIF approval process. However, reforms proposed in H.B. 31 simply do not address the underlying structural and economic stressors on the current TIF system. Instead of allowing all schools to opt-out of controversial TIF proposals, it would only realistically be an option for affluent school districts.²⁴⁰ This result, in turn, widens the resource gap between affluent and distressed school districts by allowing affluent school districts to only approve TIFs that provide a large enough return on investment. Further, school opt-out would only serve to further fracture an already fragmented region, possibly rendering any decision on TIF funding an impossible task.

The two simple reforms proposed in this Note would lessen the problems plaguing the current TIF system in Missouri. The system would balance the need for school districts to have a say over where

238. See Coffin, *supra* note 78, at 60 (“While tax increment financing is considered a very effective (*and popular*) economic development tool, public officials often face difficulties in putting it to use.”) (emphasis added); Briffault, *supra* note 169, at 74 (“One study of TIF in Indiana concluded that TIF may be the only politically acceptable tool for financing infrastructure.”) (internal quotation marks omitted).

239. LINCOLN REPORT, *supra* note 8, at 22. For example, the Cortex Redevelopment Plan in Midtown St. Louis has brought in almost 1,000 new jobs, \$155 million in new investments and revitalized an entire neighborhood—all with only \$10 million in TIF funding. LINCOLN REPORT, *supra* note 8, at 22

240. See discussion *supra* Section IV.B.i.

their funding is being sent with the needs of the municipalities to redevelop legitimately blighted land. It increases the power of economically distressed school districts to prevent overeager municipalities from making rash decisions to increase the municipality's economic base to the detriment of the school district. And, most importantly, it accomplishes these goals without fueling an increase in the resource gap by redistributing some of the power from affluent to distressed school districts.

TIFs have always been about power. Originally, they were about local power in the face of decreasing federal funds for urban redevelopment. Today, TIFs are about affluent regions using their economic power to centralize high-revenue multi-use developments within their municipal boundaries. These two proposed reforms help restore balance to that power.