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BILL ANALYSIS

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Senate Bill 1159 (Substitute S-2 as reported)
Sponsor: Senator Jason E. Allen
Committee: Natural Resources and Environmental Affairs

Date Completed: 6-2-06

RATIONALE

Tax increment financing (TIF) and similar economic development tools are designed to "capture" the tax revenue from the incremental growth in property value within a district, for use in financing a variety of public improvements in that area. These programs generally have been used in commercial and industrial areas to foster economic development in a community. Reportedly, some local governments have been struggling to fund efforts to control invasive species in inland lakes, as well as necessary improvements to sewer system infrastructure. It has been suggested that municipalities should be authorized to adopt TIF plans to finance such improvements to local water resources.

CONTENT

The bill would create the "Water Resource Improvement Tax Increment Finance Authority Act" to do the following:

- Authorize a municipality (a city or township) to establish a water resource improvement tax increment finance authority by ordinance.
- Provide for the supervision and control of an authority by a board that included the municipality's chief executive officer and five to nine members appointed by the chief executive, subject to the approval of the municipality's governing body.
- Specify an authority board's powers, including the implementation of a development plan to improve water resource quality.

- Provide for the financing of authority activities, including borrowing money and issuing bonds.
- Allow an authority to prepare and submit to the municipality's governing body a TIF plan, which would have to include a development plan for the authority's development area.
- Allow an authority to sell bonds to finance a TIF plan's development program.
- Specify requirements for a development plan.
- Specify requirements for an authority's budget approval process.
- Require that a municipality dissolve an authority after the authority completed its purpose; and provide that the authority's property and assets remaining after the satisfaction of its obligations would belong to the municipality.
- Authorize the State Tax Commission to institute proceedings to enforce the proposed Act and to promulgate rules for its administration.

Water Resource Improvement TIF Authority

If the governing body of a municipality determined that it was necessary for the best interests of the public to promote water resource improvement and/or access to inland lakes in a water resource improvement district, the governing body could by resolution declare its intention to create and provide for the operation of an authority within the boundaries of a water resource improvement district. A municipality could establish multiple authorities, but a parcel of property could not be included in more than one authority.

("Water resource improvement" would mean enhancement of water quality and water-dependent natural resources, including the control of aquatic nuisance species, as defined in Section 3101 of the Natural Resources and Environmental Protection Act (NREPA), sewer systems, and storm water systems. "Water resource improvement district" would mean an inland body of water and land up to one mile of the shoreland of the inland lake. "Inland lake" would mean a natural or artificial lake, pond, or impoundment. The term would not include the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area smaller than five acres.

Section 3101 of NREPA defines "aquatic nuisance species" as a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on those waters.)

An authority would be a public body corporate that could sue and be sued in any court of this State. An authority would possess all the powers necessary to carry out its purpose. The enumeration of a power in the proposed Act could not be construed as a limitation upon an authority's general powers.

In the resolution of intent, the governing body would have to set a date for a public hearing on the adoption of a proposed ordinance creating the authority and designating the boundaries of the development area. The bill specifies notice requirements for a public hearing, including published notice in a newspaper of general circulation in the municipality, mailed notice to the property taxpayers of record in the proposed development area, and mailed notice to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the authority were established and a TIF plan were approved.

A citizen, taxpayer, or property owner of the municipality or an official from a taxing jurisdiction with millage that would be subject to capture would have the right to be heard in regard to the establishment of the authority and the boundaries of the proposed development area. The municipality's governing body could not

incorporate into the development area land not included in the description contained in the notice, but could eliminate described lands from the development area in the final determination of the boundaries.

At least 60 days after the public hearing, if the governing body intended to proceed with the establishment of the authority, it would have to adopt, by majority vote of its members, an ordinance establishing the authority and designating the boundaries of the development area within which the authority would exercise its powers. The adoption of the ordinance would be subject to any applicable statutory or charter provisions in respect to the approval or disapproval by the chief executive or other officer of the municipality and the adoption of an ordinance over his or her veto. The ordinance would have to be filed with the Secretary of State promptly after its adoption and would have to be published at least once in a newspaper of general circulation in the municipality.

The governing body could alter or amend the boundaries of the development area to include or exclude land from it in the same manner as adopting the ordinance creating the authority.

A municipality that had created an authority could enter into an agreement with an adjoining municipality that had created an authority jointly to operate and administer the authorities under an interlocal agreement under the Urban Cooperation Act.

If a development area were part of an area annexed to or consolidated with another municipality, the authority managing that development area would become an authority of the annexing or consolidated municipality. Obligations of that authority incurred under a development or tax increment plan, agreements related to a development or tax increment plan, and bonds issued under the proposed Act would remain in effect following the annexation or consolidation.

Authority Board

An authority would be under the supervision and control of a board consisting of the chief executive officer (mayor, city manager, or township supervisor) of the municipality, or

his or her designee, and not less than five or more than nine members as determined by the municipality's governing body. Members would have to be appointed by the chief executive officer, subject to approval by the governing body. A majority of the members would have to be people having an ownership or business interest in property located in the development area. At least one member would have to be a resident of the development area or of an area within a half-mile of any part of the development area.

Board members would serve staggered terms and vacancies would be filled by appointment of the chief executive officer. Board members would serve without compensation, but would be reimbursed for actual and necessary expenses. The board would have to elect a chairperson. The board would be subject to the Open Meetings Act and the Freedom of Information Act.

The board could employ and fix the compensation of a director, subject to the governing body's approval. The director would serve at the pleasure of the board. A board member would not be eligible to hold the position of director. Before beginning his or her duties, the director would have to post a bond in the sum determined in the ordinance establishing the authority payable to the authority for its use and benefit, approved by the board, and filed with the municipal clerk. The premium on the bond would be considered an operating expense of the authority, payable from funds available to it for expenses of operation.

The director would be the chief executive officer of the authority. Subject to the board's approval, the director would supervise and be responsible for the preparation of plans and the performance of the authority's functions in the manner authorized by the proposed Act. The director would have to attend board meetings and give the board and the governing body a regular report covering the authority's activities and financial condition. If the director were absent or disabled, the board could designate a qualified person as acting director to perform the duties of the office. Before beginning his or her duties, the acting director would have to furnish bond, as required of the director. The director would have to furnish the board

with information or reports governing the operation of the authority as the board required.

Additionally, the board could employ and fix the compensation of a treasurer and secretary. The treasurer would have to keep the authority's financial records and, together with the director, would have to approve all vouchers for the expenditure of the authority's funds. The treasurer would have to perform all duties delegated to him or her by the board and would have to furnish bond in an amount prescribed by the board.

The secretary would have to maintain custody of the official seal and of records, books, documents, or other papers not required to be maintained by the treasurer. The secretary also would have to attend board meetings and keep a record of its proceedings and perform other duties delegated by the board.

The board also could retain legal counsel to advise it in the proper performance of its duties. The legal counsel would have to represent the authority in actions brought by or against it.

The board could employ other personnel it considered necessary.

Authority employees would be eligible to participate in municipal retirement and insurance programs of the municipality as if they were civil service employees, except that they would not be civil service employees.

Board Powers

An authority board could do any of the following:

- Prepare an analysis of water resource improvement and access to inland lakes issues taking place in the development area.
- Study and analyze the need for water resource improvements and access to inland lakes upon the development area.
- Develop long-range plans for water resource improvement and access to inland lakes within the district.
- Implement any plan of development to for water resource improvement and access to inland lakes in the development

area necessary to achieve the purposes of the proposed Act in accordance with the authority's powers granted by it.

- Plan, propose, and implement an improvement to a public facility within the development area to comply with the barrier-free design requirements of the State Construction Code promulgated under the State Construction Code Act.
- Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.
- Fix, charge, and collect fees, rents, and charges for the use of any facility, building, or property under its control or any part of the facility, building, or property, and pledge the fees, rents, and charges for the payment of revenue bonds issued by the authority.
- Lease, in whole or in part, any facility, building, or property under its control.
- Accept grants and donations of property, labor, or other things of value from a public or private source.
- Acquire and construct public facilities.

The board also could plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility that was necessary or appropriate to the execution of a plan that, in the board's opinion, would aid in water resource improvement and or access to inland lakes in the development area. The board would be encouraged to develop a plan that conserved the natural features, reduced impervious surfaces, and used landscaping and natural features to reflect the predevelopment site.

In addition, the board could improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, clear, improve, maintain, repair, and operate any public facility, building, and any necessary or desirable appurtenances to those buildings that the authority determined were reasonably necessary to achieve the purposes of the proposed Act, within the development area for the use, in whole or in part, of any public or private person or corporation, or a combination.

The board also could acquire by purchase or otherwise, on terms and conditions and in a manner the authority considered proper, or own, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or

interests in the property, that the authority determined was reasonably necessary to achieve the Act's purposes, and to grant or acquire licenses, easements, and options.

("Public facility" would mean a street, and any improvements to a street, including street furniture and beautification, park, parking facility, recreational facility, right of way, structure, waterway, bridge, lake, pond, canal, utility line or pipe, or building, including access routes designed and dedicated to use by the public generally, or used by a public agency, that was related to access to inland lakes or a water resource improvement. The term also would include a water resource improvement.)

The authority would be an instrumentality of a political subdivision for the purposes of Public Act 227 of 1972 (which provides for financial assistance and other services for people displaced by a State agency's acquisition of real property).

Authority Financing

The authority's activities would have to be financed from one or more of the following sources:

- Donations to the authority for the performance of its functions.
- Money borrowed and to be repaid, as specified in the bill.
- Revenue from any property, building, or facility owned, leased, licensed, or operated by the authority or under its control, subject to the limitations imposed upon the authority by trusts or other agreements.
- Proceeds of a TIF plan established under the bill.
- Proceeds from a special assessment district created as provided by law.
- Money obtained from other sources approved by the municipality's governing body or otherwise authorized by law for use by the authority or the municipality to finance a development program.

Money the authority received that did not fall under the categories described above would have to be deposited immediately to the credit of the authority, subject to disbursement under the proposed Act. Except as provided in the Act, the municipality could not obligate itself, and could not be obligated, to pay any sums

from public funds, other than money received by the municipality under the bill, for or on account of the activities of the authority.

Borrowing & Bonding

An authority could borrow money and issue its negotiable revenue bonds under the Revenue Bond Act. With the approval of the municipality's governing body, the authority could borrow money and issue its revenue bonds or notes to finance all or part of the costs of water resource improvements in connection with the implementation of a development plan in the development area; or the refund, or refund in advance, of bonds or notes issued under the bill.

An authority could finance any of the following by issuing revenue bonds or notes:

- The cost of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing property in connection with the implementation of a development plan in the development area.
- Any engineering, architectural, legal, accounting, or financial expenses.
- The costs necessary or incidental to the borrowing of money.
- Interest on the bonds or notes during the period of construction.
- A reserve for payment of principal and interest on the bonds or notes.
- A reserve for operation and maintenance until sufficient revenue had developed.

An authority could secure the bonds and notes by mortgage, assignment, or pledge of the property and any money, revenue, or income received in connection with the property.

A pledge made by the authority would be valid and binding from the time it was made. The money or property pledged by the authority immediately would be subject to the lien of the pledge without a physical delivery, filing, or further act. The lien of a pledge would be valid and binding against parties having claims of any kind in tort, contract, or otherwise, against the authority, whether or not the parties had notice of the lien. The resolution, the trust agreement, and any other instrument by which a pledge was created would not need to be filed or recorded to be enforceable.

Bonds and notes issued under the bill would be exempt from all taxation in Michigan. The interest on the bonds or notes would be exempt from all taxation in Michigan, even if subject to Federal income tax.

The municipality would not be liable on bonds or notes of the authority, and the bonds or notes would not be a debt of the municipality. They would have to contain on their face a statement to that effect.

An authority's bonds and notes could be invested in by all public officers, State agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and could be deposited with and received by all public officers and the agencies and political subdivisions of this State for any purpose for which the deposit of bonds was authorized.

Tax Increment Financing

If an authority determined that it was necessary for the achievement of the proposed Act's purposes, it could prepare and submit a tax increment financing plan to the governing body of the municipality. The plan would have to include a development plan, a detailed explanation of the TIF procedure, the maximum amount of bonded indebtedness to be incurred, and the duration of the program, and would have to be in compliance with the Act. The plan would have to contain a statement of the estimated impact of the TIF plan on the assessed values of all taxing jurisdictions in which the development area was located. The plan could provide for the use of part or all of the captured assessed value, but the portion intended to be used by the authority would have to be stated clearly in the TIF plan. The authority or municipality could exclude from the captured assessed value growth in property value resulting solely from inflation, and the plan would have to set forth the method for excluding such growth.

Approval of a TIF plan would have to comply with the bill's notice, hearing, and disclosure provisions for the adoption of a development plan. If the development plan were part of the TIF plan, only one hearing and approval procedure would be required.

Before the public hearing on a TIF plan, the governing body would have to provide a reasonable opportunity to the taxing jurisdictions levying taxes subject to capture to meet with the governing body. The authority would have to inform the taxing jurisdictions fully of the fiscal and economic implications of the proposed development area. The taxing jurisdictions could present their recommendations at the public hearing on the tax increment financing plan. The authority could enter into agreements with the taxing jurisdictions and the governing body of the municipality in which the development area was located to share a portion of the captured assessed value of the development area.

A TIF plan could be modified if the modification were approved by the governing body upon notice and after public hearings and agreements as required for approval of the original plan.

Within 60 days after the public hearing, the governing body in a taxing jurisdiction levying ad valorem property taxes that otherwise would be subject to capture could exempt its taxes from capture by adopting a resolution to that effect and filing a copy with the clerk in the municipality proposing to create the authority. In the event that the governing body levied a separate millage for public library purposes, at the request of the public library board, that separate millage would be exempt from the capture. The resolution would take effect when filed with the clerk, and would remain effective until a copy of a resolution rescinding it was filed with the clerk.

Municipal and county treasurers would have to transmit tax increment revenue to the authority. The authority would have to spend the revenue for the development program under the terms of the TIF plan. Unused funds would revert proportionately to the respective taxing bodies. The revenue could not be used to circumvent existing property tax limitations. The municipality's governing body could abolish the TIF plan if it found that the purposes for which it was established were accomplished. The plan could not be abolished, however, until the principal of, and interest on, bonds issued under the proposed Act had been paid or funds sufficient to make the payment had been segregated.

An authority annually would have to submit to the governing body of the municipality and the State Tax Commission a report on the status of the TIF account. The report would have to include the following:

- The amount and source of revenue in the account.
- The amount in any bond reserve account.
- The amount and purpose of expenditures from the account.
- The amount of principal and interest on any outstanding bonded indebtedness.
- The initial assessed value of the project area.
- The captured assessed value retained by the authority.
- The tax increment revenue received.
- The number of public facilities developed.
- The number of water resource improvements made.
- A brief description of each water resource improvement made within the district.
- Any additional information the governing body considered necessary.

By resolution of its governing body, an authority could authorize, issue, and sell tax increment bonds subject to the limitations set forth in the bill to finance the development program of the TIF plan. The bonds would have to pledge solely the tax increment revenue of a development area in which the project was located or a development area from which tax increment revenue could be used for this project, or both. In addition or in the alternative, the bonds could be secured by any other revenue identified in the bill as sources of financing for activities of the authority that the authority pledged specifically in the resolution. The full faith and credit of the municipality, however, could not be pledged to secure the bonds, except as otherwise provided. The bond issue could include a sum sufficient to pay interest on the tax increment bonds until full development of tax increment revenue from the project and also a sum to provide a reasonable reserve for payment of principal and interest on the bonds.

The municipality, by majority vote of the members of its governing body, could make a limited tax pledge to support the authority's tax increment bonds or notes or, if authorized by the municipality's voters, could pledge its unlimited tax full faith and credit for the payment of the principal of and

interest on the authority's tax increment bonds or notes.

Development Plan

If a board decided to finance a project in a development area by the use of revenue bonds or tax increment financing as authorized in the bill, it would have to prepare a development plan.

The development plan would have to contain all of the following:

- The designation of boundaries of the development area in relation to highways, streets, streams, lakes, other bodies of water, or otherwise.
- The location and extent of existing streets and other public facilities within the development area, designating the location, character, and extent of the categories of public and private land uses then existing and proposed for the development area, including residential, commercial, industrial, educational, and other uses, and including a legal description of the development area.
- A description of existing improvements in the development area to be demolished, repaired, or altered, a description of any repairs and alterations, and an estimate of the time required for completion.
- The location, extent, character, and estimated cost of the improvements including rehabilitation contemplated for the development area and an estimate of the time required for completion.
- A statement of the construction or stages of construction planned, and the estimated time of completion of each stage.
- A description of any parts of the development area to be left as open space and the use contemplated for the space.
- A description of any portions of the development area that the authority desired to sell, donate, exchange, or lease to or from the municipality and the proposed terms.
- A description of desired zoning changes and changes in streets, street levels, intersections, or utilities.
- An estimate of the cost of the development, a statement of the proposed method of financing the development, and the ability of the authority to arrange the financing.
- Designation of the person or people, natural or corporate, to whom all or a portion of the development was to be leased, sold, or conveyed in any manner and for whose benefit the project was being undertaken, if that information were available to the authority.
- The procedures for bidding for the lease, purchase, or conveyance in any manner of all or a portion of the development upon its completion, if there were no express or implied agreement between the authority and people that all or part of the development would be leased, sold, or conveyed in any manner to those people.
- The requirement that amendments to an approved development plan or tax increment plan be submitted by the authority to the governing body for approval or rejection.
- The water resource improvements that would be made in the development area.
- Other material that the authority, local public agency, or governing body considered pertinent.
- Based on consultation with the affected State and Federal authorities, an identification of the permits the board believed necessary to complete the proposed public facility and an explanation of how the facility would meet the requirements necessary for issuance of each permit.

Before adopting an ordinance approving a development plan or a TIF plan, the governing body would have to hold a public hearing. Notice of the hearing would have to be published, posted, and mailed as specified in the bill.

After the hearing, the governing body would have to determine whether the plan constituted a public purpose. If it determined that the plan constituted a public purpose, the governing body by ordinance would have to approve or reject the plan, or approve it with modification, based on the following considerations:

- The findings and recommendations of a development area citizens council, if such a council were formed.
- Whether the plan contained all of the information required under the bill.

- Whether the proposed method of financing the development was feasible and the authority had the ability to arrange the financing.
- Whether the development was reasonable and necessary to carry out the proposed Act's purposes.
- Whether the land included within the development area to be acquired was reasonably necessary to carry out the purposes of the plan and the Act in an efficient and economically satisfactory manner.
- Whether the development plan was reasonable in accord with the municipality's land use plan.
- Whether public services, such as fire and police protection and utilities, were or would be adequate to service the project area.
- Whether changes in zoning, streets, street levels, intersections, and utilities were reasonably necessary for the project and for the municipality.

Authority Budget

The director of the authority would have to submit to the board a budget for the authority's operation for each fiscal year before the beginning of that fiscal year. The budget would have to be prepared in the manner and contain the information required of municipal departments. After review by the board, the budget would have to be submitted to the governing body. The governing body would have to approve the budget before the board could adopt it. Unless authorized by the governing body or the proposed Act, municipality funds could not be included in the authority's budget.

The governing body could assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds against the funds of the authority, other than those committed, which would have to be paid annually by the board pursuant to an appropriate item in its budget.

All expense items of the authority would have to be publicized monthly and the financial records always would have to be open to the public.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would provide municipalities with a much-needed economic development tool to improve water resources and access to inland lakes, increase property value and property tax revenue, and attract new residents and businesses. Tax increment financing is a proven method for a community to create a revenue stream to invest in its own development, and has long been used for economic development in commercial and industrial areas. While the development of new and expanded business and industrial activity is highly beneficial to a community, healthy inland lakes also are an essential component of economic vitality in some cities and townships. Water-based recreational opportunities can draw residents and tourists who will shop, dine, and otherwise conduct business in the municipality. Enhancing the health of and access to inland lakes, then, also encourages economic growth. By authorizing cities and townships to create water resource improvement authorities and use TIF programs, the bill would provide a mechanism for a city or township to reverse problems with aquatic nuisance species in its lakes and inadequate sewer systems, and promote the well-being of the environment and economic development in the community.

Opposing Argument

Although the ability to adopt a TIF plan can be a valuable economic development tool for many communities, it has been misused in several cases. The purpose of a TIF plan is to finance redevelopment, particularly in downtown areas, in order to spur economic growth. Evidently, some local units have taken advantage of overly broad language in TIF statutes to finance new development on farmland and in other fringe areas. Some people are concerned that Senate Bill 1159 (S-2) similarly could encourage new development along waterfronts rather than upgrades of existing infrastructure.

Response: The bill states, "The board is encouraged to develop a plan that conserves the natural features, reduces impervious surfaces, and uses landscaping and natural features to reflect the

predevelopment site." Further narrowing the scope of the bill could diminish a community's flexibility to assess its own needs and implement the course of action it determined appropriate.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Administrative costs of the State Tax Commission would be absorbed by existing staff.

The bill would have no effect on State revenue. The bill would potentially increase local unit revenue and expenditures by an unknown amount, depending on whether the expenditures would be made absent the bill and whether (and how much) the expenditures would increase property values above what would be realized absent the bill. The bill would have no effect on local school district revenue or School Aid Fund expenditures, or on any local unit that opted to exclude all or part of its taxes from capture. It is unknown what local units would choose to establish authorities under the bill.

This estimate is preliminary and will be revised as new information becomes available.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.