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BILL



ANALYSIS

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Senate Bill 47 (as enacted)

PUBLIC ACT 94 of 2008

Sponsor: Senator Jason E. Allen

Senate Committee: Natural Resources and Environmental Affairs

House Committee: New Economy and Quality of Life

Date Completed: 7-2-09

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. Since 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 was suggested that municipalities should be authorized to adopt TIF plans to finance such improvements to local water resources.

CONTENT

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

- **Authorize a municipality (a city, village, 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 includes the municipality's chief executive officer and five to nine appointed members.**
- **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 must 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 the dissolution of an authority that has completed its purpose.**
- **Authorize the State Tax Commission to institute proceedings to enforce the Act and to promulgate rules for its administration.**

A municipality may not create an authority or expand the boundaries of a development plan after December 31, 2011.

The bill took effect on April 8, 2008.

Establishment of TIF Authority

If the governing body of a municipality determines that it is 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 may 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 may establish multiple authorities, but a parcel of property may not be included in more than one authority.

("Water resource improvement" means enhancement of water quality and water-dependent natural resources, including the following:

- The elimination of the causes and proliferation of aquatic nuisance species, but not chemical treatment of water for aquatic nuisance control.
- Sewer systems that service existing structures that have failing on-site disposal systems.
- Storm water systems that service existing infrastructure.

"Water resource improvement district" means an inland body of water and land that is up to one mile of the shoreline of the inland lake that contains at least one public access point, or an inland body of water and parcels of land that are contiguous to the shoreline of an inland lake that does not contain a public access point. "Inland lake" means a natural or artificial lake, pond, or impoundment. The term does not include the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area smaller than five acres.)

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

In the resolution of intent, the governing body must 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 Act 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 is established and a TIF plan is 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 has 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 may not incorporate into the development area land not included in the description contained in the notice, but may eliminate described land from the development area in the final determination of the boundaries.

At least 60 days after the public hearing, if the governing body intends to proceed with the establishment of the authority, it must adopt, by majority vote of its members, an ordinance establishing the authority and designating the boundaries of the development area within which the authority will exercise its powers. The adoption of the ordinance is 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 must be filed with the Secretary of State promptly after its adoption and must be published at least once in a newspaper of general circulation in the municipality.

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

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

If a development area is part of an area annexed to or consolidated with another municipality, the authority managing that development area will 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 Urban Cooperation Act will remain in effect following the annexation or consolidation.

An authority is 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 Board

An authority must be under the supervision and control of a board consisting of the chief executive officer (mayor, city manager, president or village 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 must be appointed by the chief executive officer, subject to approval by the governing body. A majority of the members must be people having an ownership or business interest in property located in the development area. At least one member must be a resident of the development area or of an area within a half-mile of any part of the development area.

Board members must serve staggered terms and vacancies must be filled by appointment of the chief executive officer. After the initial appointments, members must serve for four-year terms. Board members must serve without compensation, but may be reimbursed for actual and necessary expenses. The board must elect a chairperson. The board is subject to the Open Meetings Act and the Freedom of Information Act.

Subject to the governing body's approval, the board may employ and fix the compensation of a director, who must serve at the pleasure of the board. A board member is not eligible to hold the position of director. Before beginning his or her duties, the director must 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 is to be considered an operating expense of the authority, payable from funds available to it for expenses of operation.

The director is the chief executive officer of the authority. Subject to the board's approval, the director must supervise and be responsible for the preparation of plans and

the performance of the authority's functions in the manner authorized by the Water Resource Improvement TIF Authority Act. The director must 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 is absent or disabled, the board may designate a qualified person as acting director. Before beginning his or her duties, the acting director must furnish a bond, as required of the director. The director must give the board information or reports governing the operation of the authority as the board requires.

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

The secretary must 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 must attend board meetings and keep a record of its proceedings and perform other duties delegated by the board.

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

The board may employ other personnel it considers necessary.

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

Board Powers

An authority board may 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 for water resource improvement and access to inland lakes in the development area necessary to achieve the purposes of the 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.
- 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 may plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility that is necessary or appropriate to the execution of a plan that, in the board's opinion, will aid in water resource improvement or access to inland lakes in the development area. 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.

In addition, the board may improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, clear, improve, maintain, and repair any public facility, building, and any necessary or desirable appurtenances to those buildings, and operate a water resource improvement, as the authority determines reasonably necessary to achieve the purposes of the Act, within the development area for the use, in whole or in part, of any public or

private person or corporation, or a combination of them.

The board also may acquire by purchase or otherwise, on terms and conditions and in a manner the authority considers 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 determines is reasonably necessary to achieve the Act's purposes, and to grant or acquire licenses, easements, and options.

("Public facility" means 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 is related to access to inland lakes or a water resource improvement. The term also includes a water resource improvement.)

The board must prepare a water resource management plan in consultation with the Department of Environmental Quality, the Department of Natural Resources, or any other entity with expertise in water quality management and invasive species management.

Authority Financing

An authority's activities must 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 Act.
- 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 Act.
- 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 receives that does not fall under the categories described above must be deposited immediately to the credit of the authority, subject to disbursement under the Act. Except as provided in the Act, the municipality may not obligate itself, and may not be obligated, to pay any sums from public funds, other than money received by the municipality under the Act, for or on account of the activities of the authority.

Borrowing & Bonding

An authority may borrow money and issue its negotiable revenue bonds under the Revenue Bond Act. With the approval of the municipality's governing body, the authority may 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 Water Resource Improvement TIF Authority Act.

An authority may 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 has developed.

An authority may 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.

Bonds and notes issued under the Act are exempt from all taxation in Michigan. The interest on them is exempt from all taxation in Michigan, even if subject to Federal income tax.

A municipality is not liable on bonds or notes of an authority, and the bonds or notes are not a debt of the municipality. They must contain on their face a statement to that effect.

An authority's bonds and notes may 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 may 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 is authorized.

Tax Increment Financing

If an authority determines that it is necessary for the achievement of the Act's purposes, it may prepare a tax increment financing plan and submit the plan to the governing body of the municipality. The TIF plan must 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 must be in compliance with the Act. The plan must contain a statement of the estimated impact of the TIF plan on the assessed values of all taxing jurisdictions in which the development area is located. The plan may provide for the use of part or all of the captured assessed value, but the portion intended to be used by the authority must be stated clearly in the TIF plan. The authority or municipality may exclude from the captured assessed value growth in property value resulting solely from inflation, and the plan must set forth the method for excluding such growth.

Approval of a TIF plan must comply with the Act's notice, hearing, and disclosure provisions for the adoption of a development plan. If the development plan is part of the TIF plan, only one hearing and approval procedure is required.

Before the public hearing on a TIF plan, the governing body must give the taxing jurisdictions levying taxes subject to capture a reasonable opportunity to meet with the governing body. The authority must inform the taxing jurisdictions fully of the fiscal and economic implications of the proposed development area. The taxing jurisdictions

may present their recommendations at the public hearing on the TIF plan. The authority may enter into agreements with the taxing jurisdictions and the governing body of the municipality in which the development area is located to share a portion of the captured assessed value of the development area.

A TIF plan may be modified if the modification is 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 may 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. If the governing body levies a separate millage for public library purposes, at the request of the public library board, that separate millage is exempt from the capture. The resolution takes effect when filed with the clerk, and remains effective until a copy of a resolution rescinding it is filed with the clerk.

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

An authority annually must submit to the governing body of the municipality and the State Tax Commission a report on the status of the TIF account. The report must 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 considers necessary.

By resolution of its governing body, an authority may authorize, issue, and sell tax increment bonds subject to the limitations set forth in the Act to finance the development program of the TIF plan. The bonds must pledge solely the tax increment revenue of a development area in which the project is located or a development area from which tax increment revenue may be used for this project, or both. In addition or in the alternative, the bonds may be secured by any other revenue identified in the Act as sources of financing for activities of the authority that the authority pledges specifically in the resolution. The full faith and credit of the municipality, however, may not be pledged to secure the bonds, except as otherwise provided. The bond issue may include a sum sufficient to pay interest on the tax increment bonds until full development of tax increment revenue from the project, as well as 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, may make a limited tax pledge to support the authority's tax increment bonds or notes or, if authorized by the municipality's voters, may 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 an authority's board decides to finance a project in a development area by the use of revenue bonds or tax increment financing, it must prepare a development plan.

The plan must 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.
- 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 desires 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 part of the development is to be leased, sold, or conveyed in any manner and for whose benefit the project is being undertaken, if that information is available to the authority.
- The procedures for bidding for the lease, purchase, or conveyance in any manner of all or part of the development upon its completion, if there is no express or implied agreement between the

authority and individuals or entities that all or part of the development will be leased, sold, or conveyed in any manner to them.

- 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 will be made in the development area.
- Other material that the authority, local public agency, or governing body considers pertinent.
- Based on consultation with the affected State and Federal authorities, an identification of the permits the board believes necessary to complete the proposed public facility and an explanation of how it will meet the requirements necessary for issuance of each permit.

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

After the hearing, the governing body must determine whether the plan constitutes a public purpose. If it determines that the plan does so, the governing body by ordinance must 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 one is formed.
- Whether the plan contains all of the required information.
- Whether the proposed method of financing the development is feasible and the authority has the ability to arrange the financing.
- Whether the development is reasonable and necessary to carry out the Act's purposes.
- Whether the land included within the development area to be acquired is reasonably necessary to carry out the purposes of the plan and the Act in an efficient and economically satisfactory manner.
- Whether the development plan is in reasonable accord with the municipality's land use plan.

- Whether public services, such as fire and police protection and utilities, are or will be adequate to service the project area.
- Whether changes in zoning, streets, street levels, intersections, and utilities are reasonably necessary for the project and for the municipality.

Authority Budget

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

The governing body may 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 the board must pay annually pursuant to an appropriate item in its budget.

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

Dissolution

The governing body of a municipality must dissolve an authority by ordinance after the authority has completed its purpose. The authority's property and assets remaining after the satisfaction of its obligations will belong to the municipality.

MCL 125.1771-125.1794

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 provides 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, villages, 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, villages, and townships to create water resource improvement authorities and use TIF programs, the bill provides a mechanism for a city, village, 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.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

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

The bill will have no effect on State revenue. The bill will 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 will increase property values above what would be realized absent the bill. The bill will have no effect on local school district revenue or School Aid Fund expenditures, or on any local unit that opts to exclude all or part of its taxes from capture. It is unknown what local units will choose to establish authorities under the bill.

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.