HOUSE BILL No. 4537

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April 11, 2013, Introduced by Rep. Geiss and referred to the Committee on Tax Policy.

A bill to amend 1980 PA 450, entitled

"The tax increment finance authority act,"

by amending section 1 (MCL 125.1801), as amended by 2010 PA 245.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

(a) "Advance" means a transfer of funds made by a municipality to an authority or to another person on behalf of the authority. Evidence of the intent to repay an advance is required and may include, but is not limited to, an executed agreement to repay, provisions contained in a tax increment financing plan approved before the advance or before August 14, 1993, or a resolution of the authority or the municipality.

(b) "Assessed value" means 1 of the following:

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(*i*) For valuations made before January 1, 1995, the state equalized valuation as determined under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(*ii*) For valuations made after December 31, 1994, taxable value as determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(c) "Authority" means a tax increment finance authority created under this act.

(d) "Authority district" means that area within which an authority exercises its powers and within which 1 or more development areas may exist.

(e) "Board" means the governing body of an authority.

(f) "Captured assessed value" means the amount in any 1 year by which the current assessed value of the development area, including the assessed value of property for which specific local taxes are paid in lieu of property taxes as determined in subdivision (w), exceeds the initial assessed value. The state tax commission shall prescribe the method for calculating captured assessed value.

(g) "Chief executive officer" means the mayor or city manager of a city, the president of a village, or the supervisor of a township.

(h) "Development area" means that area to which a development plan is applicable.

(i) "Development area citizens council" or "council" means that advisory body established pursuant to section 20.

(j) "Development plan" means that information and those requirements for a development set forth in section 16.

(k) "Development program" means the implementation of the development plan.

(*l*) "Eligible advance" means an advance made before August 19, 1993.

(m) "Eligible obligation" means an obligation issued or incurred by an authority or by a municipality on behalf of an authority before August 19, 1993 and its subsequent refunding by a qualified refunding obligation. Eligible obligation includes an authority's written agreement entered into before August 19, 1993 to pay an obligation issued after August 18, 1993 and before December 31, 1996 by another entity on behalf of the authority. Eligible obligation also includes an ongoing management contract or contract for professional services or development services that was entered into by the authority or a municipality on behalf of the authority in 1991, and related similar written agreements executed before 1984, if the 1991 agreement both provides for automatic annual renewal and incorporates by reference the prior related agreements; however, receipt by an authority of tax increment revenues authorized under subdivision (aa)(*ii*) in order to pay costs arising under those contracts shall be limited to:

(*i*) For taxes levied before July 1, 2005, the amount permitted to be received by an authority for an eligible obligation as provided in this act.

(*ii*) For taxes levied after June 30, 2005 and before July 1, 2006, $3,000,000.00.

(*iii*) For taxes levied after June 30, 2006 and before July 1, 2007, $3,000,000.00.

(*iv*) For taxes levied after June 30, 2007 and before July 1, 2008, $3,000,000.00.

(*v*) For taxes levied after June 30, 2008 and before July 1, 2009, $3,000,000.00.

(*vi*) For taxes levied after June 30, 2009 and before July 1, 2010, $3,000,000.00.

(*vii*) For taxes levied after June 30, 2010 and before July 1, 2011, $2,650,000.00.

(*viii*) For taxes levied after June 30, 2011 and before July 1, 2012, $2,400,000.00.

(*ix*) For taxes levied after June 30, 2012 and before July 1, 2013, $2,125,000.00.

(*x*) For taxes levied after June 30, 2013 and before July 1, 2014, $1,500,000.00.

(*xi*) For taxes levied after June 30, 2014 and before July 1, 2015, $1,150,000.00.

(*xii*) For taxes levied after June 30, 2015, $0.00.

(n) "Fiscal year" means the fiscal year of the authority.

(o) "Governing body" means the elected body of a municipality having legislative powers.

(p) "Initial assessed value" means the assessed value, as equalized, of all the taxable property within the boundaries of the development area at the time the resolution establishing the tax increment financing plan is approved as shown by the most recent assessment roll of the municipality for which equalization has been completed at the time the resolution is adopted. Property exempt from taxation at the time of the determination of the initial assessed value shall be included as zero. For the purpose of determining initial assessed value, property for which a specific local tax is paid in lieu of a property tax shall not be considered property that is exempt from taxation. The initial assessed value of property for which a specific tax was paid in lieu of a property tax shall be determined as provided in subdivision (w).

(q) "Municipality" means a city.

(r) "Obligation" means a written promise to pay, whether evidenced by a contract, agreement, lease, sublease, bond, or note, or a requirement to pay imposed by law. An obligation does not include a payment required solely because of default upon an obligation, employee salaries, or consideration paid for the use of municipal offices. An obligation does not include those bonds that have been economically defeased by refunding bonds issued under this act. Obligation includes, but is not limited to, the following:

(*i*) A requirement to pay proceeds derived from ad valorem property taxes or taxes levied in lieu of ad valorem property taxes.

(*ii*) A management contract or a contract for professional services.

(*iii*) A payment required on a contract, agreement, bond, or note if the requirement to make or assume the payment arose before August 19, 1993.

(*iv*) A requirement to pay or reimburse a person for the cost of insurance for, or to maintain, property subject to a lease, land contract, purchase agreement, or other agreement.

(*v*) A letter of credit, paying agent, transfer agent, bond registrar, or trustee fee associated with a contract, agreement, bond, or note.

(s) "On behalf of an authority", in relation to an eligible advance made by a municipality, or an eligible obligation or other protected obligation issued or incurred by a municipality, means in anticipation that an authority would transfer tax increment revenues or reimburse the municipality from tax increment revenues in an amount sufficient to fully make payment required by the eligible advance made by a municipality, or the eligible obligation or other protected obligation issued or incurred by the municipality, if the anticipation of the transfer or receipt of tax increment revenues from the authority is pursuant to or evidenced by 1 or more of the following:

(*i*) A reimbursement agreement between the municipality and an authority it established.

(*ii*) A requirement imposed by law that the authority transfer tax increment revenues to the municipality.

(*iii*) A resolution of the authority agreeing to make payments to the incorporating unit.

(*iv*) Provisions in a tax increment financing plan describing the project for which the obligation was incurred.

(t) "Other protected obligation" means:

(*i*) A qualified refunding obligation issued to refund an obligation described in subparagraph (*ii*) or (*iii*), an obligation that is not a qualified refunding obligation that is issued to refund an eligible obligation, or a qualified refunding obligation issued to refund an obligation described in this subparagraph.

(*ii*) An obligation issued or incurred by an authority or by a municipality on behalf of an authority after August 19, 1993, but before December 31, 1994, to finance a project described in a tax increment finance plan approved by the municipality in accordance with this act before December 31, 1993, for which a contract for final design is entered into by the municipality or authority before March 1, 1994.

(*iii*) An obligation incurred by an authority or municipality after August 19, 1993, to reimburse a party to a development agreement entered into by a municipality or authority before August 19, 1993, for a project described in a tax increment financing plan approved in accordance with this act before August 19, 1993, and undertaken and installed by that party in accordance with the development agreement.

(*iv*) An obligation issued or incurred by an authority or by a municipality on behalf of an authority to implement a project described in a tax increment finance plan approved by the municipality in accordance with this act before August 19, 1993, that is located on land owned by a public university on the date the tax increment financing plan is approved, and for which a contract for final design is entered into before December 31, 1993.

(*v*) An ongoing management or professional services contract with the governing body of a county which was entered into before March 1, 1994 and which was preceded by a series of limited term management or professional services contracts with the governing body of the county, the last of which was entered into before August 19, 1993.

(*vi*) An obligation issued or incurred by a municipality under a contract executed on December 19, 1994 as subsequently amended between the municipality and the authority to implement a project described in a tax increment finance plan approved by the municipality under this act before August 19, 1993 for which a contract for final design was entered into by the municipality before March 1, 1994 provided that final payment by the municipality is made on or before December 31, 2001.

(*vii*) An obligation issued or incurred by an authority or by a municipality on behalf of an authority that meets all of the following qualifications:

(A) The obligation is issued or incurred to finance a project described in a tax increment financing plan approved before August 19, 1993 by a municipality in accordance with this act.

(B) The obligation qualifies as an other protected obligation under subparagraph (*ii*) and was issued or incurred by the authority before December 31, 1994 for the purpose of financing the project.

(C) A portion of the obligation issued or incurred by the authority before December 31, 1994 for the purpose of financing the project was retired prior to December 31, 1996.

(D) The obligation does not exceed the dollar amount of the portion of the obligation retired prior to December 31, 1996.

(*viii*) An obligation incurred by an authority that meets both of the following qualifications:

(A) The obligation is a contract of lease originally executed on December 20, 1994 between the municipality and the authority to partially implement the authority's development plan and tax increment financing plan.

(B) The obligation qualifies as an obligation under subparagraph (*ii*). The obligation described in this subparagraph may be amended to extend cash rental payments for a period not to exceed 30 years through the year 2039. The duration of the development plan and tax increment financing plan described in this subparagraph is extended to 1 year after the final date that the extended cash rental payments are due.

(u) "Public facility" means 1 or more of the following:

(*i*) A street, plaza, or pedestrian mall, and any improvements to a street, plaza, boulevard, alley, or pedestrian mall, including street furniture and beautification, park, parking facility, recreation facility, playground, school, library, public institution or administration building, right of way, structure, waterway, bridge, lake, pond, canal, utility line or pipeline, transit-oriented development, transit-oriented facility, and other similar facilities and necessary easements of these facilities designed and dedicated to use by the public generally or used by a public agency. As used in this subparagraph, public institution or administration building includes, but is not limited to, a police station, fire station, court building, or other public safety facility.

(*ii*) The acquisition and disposal of real and personal property or interests in real and personal property, demolition of structures, site preparation, relocation costs, building rehabilitation, and all associated administrative costs, including, but not limited to, architect's, engineer's, legal, and accounting fees as contained in the resolution establishing the district's development plan.

(*iii*) An improvement to a facility used by the public or a public facility as those terms are defined in section 1 of 1966 PA 1, MCL 125.1351, which improvement is made to comply with the barrier free design requirements of the state construction code promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(v) "Qualified refunding obligation" means an obligation issued or incurred by an authority or by a municipality on behalf of an authority to refund an obligation if 1 of the following applies:

(*i*) The refunding obligation meets both of the following:

(A) The net present value of the principal and interest to be paid on the refunding obligation, including the cost of issuance, will be less than the net present value of the principal and interest to be paid on the obligation being refunded, as calculated using a method approved by the department of treasury.

(B) The net present value of the sum of the tax increment revenues described in subdivision (aa)(*ii*) and the distributions under section 12a to repay the refunding obligation will not be greater than the net present value of the sum of the tax increment revenues described in subdivision (aa)(*ii*) and the distributions under section 12a to repay the obligation being refunded, as calculated using a method approved by the department of treasury.

(*ii*) The refunding obligation is a tax increment refunding bond issued to refund a refunding bond that is an other protected obligation issued as a capital appreciation bond delivered to the Michigan municipal bond authority on December 21, 1994, and the authority, by resolution of its board, authorized issuance of the refunding obligation before January 1, 2011 with a final maturity not later than 2039. The municipality by majority vote of the members of its governing body may pledge its full faith and credit for the payment of the principal of and interest on the refunding obligation. A refunding obligation issued under this subparagraph is not subject to the requirements of section 305(2), (3), (5), or (6), 501, or 503 of the revised municipal finance act, 2001 PA 34, MCL 141.2305, 141.2501, and 141.2503. The duration of the development plan and the tax increment financing plan relating to the refunding obligations described in this subparagraph is extended to 1 year after the final date of maturity of the refunding obligation.

(w) "Specific local tax" means a tax levied under 1974 PA 198, MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the technology park development act, 1984 PA 385, MCL 207.701 to 207.718, and 1953 PA 189, MCL 211.181 to 211.182. The initial assessed value or current assessed value of property subject to a specific local tax shall be the quotient of the specific local tax paid divided by the ad valorem millage rate. However, after 1993, the state tax commission shall prescribe the method for calculating the initial assessed value and current assessed value of property for which a specific local tax was paid in lieu of a property tax.

(x) "State fiscal year" means the annual period commencing October 1 of each year.

(y) "Tax increment district" or "district" means that area to which the tax increment finance plan pertains.

(z) "Tax increment financing plan" means that information and those requirements set forth in sections 13 to 15.

(aa) "Tax increment revenues" means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the captured assessed value of real and personal property in the development area, subject to the following requirements:

(*i*) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions other than the state pursuant to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate school districts upon the captured assessed value of real and personal property in the development area for any purpose authorized by this act.

(*ii*) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of the state pursuant to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate school districts upon the captured assessed value of real and personal property in the development area in an amount equal to the amount necessary, without regard to subparagraph (*i*), to repay eligible advances, eligible obligations, and other protected obligations.

(*iii*) Tax increment revenues do not include any of the following:

(A) Ad valorem property taxes attributable either to a portion of the captured assessed value shared with taxing jurisdictions within the jurisdictional area of the authority or to a portion of value of property that may be excluded from captured assessed value or specific local taxes attributable to such ad valorem property taxes.

(B) Ad valorem property taxes excluded by the tax increment financing plan of the authority from the determination of the amount of tax increment revenues to be transmitted to the authority or specific local taxes attributable to such ad valorem property taxes.

(C) AD VALOREM PROPERTY TAXES LEVIED AFTER DECEMBER 31, 2011 TO PAY RETIREMENT BENEFITS DESCRIBED IN THE FIRE FIGHTERS AND POLICE OFFICERS RETIREMENT ACT, 1937 PA 345, MCL 38.551 TO 38.562.

(D) AD VALOREM TAXES LEVIED AS A JUDGMENT LEVY BY A COURT OF PROPER JURISDICTION.

(*iv*) The amount of tax increment revenues authorized to be included under subparagraph (*ii*), and required to be transmitted to the authority under section 14(1), from ad valorem property taxes and specific local taxes attributable to the application of the levy of the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, a local school district or an intermediate school district upon the captured assessed value of real and personal property in a development area shall be determined separately for the levy by the state, each school district, and each intermediate school district as the product of sub-subparagraphs (A) and (B):

(A) The percentage which the total ad valorem taxes and specific local taxes available for distribution by law to the state, local school district, or intermediate school district, respectively, bear to the aggregate amount of ad valorem millage taxes and specific taxes available for distribution by law to the state, each local school district, and each intermediate school district.

(B) The maximum amount of ad valorem property taxes and specific local taxes considered tax increment revenues under subparagraph (*ii*).

(bb) "Transit-oriented development" means infrastructure improvements that are located within 1/2 mile of a transit station or transit-oriented facility that promotes transit ridership or passenger rail use as determined by the board and approved by the municipality in which it is located.

(cc) "Transit-oriented facility" means a facility that houses a transit station in a manner that promotes transit ridership or passenger rail use.