

SENATE BILL No. 970

December 6, 2007, Introduced by Senators ALLEN, SANBORN, KUIPERS, GILBERT, RICHARDVILLE, BIRKHOZ, HUNTER, STAMAS, BROWN, HARDIMAN, KAHN, GEORGE, CLARKE, CLARK-COLEMAN, PAPPAGEORGE, JACOBS, VAN WOERKOM, BARCIA, ANDERSON, SCOTT and THOMAS and referred to the Committee on Commerce and Tourism.

A bill to amend 1975 PA 197, entitled

"An act to provide for the establishment of a downtown development authority; to prescribe its powers and duties; to correct and prevent deterioration in business districts; to encourage historic preservation; to authorize the acquisition and disposal of interests in real and personal property; to authorize the creation and implementation of development plans in the districts; to promote the economic growth of the districts; to create a board; to prescribe its powers and duties; to authorize the levy and collection of taxes; to authorize the issuance of bonds and other evidences of indebtedness; to authorize the use of tax increment financing; to reimburse downtown development authorities for certain losses of tax increment revenues; and to prescribe the powers and duties of certain state officials,"

by amending sections 1 and 7 (MCL 125.1651 and 125.1657), section 1 as amended by 2006 PA 659 and section 7 as amended by 2005 PA 115.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Advance" means a transfer of funds made by a municipality
3 to an authority or to another person on behalf of the authority in

1 anticipation of repayment by the authority. Evidence of the intent
2 to repay an advance may include, but is not limited to, an executed
3 agreement to repay, provisions contained in a tax increment
4 financing plan approved prior to the advance, or a resolution of
5 the authority or the municipality.

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

7 (i) For valuations made before January 1, 1995, the state
8 equalized valuation as determined under the general property tax
9 act, 1893 PA 206, MCL 211.1 to ~~211.157~~211.155.

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

13 (c) "Authority" means a downtown development authority created
14 pursuant to this act.

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

16 (e) "Business district" means an area in the downtown of a
17 municipality zoned and used principally for business.

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

24 (g) "Chief executive officer" means the mayor or city manager
25 of a city, the president or village manager of a village, or the
26 supervisor of a township or, if designated by the township board
27 for purposes of this act, the township superintendent or township

1 manager of a township.

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

4 (i) "Development plan" means that information and those
5 requirements for a development plan set forth in section 17.

6 (j) "Development program" means the implementation of the
7 development plan.

8 (k) "Downtown district" means that part of an area in a
9 business district that is specifically designated by ordinance of
10 the governing body of the municipality pursuant to this act. A
11 downtown district may include 1 or more separate and distinct
12 geographic areas in a business district as determined by the
13 municipality if the municipality enters into an agreement with a
14 qualified township under section 3(7) or if the municipality is a
15 city that surrounds another city and that other city lies between
16 the 2 separate and distinct geographic areas. If the downtown
17 district contains more than 1 separate and distinct geographic area
18 in the downtown district, the separate and distinct geographic
19 areas shall be considered 1 downtown district.

20 (l) "Eligible advance" means an advance made before August 19,
21 1993.

22 (m) "Eligible obligation" means an obligation issued or
23 incurred by an authority or by a municipality on behalf of an
24 authority before August 19, 1993 and its subsequent refunding by a
25 qualified refunding obligation. Eligible obligation includes an
26 authority's written agreement entered into before August 19, 1993
27 to pay an obligation issued after August 18, 1993 and before

1 December 31, 1996 by another entity on behalf of the authority.

2 (n) "Fire alarm system" means a system designed to detect and
3 annunciate the presence of fire, or by-products of fire. Fire alarm
4 system includes smoke detectors.

5 (o) "Fiscal year" means the fiscal year of the authority.

6 (p) "Governing body of a municipality" means the elected body
7 of a municipality having legislative powers.

8 (q) "Initial assessed value" means the assessed value, as
9 equalized, of all the taxable property within the boundaries of the
10 development area at the time the ordinance establishing the tax
11 increment financing plan is approved, as shown by the most recent
12 assessment roll of the municipality for which equalization has been
13 completed at the time the resolution is adopted. Property exempt
14 from taxation at the time of the determination of the initial
15 assessed value shall be included as zero. For the purpose of
16 determining initial assessed value, property for which a specific
17 local tax is paid in lieu of a property tax shall not be considered
18 to be property that is exempt from taxation. The initial assessed
19 value of property for which a specific local tax was paid in lieu
20 of a property tax shall be determined as provided in subdivision
21 (z). In the case of a municipality having a population of less than
22 35,000 that established an authority prior to 1985, created a
23 district or districts, and approved a development plan or tax
24 increment financing plan or amendments to a plan, and which plan or
25 tax increment financing plan or amendments to a plan, and which
26 plan expired by its terms December 31, 1991, the initial assessed
27 value for the purpose of any plan or plan amendment adopted as an

1 extension of the expired plan shall be determined as if the plan
2 had not expired December 31, 1991. For a development area
3 designated before 1997 in which a renaissance zone has subsequently
4 been designated pursuant to the Michigan renaissance zone act, 1996
5 PA 376, MCL 125.2681 to 125.2696, the initial assessed value of the
6 development area otherwise determined under this subdivision shall
7 be reduced by the amount by which the current assessed value of the
8 development area was reduced in 1997 due to the exemption of
9 property under section 7ff of the general property tax act, 1893 PA
10 206, MCL 211.7ff, but in no case shall the initial assessed value
11 be less than zero.

12 (r) "Municipality" means a city, village, or township.

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

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

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

27 (iii) A payment required on a contract, agreement, bond, or note

1 if the requirement to make or assume the payment arose before
2 August 19, 1993.

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

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

9 (t) "On behalf of an authority", in relation to an eligible
10 advance made by a municipality, or an eligible obligation or other
11 protected obligation issued or incurred by a municipality, means in
12 anticipation that an authority would transfer tax increment
13 revenues or reimburse the municipality from tax increment revenues
14 in an amount sufficient to fully make payment required by the
15 eligible advance made by the municipality, or eligible obligation
16 or other protected obligation issued or incurred by the
17 municipality, if the anticipation of the transfer or receipt of tax
18 increment revenues from the authority is pursuant to or evidenced
19 by 1 or more of the following:

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

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

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

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

1 (u) "Operations" means office maintenance, including salaries
2 and expenses of employees, office supplies, consultation fees,
3 design costs, and other expenses incurred in the daily management
4 of the authority and planning of its activities.

5 (v) "Other protected obligation" means:

6 (i) A qualified refunding obligation issued to refund an
7 obligation described in subparagraph (ii), (iii), or (iv), an
8 obligation that is not a qualified refunding obligation that is
9 issued to refund an eligible obligation, or a qualified refunding
10 obligation issued to refund an obligation described in this
11 subparagraph.

12 (ii) An obligation issued or incurred by an authority or by a
13 municipality on behalf of an authority after August 19, 1993, but
14 before December 31, 1994, to finance a project described in a tax
15 increment finance plan approved by the municipality in accordance
16 with this act before December 31, 1993, for which a contract for
17 final design is entered into by or on behalf of the municipality or
18 authority before March 1, 1994 or for which a written agreement
19 with a developer, titled preferred development agreement, was
20 entered into by or on behalf of the municipality or authority in
21 July 1993.

22 (iii) An obligation incurred by an authority or municipality
23 after August 19, 1993, to reimburse a party to a development
24 agreement entered into by a municipality or authority before August
25 19, 1993, for a project described in a tax increment financing plan
26 approved in accordance with this act before August 19, 1993, and
27 undertaken and installed by that party in accordance with the

1 development agreement.

2 (iv) An obligation incurred by the authority evidenced by or to
3 finance a contract to purchase real property within a development
4 area or a contract to develop that property within the development
5 area, or both, if all of the following requirements are met:

6 (A) The authority purchased the real property in 1993.

7 (B) Before June 30, 1995, the authority enters a contract for
8 the development of the real property located within the development
9 area.

10 (C) In 1993, the authority or municipality on behalf of the
11 authority received approval for a grant from both of the following:

12 (I) The department of natural resources for site reclamation
13 of the real property.

14 (II) The department of consumer and industry services for
15 development of the real property.

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

22 (vi) A loan from a municipality to an authority if the loan was
23 approved by the legislative body of the municipality on April 18,
24 1994.

25 (vii) Funds expended to match a grant received by a
26 municipality on behalf of an authority for sidewalk improvements
27 from the Michigan department of transportation if the legislative

1 body of the municipality approved the grant application on April 5,
2 1993 and the grant was received by the municipality in June 1993.

3 (viii) For taxes captured in 1994, an obligation described in
4 this subparagraph issued or incurred to finance a project. An
5 obligation is considered issued or incurred to finance a project
6 described in this subparagraph only if all of the following are
7 met:

8 (A) The obligation requires raising capital for the project or
9 paying for the project, whether or not a borrowing is involved.

10 (B) The obligation was part of a development plan and the tax
11 increment financing plan was approved by a municipality on May 6,
12 1991.

13 (C) The obligation is in the form of a written memorandum of
14 understanding between a municipality and a public utility dated
15 October 27, 1994.

16 (D) The authority or municipality captured school taxes during
17 1994.

18 (ix) An obligation incurred by an authority on October 1, 2001
19 that was used to finance streetscape capital projects, to the
20 extent taxes described in subdivision (bb) (ii) were captured in 2002
21 through 2004, if a plan for the subsequent repayment of those taxes
22 has been approved by the state tax commission and that plan
23 provides for the payment of interest on those taxes at a rate
24 described in section 23(2) of 1941 PA 122, MCL 205.23.

25 (w) "Public facility" means a street, plaza, pedestrian mall,
26 and any improvements to a street, plaza, or pedestrian mall
27 including street furniture and beautification, park, parking

1 facility, recreational facility, right-of-way, structure, waterway,
2 bridge, lake, pond, canal, utility line or pipe, building, and
3 access routes to any of the foregoing, designed and dedicated to
4 use by the public generally, or used by a public agency. Public
5 facility includes an improvement to a facility used by the public
6 or a public facility as those terms are defined in section 1 of
7 1966 PA 1, MCL 125.1351, which improvement is made to comply with
8 the barrier free design requirements of the state construction code
9 promulgated under the Stille-DeRossett-Hale single state
10 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

11 **PUBLIC FACILITY ALSO INCLUDES THE ACQUISITION, CONSTRUCTION,**
12 **IMPROVEMENT, AND OPERATION OF A BUILDING OWNED OR LEASED BY THE**
13 **AUTHORITY TO BE USED AS A RETAIL BUSINESS INCUBATOR.**

14 (x) "Qualified refunding obligation" means an obligation
15 issued or incurred by an authority or by a municipality on behalf
16 of an authority to refund an obligation if the obligation is issued
17 to refund a qualified refunding obligation issued in November 1997
18 and any subsequent refundings of that obligation issued before
19 January 1, 2010 or the refunding obligation meets both of the
20 following:

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

26 (ii) The net present value of the sum of the tax increment
27 revenues described in subdivision (bb) (ii) and the distributions

1 under section 13b to repay the refunding obligation will not be
2 greater than the net present value of the sum of the tax increment
3 revenues described in subdivision (bb) (ii) and the distributions
4 under section 13b to repay the obligation being refunded, as
5 calculated using a method approved by the department of treasury.

6 (y) "Qualified township" means a township that meets all of
7 the following requirements:

8 (i) Was not eligible to create an authority prior to January 3,
9 2005.

10 (ii) Adjoins a municipality that previously created an
11 authority.

12 (iii) Along with the adjoining municipality that previously
13 created an authority, is a member of the same joint planning
14 commission under the joint municipal planning act, 2003 PA 226, MCL
15 125.131 to 125.143.

16 (z) "Specific local tax" means a tax levied under 1974 PA 198,
17 MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA
18 255, MCL 207.651 to 207.668, the technology park development act,
19 1984 PA 385, MCL 207.701 to 207.718, and 1953 PA 189, MCL 211.181
20 to 211.182. The initial assessed value or current assessed value of
21 property subject to a specific local tax shall be the quotient of
22 the specific local tax paid divided by the ad valorem millage rate.
23 However, after 1993, the state tax commission shall prescribe the
24 method for calculating the initial assessed value and current
25 assessed value of property for which a specific local tax was paid
26 in lieu of a property tax.

27 (aa) "State fiscal year" means the annual period commencing

1 October 1 of each year.

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

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

14 (ii) Tax increment revenues include ad valorem property taxes
15 and specific local taxes attributable to the application of the
16 levy of the state pursuant to the state education tax act, 1993 PA
17 331, MCL 211.901 to 211.906, and local or intermediate school
18 districts upon the captured assessed value of real and personal
19 property in the development area in an amount equal to the amount
20 necessary, without regard to subparagraph (i), to repay eligible
21 advances, eligible obligations, and other protected obligations.

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

24 (A) Ad valorem property taxes attributable either to a portion
25 of the captured assessed value shared with taxing jurisdictions
26 within the jurisdictional area of the authority or to a portion of
27 value of property that may be excluded from captured assessed value

1 or specific local taxes attributable to such ad valorem property
2 taxes.

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

8 (C) Ad valorem property taxes exempted from capture under
9 section 3(3) or specific local taxes attributable to such ad
10 valorem property taxes.

11 (iv) The amount of tax increment revenues authorized to be
12 included under subparagraph (ii) or (v), and required to be
13 transmitted to the authority under section 14(1), from ad valorem
14 property taxes and specific local taxes attributable to the
15 application of the levy of the state education tax act, 1993 PA
16 331, MCL 211.901 to 211.906, a local school district or an
17 intermediate school district upon the captured assessed value of
18 real and personal property in a development area shall be
19 determined separately for the levy by the state, each school
20 district, and each intermediate school district as the product of
21 sub-subparagraphs (A) and (B):

22 (A) The percentage that the total ad valorem taxes and
23 specific local taxes available for distribution by law to the
24 state, local school district, or intermediate school district,
25 respectively, bears to the aggregate amount of ad valorem millage
26 taxes and specific taxes available for distribution by law to the
27 state, each local school district, and each intermediate school

1 district.

2 (B) The maximum amount of ad valorem property taxes and
3 specific local taxes considered tax increment revenues under
4 subparagraph (ii) or (v).

5 (v) Tax increment revenues include ad valorem property taxes
6 and specific local taxes, in an annual amount and for each year
7 approved by the state treasurer, attributable to the levy by this
8 state under the state education tax act, 1993 PA 331, MCL 211.901
9 to 211.906, and by local or intermediate school districts, upon the
10 captured assessed value of real and personal property in the
11 development area of an authority established in a city with a
12 population of 750,000 or more to pay for, or reimburse an advance
13 for, not more than \$8,000,000.00 for the demolition of buildings or
14 structures on public or privately owned property within a
15 development area that commences in 2005, or to pay the annual
16 principal of or interest on an obligation, the terms of which are
17 approved by the state treasurer, issued by an authority, or by a
18 city on behalf of an authority, to pay not more than \$8,000,000.00
19 of the costs to demolish buildings or structures on public or
20 privately owned property within a development area that commences
21 in 2005.

22 Sec. 7. (1) The board may:

23 (a) Prepare an analysis of economic changes taking place in
24 the downtown district.

25 (b) Study and analyze the impact of metropolitan growth upon
26 the downtown district.

27 (c) Plan and propose the construction, renovation, repair,

1 remodeling, rehabilitation, restoration, preservation, or
2 reconstruction of a public facility, an existing building, or a
3 multiple-family dwelling unit which may be necessary or appropriate
4 to the execution of a plan which, in the opinion of the board, aids
5 in the economic growth of the downtown district.

6 (d) Plan, propose, and implement an improvement to a public
7 facility within the development area to comply with the barrier
8 free design requirements of the state construction code promulgated
9 under the Stille-DeRossett-Hale single state construction code act,
10 1972 PA 230, MCL 125.1501 to 125.1531.

11 (e) Develop long-range plans, in cooperation with the agency
12 which is chiefly responsible for planning in the municipality,
13 designed to halt the deterioration of property values in the
14 downtown district and to promote the economic growth of the
15 downtown district, and take such steps as may be necessary to
16 persuade property owners to implement the plans to the fullest
17 extent possible.

18 (f) Implement any plan of development in the downtown district
19 necessary to achieve the purposes of this act, in accordance with
20 the powers of the authority as granted by this act.

21 (g) Make and enter into contracts necessary or incidental to
22 the exercise of its powers and the performance of its duties.

23 (h) Acquire by purchase or otherwise, on terms and conditions
24 and in a manner the authority considers proper or own, convey, or
25 otherwise dispose of, or lease as lessor or lessee, land and other
26 property, real or personal, or rights or interests in property,
27 which the authority determines is reasonably necessary to achieve

1 the purposes of this act, and to grant or acquire licenses,
2 easements, and options with respect to that property.

3 (i) Improve land and construct, reconstruct, rehabilitate,
4 restore and preserve, equip, improve, maintain, repair, and operate
5 any building, including multiple-family dwellings, and any
6 necessary or desirable appurtenances to that property, within the
7 downtown district for the use, in whole or in part, of any public
8 or private person or corporation, or a combination of them.

9 (j) Fix, charge, and collect fees, rents, and charges for the
10 use of any building or property under its control or any part
11 thereof, or facility therein, and pledge the fees, rents, and
12 charges for the payment of revenue bonds issued by the authority.

13 (k) Lease any building or property under its control, or any
14 part of a building or property.

15 (l) Accept grants and donations of property, labor, or other
16 things of value from a public or private source.

17 (m) Acquire and construct public facilities.

18 (n) Create, operate, and fund marketing initiatives that
19 benefit only retail and general marketing of the downtown district.

20 (o) Contract for broadband service and wireless technology
21 service in the downtown district.

22 (p) Operate and perform all duties and exercise all
23 responsibilities described in this section in a qualified township
24 if the qualified township has entered into an agreement with the
25 municipality under section 3(7).

26 **(Q) CREATE, OPERATE, AND FUND RETAIL BUSINESS INCUBATORS IN**
27 **THE DOWNTOWN DISTRICT.**

1 (2) IF THE BOARD CREATES, OPERATES, OR FUNDS A RETAIL BUSINESS
2 INCUBATOR IN THE DOWNTOWN DISTRICT, THE BOARD SHALL GIVE PREFERENCE
3 TO TENANTS WHO WILL PROVIDE GOODS OR SERVICES THAT ARE NOT
4 AVAILABLE OR THAT ARE UNDERSERVED IN THE DOWNTOWN AREA. IF THE
5 BOARD CREATES, OPERATES, OR FUNDS RETAIL BUSINESS INCUBATORS IN THE
6 DOWNTOWN DISTRICT, THE BOARD AND EACH TENANT WHO LEASES SPACE IN A
7 RETAIL BUSINESS INCUBATOR SHALL ENTER INTO A WRITTEN CONTRACT THAT
8 INCLUDES, BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING:

9 (A) THE LEASE OR RENTAL RATE THAT MAY BE BELOW THE FAIR MARKET
10 RATE AS DETERMINED BY THE BOARD.

11 (B) THE REQUIREMENT THAT A TENANT MAY LEASE SPACE IN THE
12 RETAIL BUSINESS INCUBATOR FOR A PERIOD NOT TO EXCEED 18 MONTHS.

13 (C) THE TERMS OF A JOINT OPERATING PLAN WITH 1 OR MORE OTHER
14 BUSINESSES LOCATED IN THE DOWNTOWN DISTRICT.

15 (D) A COPY OF THE BUSINESS PLAN OF THE TENANT THAT CONTAINS
16 MEASURABLE GOALS AND OBJECTIVES.

17 (E) THE REQUIREMENT THAT THE TENANT PARTICIPATE IN BASIC
18 MANAGEMENT CLASSES, BUSINESS SEMINARS, OR OTHER BUSINESS EDUCATION
19 PROGRAMS OFFERED BY THE AUTHORITY, THE LOCAL CHAMBER OF COMMERCE,
20 LOCAL COMMUNITY COLLEGES, OR INSTITUTIONS OF HIGHER EDUCATION, AS
21 DETERMINED BY THE BOARD.