

HOUSE BILL No. 4459

March 14, 2013, Introduced by Reps. Townsend, Kowall, Jacobsen, Haines, Price, Crawford, McCready, MacMaster, Forlini, Cavanagh, Stallworth, Santana, Singh, Haugh, Hobbs, Lipton, Kesto and Goike and referred to the Committee on Tax Policy.

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 section 1 (MCL 125.1651), as amended by 2012 PA 396.

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 211.155.

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 (aa),
22 exceeds the initial assessed value. The state tax commission shall
23 prescribe the method for calculating captured assessed value.

24 (g) "Catalyst development project" means a project that is
25 located in a municipality with a population greater than 600,000,
26 is designated by the authority as a catalyst development project,
27 and is expected to result in at least \$300,000,000.00 of capital

1 investment. There shall be no more than 1 catalyst development
2 project designated within each authority.

3 (h) "Chief executive officer" means the mayor or city manager
4 of a city, the president or village manager of a village, or the
5 supervisor of a township or, if designated by the township board
6 for purposes of this act, the township superintendent or township
7 manager of a township.

8 (i) "Development area" means that area to which a development
9 plan is applicable.

10 (j) "Development plan" means that information and those
11 requirements for a development plan set forth in section 17.

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

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

26 (m) "Eligible advance" means an advance made before August 19,
27 1993.

1 (n) "Eligible obligation" means an obligation issued or
2 incurred by an authority or by a municipality on behalf of an
3 authority before August 19, 1993 and its subsequent refunding by a
4 qualified refunding obligation. Eligible obligation includes an
5 authority's written agreement entered into before August 19, 1993
6 to pay an obligation issued after August 18, 1993 and before
7 December 31, 1996 by another entity on behalf of the authority.

8 (o) "Fire alarm system" means a system designed to detect and
9 announce the presence of fire, or by-products of fire. Fire alarm
10 system includes smoke detectors.

11 (p) "Fiscal year" means the fiscal year of the authority.

12 (q) "Governing body of a municipality" means the elected body
13 of a municipality having legislative powers.

14 (r) "Initial assessed value" means the assessed value, as
15 equalized, of all the taxable property within the boundaries of the
16 development area at the time the ordinance establishing the tax
17 increment financing plan is approved, as shown by the most recent
18 assessment roll of the municipality for which equalization has been
19 completed at the time the resolution is adopted. Property exempt
20 from taxation at the time of the determination of the initial
21 assessed value shall be included as zero. For the purpose of
22 determining initial assessed value, property for which a specific
23 local tax is paid in lieu of a property tax shall not be considered
24 to be property that is exempt from taxation. The initial assessed
25 value of property for which a specific local tax was paid in lieu
26 of a property tax shall be determined as provided in subdivision
27 (aa). In the case of a municipality having a population of less

1 than 35,000 that established an authority prior to 1985, created a
2 district or districts, and approved a development plan or tax
3 increment financing plan or amendments to a plan, and which plan or
4 tax increment financing plan or amendments to a plan, and which
5 plan expired by its terms December 31, 1991, the initial assessed
6 value for the purpose of any plan or plan amendment adopted as an
7 extension of the expired plan shall be determined as if the plan
8 had not expired December 31, 1991. For a development area
9 designated before 1997 in which a renaissance zone has subsequently
10 been designated pursuant to the Michigan renaissance zone act, 1996
11 PA 376, MCL 125.2681 to 125.2696, the initial assessed value of the
12 development area otherwise determined under this subdivision shall
13 be reduced by the amount by which the current assessed value of the
14 development area was reduced in 1997 due to the exemption of
15 property under section 7ff of the general property tax act, 1893 PA
16 206, MCL 211.7ff, but in no case shall the initial assessed value
17 be less than zero.

18 (s) "Municipality" means a city, village, or township.

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

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

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

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

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

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

15 (u) "On behalf of an authority", in relation to an eligible
16 advance made by a municipality, or an eligible obligation or other
17 protected obligation issued or incurred by a municipality, means in
18 anticipation that an authority would transfer tax increment
19 revenues or reimburse the municipality from tax increment revenues
20 in an amount sufficient to fully make payment required by the
21 eligible advance made by the municipality, or eligible obligation
22 or other protected obligation issued or incurred by the
23 municipality, if the anticipation of the transfer or receipt of tax
24 increment revenues from the authority is pursuant to or evidenced
25 by 1 or more of the following:

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

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

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

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

7 (v) "Operations" means office maintenance, including salaries
8 and expenses of employees, office supplies, consultation fees,
9 design costs, and other expenses incurred in the daily management
10 of the authority and planning of its activities.

11 (w) "Other protected obligation" means:

12 (i) A qualified refunding obligation issued to refund an
13 obligation described in subparagraph (ii), (iii), or (iv), an
14 obligation that is not a qualified refunding obligation that is
15 issued to refund an eligible obligation, or a qualified refunding
16 obligation issued to refund an obligation described in this
17 subparagraph.

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

1 (iii) An obligation incurred by an authority or municipality
2 after August 19, 1993, to reimburse a party to a development
3 agreement entered into by a municipality or authority before August
4 19, 1993, for a project described in a tax increment financing plan
5 approved in accordance with this act before August 19, 1993, and
6 undertaken and installed by that party in accordance with the
7 development agreement.

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

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

13 (B) Before June 30, 1995, the authority enters a contract for
14 the development of the real property located within the development
15 area.

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

18 (I) The department of natural resources for site reclamation
19 of the real property.

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

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

1 (vi) A loan from a municipality to an authority if the loan was
2 approved by the legislative body of the municipality on April 18,
3 1994.

4 (vii) Funds expended to match a grant received by a
5 municipality on behalf of an authority for sidewalk improvements
6 from the Michigan department of transportation if the legislative
7 body of the municipality approved the grant application on April 5,
8 1993 and the grant was received by the municipality in June 1993.

9 (viii) For taxes captured in 1994, an obligation described in
10 this subparagraph issued or incurred to finance a project. An
11 obligation is considered issued or incurred to finance a project
12 described in this subparagraph only if all of the following are
13 met:

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

16 (B) The obligation was part of a development plan and the tax
17 increment financing plan was approved by a municipality on May 6,
18 1991.

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

22 (D) The authority or municipality captured school taxes during
23 1994.

24 (ix) An obligation incurred after July 31, 2012 by an
25 authority, municipality, or other governmental unit to pay for
26 costs associated with a catalyst development project.

27 (x) "Public facility" means a street, plaza, pedestrian mall,

1 and any improvements to a street, plaza, or pedestrian mall
2 including street furniture and beautification, park, parking
3 facility, recreational facility, right-of-way, structure, waterway,
4 bridge, lake, pond, canal, utility line or pipe, building, and
5 access routes to any of the foregoing, designed and dedicated to
6 use by the public generally, or used by a public agency. Public
7 facility includes an improvement to a facility used by the public
8 or a public facility as those terms are defined in section 1 of
9 1966 PA 1, MCL 125.1351, which improvement is made to comply with
10 the barrier free design requirements of the state construction code
11 promulgated under the Stille-DeRossett-Hale single state
12 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.
13 Public facility also includes the acquisition, construction,
14 improvement, and operation of a building owned or leased by the
15 authority to be used as a retail business incubator.

16 (y) "Qualified refunding obligation" means an obligation
17 issued or incurred by an authority or by a municipality on behalf
18 of an authority to refund an obligation if 1 or more of the
19 following apply:

20 (i) The obligation is issued to refund a qualified refunding
21 obligation issued in November 1997 and any subsequent refundings of
22 that obligation issued before January 1, 2010 or the obligation is
23 issued to refund a qualified refunding obligation issued on May 15,
24 1997 and any subsequent refundings of that obligation issued before
25 January 1, 2010 in an authority in which 1 parcel or group of
26 parcels under common ownership represents 50% or more of the
27 taxable value captured within the tax increment finance district

1 and that will ultimately provide for at least a 40% reduction in
2 the taxable value of the property as part of a negotiated
3 settlement as a result of an appeal filed with the state tax
4 tribunal. Qualified refunding obligations issued under this
5 subparagraph are not subject to the requirements of section 611 of
6 the revised municipal finance act, 2001 PA 34, MCL 141.2611, if
7 issued before January 1, 2010. The duration of the development
8 program described in the tax increment financing plan relating to
9 the qualified refunding obligations issued under this subparagraph
10 is hereby extended to 1 year after the final date of maturity of
11 the qualified refunding obligations.

12 (ii) The refunding obligation meets both of the following:

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

18 (B) The net present value of the sum of the tax increment
19 revenues described in subdivision (cc) (ii) and the distributions
20 under section 13b to repay the refunding obligation will not be
21 greater than the net present value of the sum of the tax increment
22 revenues described in subdivision (cc) (ii) and the distributions
23 under section 13b to repay the obligation being refunded, as
24 calculated using a method approved by the department of treasury.

25 (iii) The obligation is issued to refund an other protected
26 obligation issued as a capital appreciation bond delivered to the
27 Michigan municipal bond authority on December 21, 1994 and any

1 subsequent refundings of that obligation issued before January 1,
2 2012. Qualified refunding obligations issued under this
3 subparagraph are not subject to the requirements of section 305(2),
4 (3), (5), and (6), section 501, section 503, or section 611 of the
5 revised municipal finance act, 2001 PA 34, MCL 141.2305, 141.2501,
6 141.2503, and 141.2611, if issued before January 1, 2012. The
7 duration of the development program described in the tax increment
8 financing plan relating to the qualified refunding obligations
9 issued under this subparagraph is extended to 1 year after the
10 final date of maturity of the qualified refunding obligations. The
11 obligation may be payable through the year 2025 at an interest rate
12 not exceeding the maximum rate permitted by law, notwithstanding
13 the bond maturity dates contained in the notice of intent to issue
14 bonds published by the municipality. An obligation issued under
15 this subparagraph is a qualified refunding obligation only to the
16 extent that revenues described in subdivision ~~(bb) (ii)~~ **(cc) (ii)** and
17 distributions under section 13b to repay the qualified refunding
18 obligation do not exceed \$750,000.00.

19 (z) "Qualified township" means a township that meets all of
20 the following requirements:

21 (i) Was not eligible to create an authority prior to January 3,
22 2005.

23 (ii) Adjoins a municipality that previously created an
24 authority.

25 (iii) Along with the adjoining municipality that previously
26 created an authority, is a member of the same joint planning
27 commission under the joint municipal planning act, 2003 PA 226, MCL

1 125.131 to 125.143.

2 (aa) "Specific local tax" means a tax levied under 1974 PA
3 198, MCL 207.551 to 207.572, the commercial redevelopment act, 1978
4 PA 255, MCL 207.651 to 207.668, the technology park development
5 act, 1984 PA 385, MCL 207.701 to 207.718, and 1953 PA 189, MCL
6 211.181 to 211.182. The initial assessed value or current assessed
7 value of property subject to a specific local tax shall be the
8 quotient of the specific local tax paid divided by the ad valorem
9 millage rate. However, after 1993, the state tax commission shall
10 prescribe the method for calculating the initial assessed value and
11 current assessed value of property for which a specific local tax
12 was paid in lieu of a property tax.

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

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

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

27 (ii) Tax increment revenues include ad valorem property taxes

1 and specific local taxes attributable to the application of the
2 levy of the state pursuant to the state education tax act, 1993 PA
3 331, MCL 211.901 to 211.906, and local or intermediate school
4 districts upon the captured assessed value of real and personal
5 property in the development area in an amount equal to the amount
6 necessary, without regard to subparagraph (i), to repay eligible
7 advances, eligible obligations, and other protected obligations.

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

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

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

21 (C) Ad valorem property taxes exempted from capture under
22 section 3(3) or specific local taxes attributable to such ad
23 valorem property taxes.

24 (D) **AD VALOREM PROPERTY TAXES LEVIED UNDER 1 OR MORE OF THE**
25 **FOLLOWING OR SPECIFIC LOCAL TAXES ATTRIBUTABLE TO THOSE AD VALOREM**
26 **PROPERTY TAXES:**

27 (I) **THE ZOOLOGICAL AUTHORITIES ACT, 2008 PA 49, MCL 123.1161**

1 TO 123.1183.

2 (II) THE ART INSTITUTE AUTHORITIES ACT, 2010 PA 296, MCL
3 123.1201 TO 123.1229.

4 (iv) The amount of tax increment revenues authorized to be
5 included under subparagraph (ii) or (v), and required to be
6 transmitted to the authority under section 14(1), from ad valorem
7 property taxes and specific local taxes attributable to the
8 application of the levy of the state education tax act, 1993 PA
9 331, MCL 211.901 to 211.906, a local school district or an
10 intermediate school district upon the captured assessed value of
11 real and personal property in a development area shall be
12 determined separately for the levy by the state, each school
13 district, and each intermediate school district as the product of
14 sub-subparagraphs (A) and (B):

15 (A) The percentage that the total ad valorem taxes and
16 specific local taxes available for distribution by law to the
17 state, local school district, or intermediate school district,
18 respectively, bears to the aggregate amount of ad valorem millage
19 taxes and specific taxes available for distribution by law to the
20 state, each local school district, and each intermediate school
21 district.

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

25 (v) Tax increment revenues include ad valorem property taxes
26 and specific local taxes, in an annual amount and for each year
27 approved by the state treasurer, attributable to the levy by this

1 state under the state education tax act, 1993 PA 331, MCL 211.901
2 to 211.906, and by local or intermediate school districts, upon the
3 captured assessed value of real and personal property in the
4 development area of an authority established in a city with a
5 population of 600,000 or more to pay for, or reimburse an advance
6 for, not more than \$8,000,000.00 for the demolition of buildings or
7 structures on public or privately owned property within a
8 development area that commences in 2005, or to pay the annual
9 principal of or interest on an obligation, the terms of which are
10 approved by the state treasurer, issued by an authority, or by a
11 city on behalf of an authority, to pay not more than \$8,000,000.00
12 of the costs to demolish buildings or structures on public or
13 privately owned property within a development area that commences
14 in 2005.

15 (vi) Tax increment revenues include ad valorem property taxes
16 and specific local taxes attributable to the levy by this state
17 under the state education tax act, 1993 PA 331, MCL 211.201 to
18 211.906, and by local or intermediate school districts which were
19 levied on or after July 1, 2010, upon the captured assessed value
20 of real and personal property in the development area of an
21 authority established in a city with a population of 600,000 or
22 more to pay for, or reimburse an advance for, costs associated with
23 the land acquisition, preliminary site work, and construction of a
24 catalyst development project.