House
Legislative
Analysis
Section

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DDAs: DEFINITION OF "OTHER PROTECTED OBLIGATION"

House Bill 4806 as enrolled
Public Act 136 of 2003
Second Analysis (8-6-03)

Sponsor: Rep. Philip LaJoy
House Committee: Local Government and Urban Policy
Senate Committee: Local, Urban and State Affairs

THE APPARENT PROBLEM:

The City of Belleville in Wayne County created a downtown development authority—or DDA—that encompassed wet, vacant land that was not suitable for a construction project without the creation of a drainage system. The DDA then entered into a "preferred developer agreement" with Crosswinds Development to build a 280-unit site condominium subdivision and a 23-acre public park on that land, and the DDA agreed to finance the infrastructure improvements as an incentive for the developer to improve the property. To fund the improvements, the city sold general obligation bonds for the DDA totaling $1,675,000, with the understanding that the bonds were to be repaid by using some of the tax revenue that was captured from the project (while other captured tax revenue was to support public improvements elsewhere within the DDA district). The land was then developed as a residential neighborhood within the VanBuren Public School district.

Beginning in 1999 and in subsequent years, the DDA was notified by the Department of Treasury that audits indicated the DDA had captured too much school tax revenue—in all, $390,334 between 1994 and 1999—and that the money would have to be repaid in order to reimburse the appropriate school agencies by August 31, 2003, or DDA officials would be subpoenaed to appear before the State Tax Commission (a subpoena that was never issued).

It seems that when the Belleville DDA officials originally proceeded with their project, they met all the requirements of the Downtown Development Authority Act. They signed the development agreement on July 6, 1993, adopted a DDA Development Plan on December 20, 1993, and sold bonds a year later, in December 1994. However, the rules of the DDA program changed in 1994 and 1995, after their project had gotten underway.

In March 1994, as part of new school financing arrangements under Proposal A, amendments to the DDA statute took effect that prohibited the capture of school taxes. The amendments included a requirement that in order to capture school taxes, a project had to have had a "contract for final design by March 1, 1994." The following year, in August 1995, the Department of Treasury published a rule defining the term "contract for final design." Four years later, and after the project to build the 280-unit condominium and public park were complete, the City of Belleville was notified that its "preferred developer agreement" did not constitute a "contract for final design," as defined by the department.

In response, DDA officials claim that their "preferred developer agreement" also embodies the final design contract since it was the only agreement entered into with the developer. They point out that no separate design agreement was necessary for this project, because the development company used the firm's own architectural and engineering resources, and did not rely upon the city's resources.

Legislation has been introduced that would allow the DDA in the City of Belleville to continue its capture of school taxes in the DDA district, and that would cancel the $390,334 payment of back school taxes.

THE CONTENT OF THE BILL:

House Bill 4806 would amend the Downtown Development Authority Act to expand the definition of "other protected obligation" to include a "preferred development agreement" entered into during July 1993.

Since the passage of Proposal A to fund public schools in 1994, downtown development authorities have been generally prohibited from capturing taxes

that are used to fund school districts, except in cases specified in the law where obligations had been entered into before or during the implementation of Proposal A. These are known as "eligible obligations" and "other protected obligations". The law sets forth several narrow definitions of "other protected obligation", including one that defines the term as '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 accord with the act before December 31, 1993, for which a contract for final design is entered into by or on behalf of the municipality or authority before March 1, 1994.' House Bill 4806 would retain this definition, and expand it to include "or for which a written agreement with a developer, titled preferred development agreement, was entered into by or on behalf of the municipality or authority in July 1993."

MCL 125.1651

FISCAL IMPLICATIONS:

The Senate Fiscal Agency notes that the bill would have no fiscal impact on the state, and a negligible effect on local units. The changes in the bill would allow a limited number of authorities to continue capturing certain school taxes. Because the taxes are currently being captured, the bill would only prevent a change from occurring. Consequently, the bill would prevent a revenue loss to authorities and eliminate a revenue increase for school districts. However, the agency offers the caveat that this estimate is preliminary and will be revised as new information becomes available. (7-15-03)

ARGUMENTS:

For:

The legislation is needed in order to reverse what local officials consider an unfair ruling by the Department of Treasury during the previous administration. As a chronology of development events indicates, when the Belleville DDA officials proceeded with their project to build a 280-unit site condominium subdivision and a 23-acre public park, they met all of the requirements of the Downtown Development Authority Act. They signed a preferred development agreement on July 6, 1993, adopted a DDA Development Plan on December 20, 1993, and then the city sold general obligation bonds in order to drain the site a year later, in December 1994. However, the rules of the DDA program changed in 1994 and 1995, after their project had gotten underway, and what's more, four years passed before the DDA was notified, in 1999, that they owed school agencies $390,334 in over-captured school taxes—taxes that were captured between 1994 and 1999. The changes in the DDA law adopted in 1994 (and defined by the Department of Treasury in 1995) were the result of Proposal A, which changed the way schools are financed in Michigan, and which prohibits the capture of school taxes by DDAs. The amendments to the DDA law are good ones, but in this instance, the Belleville DDA was 'caught in the middle' of a policy change. It should not be penalized.

Against:

This legislation is unnecessary. The new administration at the Department of Treasury indicates that they are reviewing 14 similar cases that are pending, in which officials of DDAs and TIFAs are alleged to have over-captured school taxes after 1994. Each case has been scheduled for an administrative review, and meetings have already been scheduled with local officials in order to gather information and hear claims, firsthand. The department's goal is to settle or withdraw all cases before October 1, 2003, when the new fiscal year begins.

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.