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BILL ANALYSIS

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House Bill 4806 (Substitute S-1 as reported)
Sponsor: Representative Philip LaJoy
House Committee: Local Government and Urban Policy
Senate Committee: Local, Urban and State Affairs

Date Completed: 7-15-03

RATIONALE

Under the downtown development authority Act, a downtown development authority (DDA) may "capture" the growth in tax revenue in a designated development area for improvements to a variety of public facilities, such as streets, parks, parking facilities, and recreational facilities. These improvements are typically financed through bond issues that are paid off out of tax revenue growth. Many DDAs were operational before the passage of Proposal A in 1994, which significantly reduced local school property taxes. Since the passage of Proposal A, DDAs have not been able to capture the growth in school tax revenue, except as prescribed in the Act; that is, a DDA may capture State and local school taxes as necessary to repay eligible advances, eligible obligations, and other protected obligations. In general, "other protected obligation" refers to certain obligations issued by a DDA after August 19, 1993, but before December 31, 1994, to finance a project described in a tax increment finance plan approved by the municipality before December 31, 1993, for which a contract for final design was entered into by or on behalf of the municipality or authority before March 1, 1994. The Act does not define "contract for final design".

In July 1993, the DDA in the City of Belleville in Wayne County entered into a development agreement with a developer to make infrastructure improvements to a parcel of property in its DDA district, as an incentive for the developer to build a subdivision and a public park. The DDA agreed to finance the improvements by selling bonds, to be repaid from taxes captured from the tax base created by the project. In 1999, the Department of Treasury began notifying the DDA that the Department's audits showed that the DDA had

been overcapturing school taxes from 1994 through 1999, for a total of \$390,000. While the Belleville DDA believed that it had a legitimate development agreement with the developer, and thus a protected obligation under the Act, reportedly the Department did not recognize the agreement as a "contract for final design". It has been suggested that the agreement entered into by Belleville's DDA should be included as a protected obligation under the Act.

CONTENT

The bill would amend the downtown development authority Act to include in the definition of "other protected obligation" a specific preferred development agreement that was entered into during July 1993.

Under the bill, the definition of "other protected obligation" would include 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 the Act before December 31, 1993, 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

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 Belleville DDA entered into a legitimate agreement with a developer to build a subdivision and a park on vacant land within the DDA's territory. The DDA sold bonds to finance infrastructure for the site, and began repaying the bonds with taxes captured from the tax base created by the development. Six years after the project was agreed to, the Department of Treasury told the Belleville DDA that it had overcaptured the school taxes on the project and owed those taxes to local school districts, the intermediate school district, and the State (for the State education tax). It is unfair for the Department to put the DDA in this position.

The dispute centers on a determination by the Department that the DDA's agreement with the developer was not a contract for final design, as required in the Act. The language in the Act that requires a contract for final design was inserted by Public Act 323 of 1993, but the phrase was not defined. Reportedly, in 1995 the Department published a rule that defined the phrase, but by that time the Belleville project was under way. Thus far, the DDA has not paid the money the Department claims it owes. The bill would allow the DDA to avoid paying the money to the school districts and the State, thus protecting its bonds that were issued based on the belief that the captured school taxes would be available as a revenue stream for payment of the bonds.

Legislative Analyst: George Towne

FISCAL IMPACT

The bill would have no fiscal impact on the State. The bill would have a negligible effect on local units.

It appears that the bill would affect a limited number of authorities. The changes in the bill would allow 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.

This estimate is preliminary and will be revised as new information becomes available.

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.