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BILL ANALYSIS



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Senate Bill 393 (as enacted)

PUBLIC ACT 57 of 2018

Sponsor: Senator Ken Horn

Senate Committee: Economic Development and International Investment

House Committee: Local Government

Date Completed: 3-28-19

RATIONALE

Many municipalities use tax increment financing (TIF) revenue for specific public purposes. Previously, there were several statutes under which a municipality could create an authority that could "capture" tax revenue attributable to increases in property value within an area or district ("tax increment revenue"), and use that money for identified purposes. These purposes vary and depend on the authority that collects the revenue and the statute under which the authority was created.

Concerns were raised about TIF authorities' adherence to reporting requirements. Generally, statutes authorizing TIF require an authority to provide a financial report to certain governing bodies or State agencies or departments. However, it was reported that few authorities implementing TIF complied with the reporting requirements. Some believed that this occurred because there was confusion about what needed to be reported or what forms had to be filed, filing difficulties, or a lack of penalties for noncompliance. To give all authorities an incentive to report on their TIF activities and finances regularly, create more transparency regarding the TIF process, and allow streamlined administration of TIF authorities across the State, it was suggested that several TIF statutes be recodified under one act, and that penalties for noncompliance and further reporting requirements be created.

CONTENT

The bill enacted the "Recodified Tax Increment Financing Act" to do the following:

- Recodify several tax increment financing (TIF) statutes.**
- Establish reporting requirements for previously created authorities and authorities created under the Act, and penalties for noncompliance with those requirements.**
- Require authorities to hold informational meetings.**
- Provide for the continuation of a liability or obligation of an authority under a statute that the bill repeals.**

The bill repealed the Historic Neighborhood Tax Increment Finance Authority Act, the Private Investment Infrastructure Funding Act, the downtown development authority Act, the Tax Increment Finance Authority Act, the Local Development Financing Act, the Corridor Improvement Authority Act, the Neighborhood Improvement Authority Act, the Water Resource Improvement Tax Increment Finance Authority Act, and the Nonprofit Street Railway Act.

The Act took effect on January 1, 2019.

(The majority of the Acts that were repealed provided for the creation of an authority that could

have captured tax revenue attributable to increases in property value within an area or district and used that money for specific purposes, or otherwise captured tax revenue for listed purposes.)

Recodified TIF Acts

The Act recodifies the downtown development authority Act, the Tax Increment Finance Authority Act, the Local Development Financing Act, the Nonprofit Street Railway Act, the Corridor Improvement Authority Act, the Water Resource Improvement Tax Increment Finance Authority Act, and the Neighborhood Improvement Authority Act. The recodified provisions of these Acts are "Parts" of the proposed Act.

Generally, each Act is recodified with several changes that are similar for each part. Except in the Nonprofit Street Railway Part, each part omits existing provisions that are similar or identical to the following:

- The requirement that an authority annually submit to the governing body of the municipality and the State Tax Commission a report on the status of the tax increment financing plan.
- The ability of the Commission to institute proceedings to compel enforcement of the Act.
- The ability of the Commission to promulgate rules necessary for the administration of the Act.

Generally, each of the TIF Acts states that a tax increment finance plan cannot be abolished until the principal of and interest on bonds issued pursuant to the Act have been paid or funds sufficient to make the payment have been segregated. Except in the Nonprofit Street Railway Part, the bill states in each part that a TIF plan may not be abolished, allowed to expire, or otherwise terminated until the principal of, and interest on, bonds issued pursuant to the part have been paid or funds sufficient to make the payment have been segregated.

(In general, a tax increment finance plan is a plan for an authority to "capture" revenue from incremental increases or value in a designated area or district, and to spend the revenue to develop the area or finance a specific project.)

Authority Reporting Requirements

Under Part 9 of the Act, each municipality that has created an authority or that creates an authority must create a website or use the existing website of the municipality that is operated and regularly maintained with access to authority records and documents for the fiscal year beginning on the Act's effective date, including all of the following:

- Minutes of all board meetings.
- Annual budget, including encumbered and unencumbered fund balances.
- Annual audits.
- Currently adopted development plan, if not included in a TIF plan.
- Currently adopted tax increment finance plan, if currently capturing tax increment revenue.
- Current authority staff contact information.
- A listing of current contracts with a description of those contracts and other documents related to management of the authority and services provided by the authority.

Additionally, the municipality must include on the website an annual updated synopsis of activities of the authority, which must include all of the following, if any:

- For any tax increment revenue described in the annual audit that is not spent within five years of its receipt, a description of the reasons for accumulating those funds, a time frame when the funds will be spent, the uses for which the funds will be spent, and, if any funds have not been spent within 10 years of their receipt, the amount of those funds and a written explanation of why they have not been spent.
- A list of authority accomplishments, including progress made on development plan and tax increment finance plan goals and objectives for the immediately preceding fiscal year.

- A list of authority projects and investments, including active and completed projects for the immediately preceding fiscal year.
- A list of authority events and promotional campaigns for the immediately preceding fiscal year.

These reporting requirements apply to records and documents related to fiscal years as follows:

- For the fiscal year in which the Act takes effect, the records and documents for that fiscal year.
- For the fiscal year one year following the Act's effective date, the records and documents for that fiscal year and the immediately preceding fiscal year.
- For the fiscal year two years following the Act's effective date, the records and documents for that fiscal year and the two immediately preceding fiscal years.
- For the fiscal year three years following the Act's effective date, the records and documents for the fiscal year and the three immediately preceding fiscal years.
- For the fiscal year four years following the Act's effective date and each subsequent fiscal year, the records and documents for the fiscal year and the four immediately preceding fiscal years.

The reporting requirements do not take effect until 180 days after the end of an authority's current fiscal year as of the Act's effective date.

If the municipality creating an authority does not have an existing website and chooses not to create a website, the municipality must maintain the required records at a physical location within the municipality that is open to the public.

Informational Meetings

Each year, the board of an authority must hold at least two informational meetings. At least 14 days before the date of an informational meeting, notice of the meeting must be posted on the municipality's or authority's website, and the board of the authority must mail notice of the meeting to the governing body of each taxing jurisdiction levying taxes that are subject to capture by an authority under the Act. As an alternative to mailing notice of the informational meeting, the board of the authority may notify the clerk of the governing body of each taxing jurisdiction by electronic mail. The informational meetings may be held in conjunction with other public meetings of the authority or municipality.

TIF Account Reporting

Annually, on a form and in the manner prescribed by the Department of Treasury, an authority that is capturing tax increment revenue must submit to the governing body of the municipality, the governing body of a taxing unit levying taxes subject to capture by an authority, and the Department a report on the status of the tax increment financing account. However, an authority may submit the report by electronic means to the governing body of the municipality and the governing body of a taxing unit levying taxes subject to capture by the authority. The report must include all of the following:

- The name of the authority.
- The date the authority was formed, the date the TIF plan was set to expire or terminate, and whether the plan expired during the immediately preceding fiscal year.
- The date the authority began capturing tax increment revenue.
- The current base year taxable value of the tax increment financing district.
- The unencumbered and encumbered fund balance for the immediately preceding fiscal year.
- The amount and source of revenue in the account, including the amount of revenue from each taxing jurisdiction.
- The amount in any bond reserve account.
- The amount and purpose of expenditures from the account.
- The amount of principal and interest on any outstanding bonded indebtedness.
- The initial assessed value of the development area or authority district by property tax classification.

- The captured assessed value retained by the authority, by property tax classification.
- The tax increment revenue received for the immediately preceding fiscal year.
- Whether the authority amended its development plan or its TIF plan within the immediately preceding fiscal year and, if the authority amended either plan, a link to the current development plan or tax increment financing plan that was amended.
- Any additional information the governing body of the municipality or the Department considers necessary.

The report must be filed with the Department of Treasury at the same time as the annual financial report is filed with the Department under the Uniform Budgeting and Accounting Act. The Department must collect the reports and annually compile a combined report that summarizes the reported information and annually submit a copy of that combined report to each member of the State Legislature.

The Department must consult with the professional organizations that represent municipalities developing the reporting form, and finalize and publish the form no later than 60 days after the Act's effective date.

Within 90 days of the Act's effective date, each authority must send a copy or an electronic mail link of its currently adopted development plan or its currently adopted tax increment finance plan, if separate from the development plan, to the Department.

Enforcement & Compliance

Under Part 9, the Department may institute proceedings to compel enforcement of the proposed Act and must send written notification of a violation to an authority that fails to comply with the Act, to each taxing jurisdiction that has tax increment revenue captured by the authority, and to the governing body of the municipality that established the authority. The written notification must specifically detail the authority's noncompliance with the Act.

If the Department notifies an authority in writing that it failed to comply with any provision of the Act, and after 60 days following receipt of that notice the authority does not comply, the authority may not capture any tax increment revenue that is in excess of amounts necessary to pay bonded indebtedness or other obligations for the period of noncompliance. During the period of noncompliance, an authority may not amend or approve a TIF plan. If the period of noncompliance exceeds two consecutive years, the authority may not capture TIF revenue that is in excess of amounts necessary to pay bonded indebtedness or other obligations without a resolution of authorization of the municipality that created the authority and each taxing jurisdiction whose ad valorem taxes are subject to capture by the authority. Any excess funds captured must be returned to the taxing jurisdiction from which they were captured according to the part under which they were captured.

The use of "authority" and "municipality" in Part 9 refer to an authority and municipality as used in each part except the Nonprofit Street Railway Part.

Repealed Act Transition

The repeal of a statute or section of law by the bill does not relinquish any penalty, forfeiture, or liability, whether criminal or civil in nature, and that statute or section of law must be treated as still remaining in force as necessary for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of the penalty, forfeiture, or liability.

A bond, note, or any other obligation or refunding of any obligation issued by an authority or by the municipality that created the authority under a statute or section of law repealed by the bill must continue in effect under its original terms under the corresponding part of the Act. A contractual right, duty, or obligation relating to an authority under a statute or section of law repealed by the bill must continue and remain with the authority under the corresponding part of

the Act. A development plan or a TIF plan developed by an authority under a statute or section of law repealed by the bill remains in effect with the authority under the corresponding part of the Act.

Members of a board of an authority created under a statute or section of law repealed by the bill with the same or similar name and functions must continue in office for the duration of the terms of office for which they were appointed. Members must be appointed under the Act only as terms of the former members expired or vacancies occurred. Members of the board of an authority created under a statute or section of law repealed by the bill may be appointed to the new board to succeed themselves subject to any limits for the total period of service set forth under the Act.

As the Act is a recodification of certain existing tax increment financing acts, the recodification of the downtown development authority Act is a continuation of the taxing authority authorized under the Act for the purposes of Article IX, Section 31 of the State Constitution. (Article IX, Section 31 is part of the "Headlee amendment" to the Constitution approved by the voters in 1978. This section requires voter approval of any local tax increases or new taxes established after the amendment was approved; limits property tax revenue resulting from increases in property tax assessment; and limits revenue collected to the amount the millage originally was to generate, adjusted for inflation.)

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

Authorities implementing tax increment financing have captured tax dollars for years for different development projects. However, a lack of State oversight encouraged the absence of transparency. According to testimony provided before the Senate Committee on Economic Development and International Investment, authorities created under the Brownfield Redevelopment Financing Act were the only authorities consistently reporting their finances. The Department of Treasury estimated that it received reporting data from around 40% of TIF authorities statewide. Without proper reporting, there was a lack of accountability to taxpayers and to entities that would receive tax revenue if it were not captured. While TIF is a useful tool for a municipality to enhance its tax base and improve its communities through development projects, tax increment financing must be implemented in a transparent and accountable way. The Act ensures this by requiring authorities to gather and report more data, and by creating penalties for TIF authorities that do not comply with the new reporting requirements.

Supporting Argument

The State lacks data on the effectiveness of tax increment financing and the amount of tax dollars that TIF authorities capture. By enacting the bill, the Department of Treasury will receive data consistently from TIF authorities across the State. The data may assist policymakers in assessing the value of TIF and its future applications.

Opposing Argument

While the Act will promote accountability and transparency of TIF authorities, the problem of special millage capture remains. Special millages are voted on by taxpayers for the purpose of raising money for specific causes, such as services for senior citizens, veterans, public safety, and road improvements. Under the Act, TIF authorities may continue to capture dollars raised from these millages, which take money away from a purpose directly approved by the taxpayers. The bill should have included a provision exempting special millages from capture.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill will increase administrative costs of the Michigan Department of Treasury by a minimal amount, increase the local administrative costs of some tax increment financing authorities (TIFAs), and, in cases of TIFA noncompliance with expanded reporting requirements, increase revenue to other local units of government. The expanded financial and activity reporting requirements apply to downtown development authorities, tax increment financing authorities, local development finance authorities, corridor improvement authorities, water resource improvement authorities, and neighborhood improvement authorities. These TIFAs are required to submit to the Department reports that are more detailed than those required under previous law; make those reports publicly available either online or at the municipal premises; and hold informational meetings. The cost of complying with these requirements will vary by locality depending on the number and complexity of projects and the availability of authority or municipal personnel to prepare the reports.

A TIFA that does not comply with the reporting requirements after receiving notice of noncompliance from the Department is limited in the amount of tax increment revenue that it may collect to the amount necessary to pay bonded indebtedness and other obligations. A local unit of government subject to tax capture within a noncompliant TIFA may see increased local revenue if captured tax revenue in excess of the amount needed by the TIFA for bonded indebtedness is returned to the local government that levied the tax.

Fiscal Analyst: Ryan Bergan

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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.