



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

BUSINESS IMPROVEMENT ZONES

**House Bill 4735 as enrolled
Public Act 261 of 2001
Sponsor: Rep. Jason Allen**

**House Bill 4736 as enrolled
Public Act 260 of 2001
Sponsor: Rep. Samuel Buzz Thomas**

**House Committee: Commerce
Senate Committee: Economic
Development, International Trade and
Regulatory Affairs**

Revised Second Analysis (1-27-03)

THE APPARENT PROBLEM:

Supporters of the business improvement district (BID) concept describe it as a mechanism for property owners and merchants to use to plan and finance supplemental services that will enhance the physical environment in a designated business area, such as beautification, private security, lighting, marketing, promotions, and the cleaning of sidewalks, common spaces, and parks. One proponent has termed it, "self-help through self-assessment". Under such a program, property owners and business owners in a specified geographic area band together to create a district in which special assessments can be levied, typically based on property values, with the proceeds used to fund enhancement projects. The revenue stream can also be used to support bonds to pay for a variety of streetscape improvements, such as lighting, benches, and plantings. A BID is often a privately managed entity but it requires the authorization of the local unit of government to make the assessments binding and to collect the assessments. There are said to be about 1,200 BIDs in the United States and Canada. Michigan, however, does not have a statute governing the creation and operation of such districts. There is a BID in Detroit, but it is a voluntary organization. Legislation has been introduced that would govern the establishment and operation of such business improvement districts (referred to in the legislation as business improvement zones).

THE CONTENT OF THE BILLS:

House Bill 4736 would amend Public Act 120 of 1961 (MCL 125.990 et al.), sometimes called the principal shopping district act, to add a new chapter (Chapter 2) under which one or more business improvement zones could be established in a city or village. Such a zone could be funded by assessments levied against property within the zone area (other than residential and tax-exempt property) and would be authorized to operate under a zone plan for a seven-year period. A zone could subsequently be renewed for an additional seven years and a new plan adopted. The establishment of such a zone would require the submission of petitions by interested parties, approval of a zone plan by affected property owners, approval of the zone and the plan by the governing body of the local unit of government, and an election involving affected property owners conducted by the local clerk. The bill would take effect on March 1, 2002.

House Bill 4735 would make complementary amendments to the same act (MCL 125.981) to name the act's existing provisions Chapter 1 and to specify that current references to "the act" would be references to that chapter. The bill would also provide a definition of the term "assessable property" for the purposes of Chapter 1.

Under House Bill 4736, a business improvement zone could do the following for the benefit of property owners within the zone:

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- Acquire, construct, develop, improve, maintain, operate, or reconstruct park areas, planting areas, and related facilities within the zone area;
- Acquire, construct, clean, improve, maintain, reconstruct, or relocate sidewalks, street curbing, street medians, fountains, and lighting within the zone area;
- Develop and propose lighting standards within the zone area;
- Acquire, plant, and maintain trees, shrubs, flowers, or other vegetation within the zone area;
- Provide or contract for security services with other public or private entities and purchase equipment or technology related to security services within the zone area;
- Promote and sponsor cultural or recreational activities;
- Engage in economic development activities, including the promotion of business, retail, or industrial development, developer recruitment, business recruitment, business marketing, business retention, public relations, and market research;
- Engage in any other activity to enhance the economic prosperity, enjoyment, appearance, image, and safety of the zone area;
- Acquire by purchase or gift, maintain, or operate real or personal property necessary to implement the purposes of the district, and solicit and accept gifts and grants to further the zone plan; and
- Sue or be sued.

Supplemental Services. The bill would specify that the services and projects provided by a business improvement zone were to be considered services of the zone and not services, functions, or projects of the municipality. The zone's services and projects would be supplemental to the municipal services, projects, and functions.

Petitioning for a Zone. To establish a zone, a petition would have to be filed with the city or village clerk bearing the signatures of property owners of parcels representing at least 30 percent of the total taxable value of all assessable property within the zone. The petition would also have to include the boundaries of the zone area and a listing, by tax parcel identification number, of all parcels within the zone area, separately identifying assessable property. The

bill would require that the majority of all parcels included in a zone area, both by area and by taxable value, be assessable property (that is, not residential or tax-exempt property). A zone area would have to be contiguous, with the exception of public streets, alleys, parks, and other public rights-of-way. A business improvement zone could be established in a city or village even if there was already a principal shopping district or a business improvement district established under Chapter 1 of the act. However, assessable property could not be included in more than one business improvement zone and could not be included in both a principal shopping district and a business improvement district established under Chapter 1.

The bill would also specify that if a Chapter 1 business improvement district was already located in a city or village on the bill's effective date, a business improvement zone could not be established under Chapter 2 unless within 180 days after the bill's effective date or during July 2005 or during July every third year after 2005, the governing body of the city or village adopted a resolution authorizing itself to consider the establishment of a business improvement zone.

Meeting of Owners/Zone Plan. Upon the submission of a petition, the local clerk would have to notify all property owners within the zone area of a public meeting regarding the establishment of a zone to be held not less 45 days or more than 60 days after the filing of the petition. Notice would have to be sent by first-class mail no less than 14 days prior to the meeting. At the meeting, property owners could adopt a zone plan for submission to and approval by the local governing body. A zone plan would have to include: a description of the zone boundaries; the proposed initial board of directors; the method for removal, appointment, and replacement of the board; a description of planned projects during the seven-year period, including the scope, nature, and duration of projects; an estimate of the total amount of expenditures for planned projects; the proposed source or sources of financing for the projects; if the financing included assessments, the projected amount or rate of the assessments for each year and basis upon which they were to be imposed; a listing, by tax parcel identification number, of all parcels within the zone area; and a plan of dissolution. A plan would be considered adopted if a majority of the property owners voting at the meeting approved the plan. Votes of property owners would be weighted in proportion to the amount of taxable value of their respective real property for the preceding calendar year, but in no case could one property owner have

more than 25 percent of the votes eligible to be cast. A meeting of property owners would be subject to the Open Meetings Act and would have to be held in the city or village in which the zone was to be located.

Local Unit Approval. If a plan was adopted, it would be presented to the local clerk, and the local governing body would have to schedule a public hearing within 45 days to review the plan and any proposed assessments and to receive public comment. The clerk would have to notify all owners of parcels within the zone area of the public hearing by first-class mail. At the hearing, the governing body would have to approve or reject the establishment of the zone and the zone plan.

If the governing body rejected the establishment of a zone and the zone plan, the local clerk would have to notify all property owners within the zone of a reconvened meeting of owners to be held not sooner than 10 days after or later than 21 days after the date of the governing board's rejection. Notice would have to be sent to property owners by first-class mail not less than 7 days prior to the meeting. At the reconvened meeting, the property owners could amend the zone plan by majority (weighted) vote. The amended zone plan could be resubmitted to the local clerk without a new petition for approval or rejection by the local governing body not later than 60 days after the resubmission. If the amended plan was not rejected within 60 days, it would be considered approved. If it was rejected, it could not be resubmitted without the delivery of a new petition.

Approval of the zone and plan would serve as a determination by the city or village that any assessment set forth in the plan, including the basis for allocating the assessment, was appropriate (subject to subsequent approval of the zone and zone plan by zone property owners).

Election Involving Property Owners. If the zone and plan were approved by the local governing body, an election would be held involving the zone property owners. The election would be conducted by mail not more than 60 days following the approval. The local clerk would have to notify property owners of the election by first-class mail at least 30 days before the election, and publish the notice at least twice in a newspaper of general circulation. The first publication would have to be not less than 10 days or more than 30 days before the election, and the second publication at least one week after the first publication. Votes would be weighted as at the earlier election. This election (as with the previous one) would not be considered an election subject to the

Michigan Election Law. The person who filed the petition, the proposed board members, and the property owners could assist the local clerk in conducting the election to keep expenses to a minimum. Their participation would be at the option of and under the direction of the local clerk. Following the election, the local unit could ask the resulting zone (if approved) or the person filing the petitions to provide reimbursement for all or a portion of reasonable expenses (or it could forgo collecting expenses).

Adoption of a Business Improvement Zone. The proposal to establish the zone and the zone plan, including the initial board of directors, would be considered adopted if 60 percent of property owners voting in the election approved, with votes weighted as before. Adoption of a zone and zone plan would authorize the creation of a zone and the implementation of the plan for a seven-year period. The adoption of a zone or plan would not relieve the zone from following, and would not waive any rights of the local unit to enforce, any applicable laws, statutes, or ordinances. A zone would have to comply with all applicable state and federal laws. To the extent not protected by the immunity conferred by the Governmental Immunity Act, a local unit that approved a business improvement zone within its boundaries would be immune from civil or administrative liability arising from any actions of the zone.

Board of Directors. The day-to-day activities of the zone and the implementation of the zone plan would be managed by a board of directors. The board would have to consist of an odd number of directors totaling not less than 5 or more than 15. The board could include one director nominated by the chief executive of the city or village and approved by the local governing body. The duties of the board would be prescribed by the zone plan and would include developing administrative procedures for implementing the plan; recommending amendments to the plan; scheduling and conducting an annual meeting of owners; and developing a zone plan for the next seven-year period. The board would be subject to the Open Meetings Act and the Freedom of Information Act. Board meetings would have to be held within the city or village in which the zone was located. A zone could contract with a nonprofit corporation and pay the corporation a reasonable fee for services provided. The bill would require that the articles of incorporation of such a nonprofit corporation would have to provide that it could promote a zone and provide management services for the implementation of a zone plan. The corporation

would have to be exempt from federal income tax under sections 501(c)(4) or 501(c)(6) of the federal Internal Revenue Code.

Assessments. A zone could be funded in whole or in part by one or more assessments on assessable property, as provided for in the zone plan. An assessment would be in addition to any taxes or special assessments otherwise imposed on assessable property, and would not be a special assessment collected under the General Property Tax Act. A zone assessment could be imposed only on the basis of the benefits to assessable property afforded by the zone plan. There would be a rebuttable presumption that the plan and any project specially benefited all assessable property in the zone. The local treasurer would collect a zone's assessments and remit them to the zone. The zone could assist the treasurer to keep the expenses of collecting assessments at a minimum. Assessment revenues would be the property of the zone and not of the local unit of government or of the state. Money collected from assessments would have to be deposited in a financial institution and could only be used to implement the zone plan.

Delinquent assessments. Delinquent assessments would be collected by the zone. The zone could institute a civil action to collect any delinquent assessment. An assessment would be delinquent if it had not been paid within 90 days after it was due. A delinquent assessment would accrue interest at a rate of 1.5 percent per month until paid. If any portion of an assessment had not been paid within 90 days after it was due, the portion of the unpaid assessment would be considered a lien on the property. The lien would be for the unpaid amount and would not include any interest.

Loans. A zone could also borrow money in anticipation of the receipt of assessments if 1) the loan was not requested or authorized, or would not mature, within 90 days of the expiration of the seven-year period; 2) the amount of the loan did not exceed 50 percent of the annual average assessment revenue of the zone for the previous year or, if the zone had been in existence for less than a year, did not exceed 25 percent of projected revenue; and 3) the loan repayment period did not extend beyond the seven-year period. A zone loan would be subject to the Revised Municipal Finance Act.

Audits and Reports. All expenditures would have to be audited annually by a certified public accountant and a copy of the audit would have to be transmitted to the board of directors within 30 days after completion, with copies available to property owners

and the public. The audit would have to be completed within nine months of the close of the fiscal year of the business improvement zone. If an audit contained material exceptions and they were not substantially corrected within 90 days of the delivery of the audit, the zone would be dissolved in accordance with the zone plan, upon approval of the dissolution by the local governing board. The board of directors would also be required to publish an annual activity and financial report that would be available to the public. Each year, every property owner would have to be notified of the availability of the activity and financial report.

Renewal and Dissolution. Prior to the expiration of the seven-year period for which the zone had been authorized, the board of directors could notify property owners of a special meeting to approve a new zone plan for a new seven-year period. The notification would have to be made by first-class mail at least 14 days prior to the meeting. Re-authorization of the zone would require a 60 percent majority vote (weighted as before) of owners attending the meeting. If the new zone plan reflected any new assessment or reflected the extension of an assessment beyond its previously approved duration, then the new or extended assessment would only be effective if approved by the local governing body.

The zone could be dissolved at an annual meeting or a special meeting by a vote of more than 50 percent of the property owners of assessable property voting at the meeting. Property owners could get the question of dissolution placed on the agenda of the annual meeting or on the agenda of a special meeting by submitting a written petition signed by 20 percent of the property owners of assessable property within the zone area. If the next annual meeting was to be held not later than 60 days after receipt of the petition, the dissolution vote would take place at the annual meeting; otherwise, a special meeting would be held not later than 60 days after submission of the petition. A dissolution would not take effect until all contractual liabilities of the zone had been paid and discharged.

Upon dissolution, the board of a zone would have to dispose of the zone's remaining physical assets. The proceeds of any physical assets disposed of by the zone and all money collected through assessments not required to pay expenses would have to be refunded on a pro rata basis to those from whom assessments were collected. If the board found that the refundable amount was so small as to make impracticable the computation and refunding of the money, the money could be transferred to the local

treasurer for deposit in the local unit's general fund. Upon dissolution, any remaining assets of the zone would be transferred to the local treasurer for deposit in the local unit's general fund.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reports that the bill would have no fiscal impact on the state and minimal impact on local units of government. (Floor analysis dated 9-28-01)

ARGUMENTS:

For:

One proponent of business improvement districts (or zones, as the bills under discussion refers to them) has said that they "are based on a simple premise: Those with the greatest stake in an area's prosperity assume collective responsibility for its improvement – and only those who benefit from physical improvements or services pay for them". There are said to be some 1,200 BIDs in the United States and Canada. Supporters of the concept point to successful operations in Philadelphia, New York, Boston, Los Angeles, Des Moines, and Paterson, New Jersey. House Bills 4735 and 4736 would provide enabling legislation for the creation of such districts in cities and villages in Michigan. A number of representatives of Detroit business interests have supported such an approach. Under a BID, the property owners and businesses in a designated area assess themselves in order to pay for programs and services that are supplemental to government services. The goal is to improve the area, attract traffic, and increase property values. As one study of these districts pointed out, "The motivation for property owners to establish a BID and thereby impose a compulsory levy on themselves is that the expected commercial return will exceed their personal contribution. The growth in BID formations across the United States reflects the recognition by property owners that the value of their asset . . . depends to a significant extent on the surrounding environment." As a result, the interests of the participating property owners and merchants are expected to be reflected in the planning that precedes final approval of the district, including the proposed projects and programs that the assessments will fund. At the same time, local business owners take responsibility for the quality of the environment they are creating within the district. Sometimes such efforts can stimulate supportive action by the local government. Obviously, the compulsory assessment feature saves the time-consuming fundraising that a

voluntary organization must carry out (and avoids the problem of "free riders"). It ensures that those who benefit also pay.

It should be noted that the bills require that a zone be approved by the local unit of government, as well as by a supermajority of affected property owners. The local unit would have to hold a public hearing at which the public as well as affected property owners could express their views. By the time property owners vote on final approval, the zone's plan of operation will have been developed and will be available for scrutiny, including the proposed initial board of directors and a description of planned projects. The bottom-up process of establishing a zone is designed, proponents note, so that it requires the involvement of those who want to make it happen, those who see the benefits that will result. They then must design a program so as to convince others of its benefits.

Against:

A number of questions and concerns have been raised about the nature of business improvement zones and how they would operate in relationship to local governments. Some critics see such zones as simply an additional layer of taxation imposed on the business sector. It should also be noted that the proposal does not provide property owners and business owners who are unhappy with the assessments or with the nature of the programs and services being funded with much of an opportunity to be heard or to be represented. The composition of the board is left to the zone's plan of operation. It is possible for a few large property owners to override the interests of numerous smaller property owners. Also, critics say, there is sometimes a tension between the interests of property owners and the interest of the local businesses, in cases where the businesses are tenants and not owners.

Another criticism is that this kind of zone essentially creates private governments and allows privately sponsored compulsory assessments. At least with government-sponsored zones (such as tax increment finance authorities), there is ongoing oversight by elected representatives and opportunities for the public's views to be heard. The administrators of an improvement zone could engage in projects with significant community impact that the community at large has little voice in. Further, the bill says that the services provided by the business improvement zone would be supplemental, which suggests they are not to replace existing public services. How is this to be enforced?

Response:

The legislation gives the local unit of government a role in the formation and ongoing administration of a zone. As mentioned earlier, the creation of the zone, the initial plan, and the zone board membership all would require local approval. Plus, at least one board member would be a representative of the local unit. As enacted, moreover, the legislation allows a minority of property owners to petition for the dissolution of a zone and requires only simple majority vote at a meeting of property owners for the zone to be dissolved. This would provide a means for disgruntled owners to air grievances.

Analyst: C. Couch

■ 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.