

EXCEPTION TO DDA ACT

House Bill 6043 (Substitute H-2) First Analysis (5-15-02)

Sponsor: Rep. Tom Meyer
Committee: Commerce

THE APPARENT PROBLEM:

The Downtown Development Authority Act contains certain requirements that must be met before an ordinance establishing an authority can be adopted. A public hearing must be held, and at least 20 days before the hearing, notice of the hearing must be published twice in a newspaper, mailed to taxpayers in the proposed district, and posted in at least 20 "conspicuous and public places" in the proposed district. Once an ordinance is adopted, it must be filed with the secretary of state "promptly" and be published at least once in a newspaper of general circulation in the municipality. In the past, some communities have failed to meet one or more of the requirements when establishing a DDA. Such cases typically are discovered by bond counsel well after a district has been created and begun operations, and the legislature has several times enacted "amnesty" bills that validated the authorities despite the technical deficiencies, on the grounds that there had been no attempt to deceive the public. Another such case has come to light, involving the Village of Millington. In this case, local officials say, it is a matter of the records detailing the creation of the authority being missing, apparently mistakenly disposed of during an administrative housecleaning. (Also, the newspaper used in 1990 for notice purposes is said to be out of business.) The lack of the proper "paper trail" became apparent during a recent grant application. The authority has been in operation for nearly a dozen years and is about to undertake an important "streetscape" project. Legislation has been introduced that would address this problem.

THE CONTENT OF THE BILL:

The bill would amend the Downtown Development Authority Act to ratify and validate certain local ordinances adopted under the act even though certain statutory requirements were not met. Specifically, the bill would ratify and validate an ordinance enacted by a municipality with a population greater than 1,000 and less than 2,000 establishing an authority, creating a district, or approving a

development plan or tax increment financing plan, and all actions taken or to be taken under that ordinance, notwithstanding that the notice for the public hearing was not published, posted, or mailed at least 20 days before the hearing as required by the act. (The bill would also apply to amendments to an authority, district, or plan ordinance.)

The bill would apply if notice had been either published or posted at least once 10 days before the hearing or if the authority had been established in 1990 by a municipality that filed the ordinance with the secretary of state not later than July 1991. Further, the bill would only apply to an ordinance or amendment adopted by a municipality before January 1, 1999 and would include any bonds or amounts to be used by the authority to pay the principal and interest on bonds that have been issued or that are to be issued by the authority or the incorporating municipality. An authority for which an ordinance or amendment establishing the authority had been published before February 1, 1991 would be considered to have been filed promptly with the secretary of state if it was filed before December 31, 2002.

The bill would specify that the validity of the proceedings or findings establishing an authority, or of the procedure, adequacy of notice, or findings with respect to the approval of a development plan or tax increment financing plan is conclusive with respect to the capture of tax increment revenues for a bond issued after June 1, 2002 and before June 1, 2006.

MCL 125.1653d

FISCAL IMPLICATIONS:

There is no information at present.

House Bill 6043 (5-15-02)

ARGUMENTS:***For:***

The bill would legitimize an existing downtown development authority that, according to testimony, is unable to locate the proper records to establish that it met all the technical notice and filing requirements when the authority was created a dozen years ago. The records reportedly were mistakenly discarded. There is precedent for this kind of bill; the legislature has on a number of occasions enacted similar bills ratifying and validating ordinances creating DDAs notwithstanding certain technical imperfections in their creation.

POSITIONS:

The Michigan Municipal League supports the bill.
(5-14-02)

Representatives of the Village of Millington testified in support of the bill. (5-14-02)

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.