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BILL



ANALYSIS

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Senate Bill 69 (as enacted)

PUBLIC ACT 61 of 2007

Sponsor: Senator Tupac A. Hunter

Senate Committee: Commerce and Tourism

House Committee: Intergovernmental, Urban, and Regional Affairs

Date Completed: 11-2-07

RATIONALE

Tax increment financing (TIF) and similar economic development tools are designed to "capture" the tax revenue from the incremental growth in property value within a district, for use in financing a variety of public improvements in that area. These programs generally have been used in commercial and industrial areas to foster economic development in a community. Some contend that thriving neighborhoods also are essential to creating and maintaining economic vitality, and have suggested that municipalities be authorized to adopt TIF plans for residential areas.

CONTENT

The bill created the "Neighborhood Improvement Authority Act" to do all of the following:

- Authorize a "municipality" (city or village) to create a neighborhood improvement authority under certain circumstances, by passing a resolution after providing notice and holding a public hearing.
- Provide for the supervision and control of an authority by a board that includes the municipality's chief executive officer and five to nine members appointed by the chief executive, subject to the approval of the municipality's governing body.
- Specify an authority board's powers.
- Provide for the financing of authority activities, including borrowing money and issuing bonds.
- Allow an authority to prepare and submit to the municipality's governing body a tax increment

financing plan, which must include a development plan for the authority's development area.

- Allow an authority to sell bonds to finance a TIF plan's development program.
- Specify requirements for a development plan.
- Specify requirements for an authority's budget approval process.
- Require a municipality to dissolve an authority that has completed its purpose; and provide that the authority's property and assets remaining after the satisfaction of its obligations belong to the municipality.
- Authorize the State Tax Commission to institute proceedings to enforce the Act and to promulgate rules for its administration.

The Act took effect on September 19, 2007.

Neighborhood Improvement Authority

A municipality's governing body may declare its intention to create and provide for the operation of a neighborhood improvement authority if it determines that doing so is necessary for the public's best interests to promote residential growth in a residential district and to promote economic growth. A municipality may establish multiple authorities, but a parcel of property may not be included in more than one.

In the resolution of intent, the governing body must set a date for a public hearing on the adoption of an ordinance that proposes creating an authority and designates the

boundaries of a development area. The Act specifies notice requirements for a public hearing, including published notice in a newspaper of general circulation in the municipality, mailed notice to property taxpayers of record in the proposed development area, and mailed notice to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the authority were established and a TIF plan were approved.

If the municipality's governing body intends to proceed, at least 60 days after the hearing it must adopt an ordinance establishing the authority and designating the boundaries of the development area within which the authority will exercise its powers. The governing body may alter or amend the boundaries to include or exclude parcels of land in the same manner as adoption of the ordinance creating an authority.

An authority may have a duration of up to 30 years from the date of the resolution creating it. The municipality's governing body may extend the authority's duration, however, if the purposes for which it was created still exist.

If the development area is part of an area annexed to or consolidated with another municipality, the authority managing the development area will become an authority of the annexing or consolidated municipality.

A residential district or development area under the Act may not include an area that is part of a residential district or a development area under the Historical Neighborhood Tax Increment Finance Authority Act.

Authority Board

An authority must be under the supervision and control of a board that consists of the municipality's chief executive officer (mayor or city manager of a city, or president or village manager of a village) or his or her designee and not less than five or more than nine members determined by the municipality's governing body. Members must be appointed by the municipality's chief executive officer, subject to approval by the municipality's governing body.

People having an ownership or business interest in property located in the development area must make up at least a majority of the board members, and at least one member must be a resident of the development area or live within a half-mile of it. Board members must serve staggered terms and vacancies are to be filled by appointment of the municipality's chief executive. Members must serve without compensation but may be reimbursed for actual and necessary expenses. The board must elect its chairperson. The board is subject to the Open Meetings Act and the Freedom of Information Act.

The board may employ a director and fix his or her compensation, subject to approval of the municipality's governing body. The director must attend board meetings and give the board and the municipality's governing body a regular report on the authority's activities and financial condition. The board also may employ and fix the compensation of a treasurer, a secretary, and other personnel whom it considers necessary. An authority's employees are eligible to participate in municipal retirement and insurance programs as if they were civil service employees.

Board Powers

An authority board may do any of the following:

- Prepare an analysis of economic changes taking place in the development area.
- Study and analyze the impact of metropolitan growth upon the development area.
- Plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility, an existing building, or a multiple-family dwelling unit for a plan that the board believes aids in the development area's residential and economic growth.
- Develop long-range plans, in cooperation with the municipality's planning agency, that are designed to halt the deterioration of property values and promote residential and economic growth in the development area, and take steps to persuade property owners to implement the plans.
- Implement in the development area any plan of development, including low-

income housing, that is necessary to achieve the purposes of the Neighborhood Improvement Authority Act.

- Make and enter into contracts to exercise its powers and the performance of its duties.
- Acquire, own, convey, or otherwise dispose of, or lease land and other real or personal property necessary to achieve the purposes of the Act, and to grant or acquire licenses, easements, and options.
- Improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, clear, improve, maintain, repair, and operate any public facility, building (including multiple-family dwellings), and any necessary or desirable appurtenances, within the development area for a public or private use.
- Fix, charge, and collect fees, rents, and charges for the use of any facility, building, or property it controls and pledge the collections for the payment of revenue bonds issued by the authority.
- Accept from public and private sources, grants and donations of property, labor, or other things of value.
- Acquire and construct public facilities.

("Public facility" means housing; a street, plaza, or pedestrian mall, and any improvements to it; park; parking facility; recreational facility; right of way; structure; waterway; bridge; lake; pond; canal; utility line or pipe; or building, including access routes designed and dedicated to public use or used by a public agency.)

Authority Financing

An authority's activities must be financed from one or more of the following sources:

- Donations to the authority for the performance of its functions.
- Money borrowed and to be repaid, as authorized by the Act.
- Revenue from any property, building, or facility owned, leased, licensed, or operated by the authority or under its control, subject to limitations imposed on the authority by trusts or other agreements.
- Proceeds of a tax increment financing plan established under the Act.
- Proceeds from a special assessment district created as provided by law.

- Money obtained from other sources approved by the municipality's governing body or otherwise authorized by law for use by the authority or the municipality to finance a development program.

Except as otherwise provided, the municipality may not obligate itself, and may not be obligated, to pay any sums from public funds for or on account of the authority's activities, other than money received pursuant to the Act for that purpose.

Borrowing & Bonding

An authority may borrow money and issue its negotiable revenue bonds under the Revenue Bond Act. With approval of the municipality's governing body, an authority may borrow money and issue its revenue bonds or notes to finance all or part of the costs of acquiring or constructing property in connection with either the implementation of a development plan in the development area or the refund of bonds or notes issued under these provisions.

An authority may finance any of the following by issuing revenue bonds or notes:

- The cost of buying, acquiring, constructing, improving, enlarging, extending, or repairing property in connection with a development plan in the development area.
- Any engineering, architectural, legal, accounting, or financial expenses.
- The costs necessary or incidental to borrowing money.
- Interest on the bonds or notes during the period of construction.
- A reserve for payment of principal and interest on the bonds or notes.
- A reserve for operation and maintenance until sufficient revenue has developed.

An authority may secure the bonds and notes by mortgage, assignment, or pledge of the property and any money, revenue, or income received in connection with it.

Bonds or notes issued under the Neighborhood Improvement Authority Act are exempt from taxes in this State, except for inheritance and transfer taxes, and the interest on the bonds or notes is tax exempt in this State, even if subject to Federal income tax.

The municipality is not liable on the authority's bonds or notes, and those bonds and notes are not a debt of the municipality. A statement to that effect must be included on the face of the bonds and notes.

An authority's bonds or notes may be invested in by all public officers, State agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees. The bonds or notes also may be deposited with and received by all public officers and agencies and political subdivisions for any purpose for which the deposit of bonds is authorized.

Tax Increment Financing

If an authority determines that doing so is necessary to achieve the purposes of the Act, it may prepare and submit a tax increment financing plan to the municipality's governing body. The plan must include a development plan, a detailed explanation of the TIF procedure, the maximum amount of bonded indebtedness to be incurred, and the duration of the TIF program. The plan also must include a statement of the estimated impact of the TIF plan on the assessed values of all taxing jurisdictions in which the development area is located, and may provide for the use of part or all of the captured assessed value. The authority or the municipality may exclude from captured assessed value the growth in property value resulting solely from inflation.

Approval of a TIF plan must comply with the Act's notice, hearing, and disclosure provisions for the adoption of a development plan. If the development plan is part of the TIF plan, only one hearing and approval procedure are required.

Before a public hearing on a TIF plan, the municipality's governing body must provide a reasonable opportunity to the taxing jurisdictions levying taxes subject to capture to meet with the governing body. The authority must inform those jurisdictions of the fiscal and economic implications of the plan. The taxing jurisdictions may present their recommendations at the public hearing. The authority may enter into agreements with the taxing jurisdictions and the municipality's governing body to share a portion of the captured assessed value of

the development area. Within 60 days after the public hearing, a taxing jurisdiction's governing body may exempt its taxes from capture by adopting a resolution and filing a copy of it with the clerk of the municipality. If the governing body levies a separate millage for public library purposes, that millage is exempt from the TIF capture at the request of the public library board.

Municipal and county treasurers must transmit tax increment revenue to the authority. The authority must spend the revenue for the development program under the terms of the TIF plan.

Annually, an authority must submit to the municipality's governing body and the State Tax Commission a report on the status of the TIF account, including information regarding sources of revenue, amount and purpose of expenditures, the amount of principal and interest on any outstanding bonded indebtedness, the initial assessed value of the project area that captured assessed value retained by the authority, the amount of public housing created or improved, and the number of jobs created as a result of implementing the plan.

The authority, by resolution of its governing body, may authorize, issue, and sell tax increment bonds, subject to limitations in the Act, to finance a TIF plan's development program. These bonds must pledge solely the tax increment revenue of a development area in which the project is located or a development area from which tax increment revenue may be used for the project, or both. The bonds may be secured by any other activities of the authority that it specifically pledged in the resolution but, except as otherwise provided in the Act, the municipality's full faith and credit may not be pledged to secure the bonds. The authorizing resolution will create a statutory lien on the tax increment revenue and other revenue pledged by the resolution, which will be a first lien subject only to liens previously created. The bonds are subject to the Revised Municipal Finance Act.

The municipality, by majority vote of its governing body, may make a limited tax pledge to support the authority's tax increment bonds or notes. If authorized by the municipality's voters, the municipality's governing body may pledge its unlimited tax full faith and credit for the payment of the

principal of and interest on the tax increment bonds or notes.

Development Plan

If an authority board decides to finance a project in a development area by the use of revenue bonds or tax increment financing, it must prepare a development plan. The development plan must include all of the following:

- The designation of the development area's boundaries.
- The location and extent of existing streets and other public facilities within the development area, designating location, character, and the current and proposed extent of public and private land uses.
- A description of existing improvements in the development area to be demolished, repaired, or altered; a description of any repairs and alterations; and an estimate of the time required for completion.
- The location, extent, character, and estimated cost of improvements.
- A statement of the planned construction or stages of construction, and the estimated time of completion of each stage.
- A description of any parts of the development area to be left as open space and the use contemplated for the space.
- A description of any portions of the development area that the authority wants to sell, donate, exchange, or lease to or from the municipality and the proposed terms.
- A description of desired zoning changes and changes in streets, street levels, intersections, or utilities.
- An estimate of the cost of development, a statement of the proposed method of financing, and the ability of the authority to arrange the financing.
- Designation of the person or persons to whom all or part of the development is to be leased, sold, or conveyed and for whose benefit the project is being undertaken.
- The procedures for bidding for the lease, purchase, or conveyance of all or part of the development.
- The requirement that amendments to an approved development plan or TIF plan be submitted to the municipality's governing body for approval or rejection.

-- Other material that the authority, local public agency, or municipality's governing body considers pertinent.

Before adopting an ordinance approving a development plan or a TIF plan, the municipality's governing body must hold a public hearing. Notice of the hearing must be published, posted, and mailed as specified in the Act. At the hearing, the governing body must provide an opportunity for interested people to speak, and receive and consider written communications. After the hearing, the municipality's governing body must determine whether the development plan or the TIF plan constitutes a public purpose. If it so determines, the governing body may approve or reject the plan, or approve it with modification based on criteria specified in the Act.

Authority Budget

The director of an authority must submit to the board a budget for authority operations for each fiscal year, before the beginning of the fiscal year. After review by the board, the budget must be submitted to the municipality's governing body, which must approve the budget before the authority board may adopt it. Unless authorized by the municipality's governing body or the Act, municipality funds may not be included in the authority's budget.

MCL 125.2911-125.2932

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 bill provides cities and villages with a much-needed economic development tool to improve neighborhoods, increase property value and property tax revenue, and attract new residents and businesses. Tax increment financing is a proven method for a community to create a revenue stream to invest in its own development, and has long been used for economic development in commercial and industrial areas. While the development of new and expanded business and industrial activity is highly beneficial to a community, thriving residential areas also are an essential component of economic vitality. Making a city or village a more

attractive place to live can influence the decision of a business to remain, locate, or expand in a particular area. Attractive neighborhoods also can draw residents who will shop, dine, and otherwise conduct business in the city or village. Enhancing residential areas, then, also encourages economic growth. By authorizing cities and villages to create neighborhood improvement authorities and use TIF programs, the bill provides a mechanism for those municipalities to reverse problems with property deterioration in their neighborhoods and promote residential growth and economic development in those communities.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will increase local unit expenses and possibly increase local unit revenue as well as restrict the spending of any increased local unit revenue. Depending on whether the changes in property values under the bill would have occurred absent the bill, the bill either will have no effect on State revenue or will accelerate future increases in State revenue and reduce School Aid Fund expenditures. It is unknown how many communities will establish an authority under the bill, or how many authorities will be established within each community. Similarly, it is unknown what properties will be included within an authority and what the change in property values subject to capture will be.

The bill allows the taxes resulting from any increase in property tax values to be captured to pay for any authorized expenditures, including payments on bonds issued for the authority. Certain property taxes, such as the State education tax (SET) and local school district and intermediate school district (ISD) mills, will not be subject to capture. Any positive change in property values that would have occurred absent the bill will represent a delay in future revenue increase for local units. To the extent that the bill produces higher property values than what would have occurred absent the bill, it will increase local unit revenue and SET revenue, particularly in the future. In the near-term, any increased property tax revenue from taxes that may be captured will be restricted to the authority.

To the extent that local school district and ISD revenue will be higher under the bill, the bill also will reduce School Aid Fund expenditures. School Aid Fund expenditures are reduced when local school districts and ISDs receive more local revenue, but less money is needed from the State to meet per-pupil funding guarantees.

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.