

PUBLIC TRANSIT MBT CREDITS & TRANSIT REVITALIZATION INVESTMENT ZONES

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House Bills 5169-5171

House Bill 5173

Sponsor: Rep. Marie Donigan

Committee: Intergovernmental and Regional Affairs

Complete to 8-17-09

A SUMMARY OF HOUSE BILLS 5169-5171 AND 5173 AS INTRODUCED 7-14-09

The bills would amend various acts, and create one new act, in order to promote investment in public transit-oriented development.

The term "transit-oriented development" means **development concentrated around and oriented to transit stations in a manner that promotes transit ridership or passenger rail use**. The term "transit-oriented development project" means the total of all eligible investments on an eligible transit-oriented development property. Eligible property would be located in a new kind of zone created under the legislation, the transit revitalization investment zone.

House Bill 5169 would amend the Michigan Business Tax Act (MCL 208.1101 et al.) to create a tax credit for transit-oriented development projects in investment zones equal to 10 percent of the cost of eligible investments in transit-oriented development projects (with the maximum credit amount approved in advance).

House Bill 5170 would amend the Michigan Economic Growth Authority Act (MCL 207.806) to allow MEGA to determine the eligibility of and issue certificates to MBT taxpayers for MBT tax credits on transit-oriented projects. MEGA could not approve more than 20 projects each calendar year and total credits could not exceed \$40 million in a calendar year.

House Bill 5171 would amend the Downtown Development Authority Act (MCL 125.1664 et al.) to provide for agreements between DDAs and public transit agencies over the sharing of captured revenues.

House Bill 5173 would create a new act, to be known as the "Transit Revitalization Investment Zone Act," which would allow a new kind of tax increment finance authority to be created to capture future increases in tax revenue for "transit revitalization improvements" within a specially designated transit revitalization zone. State and local school taxes and library revenues would not be captured, and community colleges could opt out by filing a resolution with the appropriate municipal clerk.

House Bill 5169 is tie-barred to House Bills 5170, 5171, and 5173, so that it could not go into effect unless those bills were also enacted into law. A more detailed, although not comprehensive, explanation of each bill follows.

House Bill 5169 (Michigan Business Tax Credit)

The bill would amend the Michigan Business Tax Act and applies to tax years that begin after December 31, 2009. It makes available to certain taxpayers a credit against the MBT equal to 10 percent of the cost of eligible investments in transit-oriented development projects. To receive the credit, a taxpayer must first obtain a pre-approval letter from a transit revitalization authority or a downtown development authority. Then, final approval must be obtained from the Michigan Economic Growth Authority (MEGA). The project must be completed within five years after issuance of the pre-approval letter and the project cannot exceed the amount stated in the pre-approval letter. (If the eligible investment exceeded the amount in the pre-approval letter, then the total of all credits could not exceed the total of all credits on the certificate of completion.)

Local Project Approval. Neither a transit revitalization investment board nor a DDA board could approve any project application unless the authority had entered into an agreement with a public transportation agency to share a portion of the captured assessed value under the Transit Revitalization Investment Zone Act (to be created by another bill in the package) or the Downtown Development Act. Only the director of the board would be authorized to deny an application under this section. If an application for pre-approval were denied, a taxpayer could apply again (for the same project, or another).

The bill specifies that a transit-oriented development project would have to be approved or denied by the authority within 45 days after receipt of the application. If there was no action within 45 days, then the application would be considered to be approved. If the board approved a project, then the director of the board (or a designee) would issue a pre-approval letter that stated the maximum total eligible investment for the project on which credits could be claimed and the maximum total of all credits for the project upon completion.

MEGA Project Approval. Upon receipt of the pre-approval letter, the taxpayer would be required to submit the letter along with a copy of the transit-oriented development project to the Michigan Economic Growth Authority for final approval of the project. The MEGA could not approve more than 20 projects each calendar year, and the total amount of all tax credits could not exceed \$40 million in a calendar year.

MEGA would be required to review all pre-approval letters and transit-oriented development projects for final approval, and if a project was approved, to assign a number to the project and determine the maximum total of all credits for that project. Further, MEGA would be required to consider the following criteria when approving a project:

- The overall benefit to the public.

- The extent to which the project would enhance the transit revitalization investment zone by providing more public transportation options and promoting transit rider-ship or passenger rail use.
- Creation of jobs.
- Whether the eligible property was in an area of high unemployment.
- Whether the project was financially and economically sound.
- The extent to which the project would encourage further transit-oriented development.
- Whether the project was situated on sites that were currently surface parking lots or were located in a downtown area, or within immediate walking distance of a downtown area.
- Any other criteria that the MEGA considered appropriate.

A taxpayer could apply for projects on more than one eligible property in a tax year. Each project approved and each project for which a certificate of completion was issued would be for eligible investment on one eligible property.

Certificate of Completion. When a project was completed, the taxpayer would submit to the transit revitalization investment authority or to the downtown development authority (whichever was applicable), and to the MEGA, the documentation that the project was completed, an accounting of the cost of the project, and the eligible investment of each taxpayer if there was more than one eligible for a credit, and whether or not the taxpayer was (or would soon be) an owner or lessee of the eligible property. The authority director (or a designee) would have to verify completion, and to do so, conduct an on-site inspection as part of the verification process. The director of the authority would also have to notify MEGA. Within 90 days, MEGA would have to issue a certificate of completion to each taxpayer that had made an eligible investment on the property.

The certificate of completion would have to specify the total amount of all credits for the project (not to exceed the total in the pre-approval letter), and state all of the following:

- The total cost of the project and the eligible investment of each taxpayer.
- Each taxpayer's credit amount.
- The taxpayer's federal employer identification number or the Michigan Treasury number assigned to the taxpayer.
- The project number.

The bill describes the costs allowed as eligible investment, as well as when and the manner in which a taxpayer can claim credits. Any portion of a tax credit that exceeds tax liability for a tax year can be carried forward to offset tax liability in subsequent tax years for up to 10 years (beginning in the tax year in which the certificate of completion is issued to the taxpayer). In the alternative, if the credit allowed exceeds the taxpayer's tax liability, the taxpayer can elect to have the excess refunded at a rate equal to 85 percent of that portion of the credit that exceeds the tax liability (and forgo the remaining 15 percent of the credit and any carry-forward). The bill also describes how the cost of

personal property must be treated, if that personal property is disposed of or transferred from the eligible property to any other location.

Assignment of Credits. Taxpayers may also assign all or a portion of the credit; however, any assignment of a credit is irrevocable and must be made in the tax year in which a certificate of completion is issued (unless the assignment is an unknown lessee). The assigning of credit must be completed on a form prescribed by the Michigan Economic Growth Authority, which then reviews and issues a completed assignment or re-assignment certificate to the assignee or re-assignee.

The bill specifies that if the total of all credits for a project is more than \$10 million but \$30 million or less, all of the following would apply to the assignment of a credit:

- The credit would be assigned based on the schedule contained in the certificate of completion.
- If the taxpayer assigned all or a portion of the credit amount, the taxpayer would assign the annual credit amount for each tax year separately.
- More than one annual credit amount could be assigned to any one assignee, and the taxpayer could assign all or a portion of each annual credit amount to any assignee.

MEGA Reports to the Legislature. The bill would require the Michigan Economic Growth Authority to annually prepare and submit to the House of Representatives and Senate committees responsible for tax policy and economic development issues, a report on the credits issued under this section. The report would have to include, but not be limited to all of the following:

- A listing of the projects under this section that were approved in the calendar year.
- The total amount of eligible investment for projects approved in the calendar year.

Definitions. House Bill 5169 defines 13 terms, including "eligible activity," which is defined to mean one or more of the following: (1) infrastructure improvements that directly benefit eligible property and (2) reasonable costs of developing and preparing transit-oriented development projects. "Eligible property" refers to property for which eligible activities are identified under a project that was used or is currently used for high-density residential, commercial, or mixed use purposes, including personal property, to the extent the property is included in a development project and is within a transit revitalization investment zone. It includes parcels adjacent or contiguous to the property if development of those parcels is estimated to increase the captured taxable value of the property.

"Eligible investment" means, when made no earlier than 90 days prior to the date of the pre-approval letter, any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property and the addition of machinery, equipment, and fixtures to eligible property after the date that eligible

activities on that eligible property have started on a transit-oriented development project under the Transit Revitalization Investment Zone Act, if the cost of the eligible investments are not otherwise reimbursed to the taxpayer or paid for on behalf of the taxpayer from any source other than the taxpayer. The addition of leased machinery, equipment, or fixtures to eligible property by a lessee of the machinery, equipment, or fixtures is eligible investment if the lease of the machinery, equipment, or fixtures has a minimum term of 10 years or is for the expected useful life of the machinery, equipment or fixtures, and if the owner is not the taxpayer.

Eligible investment does *not* include certain soft costs of the eligible investment as determined by the Transit Revitalization Investment Authority, including, but not limited to developer fees, appraisals, performance bonds, closing costs, bank fees, loan fees, risk contingencies, financing costs, permanent or construction period interest, legal expenses, leasing or sales commissions, marketing costs, professional fees, shared savings, taxes, title insurance, bank inspection fees, insurance, and project management fees. Notwithstanding the foregoing, eligible investment *does include* architectural, engineering, surveying and similar professional fees.

House Bill 5170 (MEGA Act)

House Bill 5170 would amend the Michigan Economic Growth Authority Act to allow MEGA to issue tax credits on transit-oriented development projects. This bill works in tandem with House Bill 5169. The MEGA Act currently says MEGA has the powers necessary to carry out and effectuate the purposes of the act, and the bill would specifically include within its powers determining the eligibility of and issuing certificates to taxpayers for MBT credits allowed under House Bill 5169.

House Bill 5171 (DDA Act)

House Bill 5171 would amend the Downtown Development Authority Act to provide for agreements between downtown development authorities and public transit agencies.

Currently under the law, a downtown development authority may enter into agreements with the taxing jurisdiction and the governing body of the municipality in which the development area is located to share a portion of the captured assessed value of the district. The bill would retain this provision but extend it to include "a public transportation agency as that term is defined in the Transit Revitalization Investment Zone Act that operates in the development area." [Under House Bill 5173, a "public transportation agency" is defined to mean a governmental entity that operates or is authorized to operate intercity or local commuter passenger rail service in this state or a public transit authority created under the Metropolitan Transportation Authorities Act, the Public Transportation Authorities Act, Public Act 55 of 1963, the Home Rule City Act, the Revenue Bond Act, the Charter Township Act, or the Urban Cooperation Act.]

Under House Bill 5171, if an authority entered into an agreement with a public transportation agency to share a portion of the captured assessed value, that agreement

would have to be in writing, and would have to contain both (1) a provision that the captured assessed value could be used for operating expenses and (2) a provision describing how the authority would help applicants who were seeking credits under the Michigan Business Tax Act.

Currently the law specifies many required parts of the development plan that a DDA must prepare when its members decide to finance a project in a downtown district by the use of revenue bonds (as authorized in Section 13 of the act) or by tax increment financing (as authorized in Sections 14, 15, and 16 of the act). House Bill 5171 would modify these provisions by adding a requirement to include within the development plan "*an evaluation and report on public transit provided in the development area that details each of the following: (i) the current public transit services provided in the development area; and (ii) how development in the development area will incorporate existing public transit services, and how development will encourage the expansion of public transit options in the development area.*"

Finally, the bill eliminates an obsolete provision that makes reference to the now repealed Federal Facility Development Act.

House Bill 5173 (New TIFA Act)

The bill would create the Transit Revitalization Investment Zone Act. Under this act, a new kind of tax increment finance authority could be created. The aim would be to promote development, including "transit revitalization improvements," within a specially designated transit revitalization zone.

The bill would define the term "transit-oriented development" to refer to development concentrated around and oriented to transit stations in a manner to promote transit ridership or passenger rail use. Before any tax increment financing plan was implemented, an authority would have to enter into a contract with the public transportation agency that operates the transit station in the zone, with the contract to address the distribution of revenue, the allocation of responsibility for maintenance and upkeep of the transit station and associated facilities, and the use of the facilities.

When local units of government create tax increment financing authorities, or TIFAs, they typically establish a special district or zone and then capture future increases in property taxes within that district for the authority to use to finance public infrastructure improvement projects within the district. This often includes the issuance of bonds to finance projects. There are already several statutes that allow for the creation of TIFAs. House Bill 5173 would create an additional TIFA statute, with many of the same requirements and procedures found in other TIFA acts.

The tax increment financing authority created under the bill would not be able to capture local and intermediate school district revenues, taxes levied by a library, or revenues from the State Education Tax Act. The TIFA also could not capture property taxes levied for bonded indebtedness, or property taxes captured by downtown development

authorities and other tax increment financing authorities, including water resource TIFAs, local development finance authorities, brownfield redevelopment finance authorities, historical neighborhood tax increment finance authorities, corridor improvement authorities, and neighborhood improvement authorities.

Further, community college districts could exempt their taxes from being captured by adopting a resolution and filing a copy with the local clerk of the municipality proposing to create the authority.

Under the bill, the governing body of a municipality (city, village, or township) could establish such a transit revitalization investment zone tax increment finance authority and subsequently enter into an agreement with other affected municipalities and public transportation agencies to create a zone. (Public transportation agencies would include existing public transit authorities, as well as a governmental entity operating or authorized to operate intercity or local commuter passenger rail service.) Such a zone could be established by an authority in advance of any implementation of a public transit service associated with a zone.

The bill would, briefly put, do the following:

- Authorize a city, township, or village to create one or more authorities by passing an ordinance after providing notice and holding a public hearing. The local unit would also designate the zone boundaries by ordinance.
- Provide for the supervision and control of an authority by a board. The size of the board and the nominating process would be established by the agreement between the affected municipalities and local public transportation agencies. Members would be appointed by the chief executive of the affected municipalities, subject to the approval of the local governing bodies. At least one member would be nominated by the public transportation agencies.
- Allow a board to hire a director to serve as chief executive officer of the authority, subject to the approval of the municipality's governing body. The board could also employ other officers and personnel. Employees would be eligible to participate in municipal retirement and insurance programs of a municipality as if they were civil service employees; however, they would not be civil service employees.
- Make the board subject to the Open Meetings Act and the Freedom of Information Act. Expense items of an authority would be publicized monthly and financial records would be open to the public.
- Allow an authority to prepare and submit to the municipality's governing body a tax increment financing plan, which would have to include a development plan for the zone. Tax increment financing plans and development plans would be subject to public hearings and affected local taxing jurisdictions would have to be

notified. The authority could enter into agreements with local taxing jurisdictions, public transit agencies, and the municipality in which the zone is located to share portions of the captured assessed value of the development area.

- Specify an authority board's powers, as described later.
- Provide for the financing of authority activities, including borrowing money and issuing bonds. The authority could issue negotiable revenue bonds under the Revenue Bond Act and could, with local unit approval, issue revenue bonds or notes to finance all or part of the costs of transit revitalization development improvements, as delineated in the bill. The local unit would not be liable on such debt.
- Allow an authority also to authorize, issue, and sell bonds to finance a TIF plan's development program. A municipality could make a limited tax pledge to support the authority's TIF bonds or notes with governing body approval but would need voter approval to pledge its unlimited tax full faith and credit for authority bonds or notes.
- Establish criteria for any development plan.
- Specify requirements for an authority's budget approval process.
- Require that a municipality dissolve an authority after it has completed its purpose, and provide that the authority's property and assets remaining after the satisfaction of its obligations would belong to the local unit.
- Authorize the State Tax Commission to institute proceedings to enforce the proposed act and permit the STC to promulgate rules for its administration.

Board powers. An authority board could do any of the following:

- Authorize expenditures of tax increment revenues obtained under the act for the operating costs of a public transportation agency serving the zone.
- Plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility necessary or appropriate for a plan that the board believed aided in the establishment of a zone.
- Plan, propose, and implement an improvement to a public facility within the zone to comply with the state barrier free design requirements.
- Develop long-range plans for zones.
- Implement any plan of development for transit revitalization in the zone.

- 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 proposed 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 or building, and any necessary or desirable appurtenances, within the zone for a public or private use.
- Fix, charge, and collect fees, rents, and charges for the use of any facility, building, or property it controlled and pledge the collections for the payment of revenue bonds issued under by the authority.
- Lease any facility, building, or property under its control.
- Accept from public and private sources, grants and donations of property, labor, or other things of value.
- Acquire and construct public facilities.

("Public facility" would mean a street, and any improvements to a street; 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, that is related to development concentrated around and oriented to transit stations in a manner that promotes rider-ship or passenger rail use.)

Shared and written TIF agreements. House Bill 5173 requires that before the public hearing on the tax increment financing plan, a governing body must provide a reasonable opportunity to those taxing jurisdictions that are levying taxes subject to capture to meet with the governing body's officials. The authority must fully inform those taxing jurisdictions of both the fiscal and economic implications of the proposed development area. The taxing jurisdictions may then present their recommendations on the tax increment financing plan at the public hearing.

Under the bill, the authority may enter into agreements with the taxing jurisdictions, public transportation agencies that operate in the zone, and with the governing body of the municipality in which the zone is located, in order to share a portion of the captured assessed value of the development area. If the authority entered into an agreement with a public transportation agency to share a portion of the captured assessed value, then that agreement would have to be in writing, and it would have to contain (a) a provision that the captured assessed value could be used for operating expenses; and (b) a provision on how the authority would facilitate applicants who were seeking credits under Section 438 of the Michigan Business Tax, the section to be added by House Bill 5169.)

FISCAL IMPACT:

House Bills 5169 and 5170 would provide a MBT tax credit through MEGA for transit-oriented development projects. To the extent these projects/credits are approved, these bills would reduce MBT revenue by an amount not to exceed \$40 million per calendar year.

House Bill 5173 would allow for the creation of a new kind of tax increment financing authority, under which the growth in local property tax revenues within a designated zone could be captured and redistributed. School taxes and library taxes would not be captured, and community colleges could opt out by resolution. Also, existing tax increment financing revenues would be protected.

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■ 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.