

HOUSE BILL No. 5552

October 27, 2009, Introduced by Reps. Hammel and Mayes and referred to the Committee on Banking and Financial Services.

A bill to amend 1975 PA 197, entitled

"An act to provide for the establishment of a downtown development authority; to prescribe its powers and duties; to correct and prevent deterioration in business districts; to encourage historic preservation; to authorize the acquisition and disposal of interests in real and personal property; to authorize the creation and implementation of development plans in the districts; to promote the economic growth of the districts; to create a board; to prescribe its powers and duties; to authorize the levy and collection of taxes; to authorize the issuance of bonds and other evidences of indebtedness; to authorize the use of tax increment financing; to reimburse downtown development authorities for certain losses of tax increment revenues; and to prescribe the powers and duties of certain state officials,"

by amending section 1 (MCL 125.1651), as amended by 2008 PA 225.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

(a) "Advance" means a transfer of funds made by a municipality to an authority or to another person on behalf of the authority in

1 anticipation of repayment by the authority. Evidence of the intent
2 to repay an advance may include, but is not limited to, an executed
3 agreement to repay, provisions contained in a tax increment
4 financing plan approved prior to the advance, or a resolution of
5 the authority or the municipality.

6 (b) "Assessed value" means 1 of the following:

7 (i) For valuations made before January 1, 1995, the state
8 equalized valuation as determined under the general property tax
9 act, 1893 PA 206, MCL 211.1 to 211.155.

10 (ii) For valuations made after December 31, 1994, the taxable
11 value as determined under section 27a of the general property tax
12 act, 1893 PA 206, MCL 211.27a.

13 (c) "Authority" means a downtown development authority created
14 pursuant to this act.

15 (d) "Board" means the governing body of an authority.

16 (e) "Business district" means an area in the downtown of a
17 municipality zoned and used principally for business.

18 (f) "Captured assessed value" means the amount in any 1 year
19 by which the current assessed value of the project area, including
20 the assessed value of property for which specific local taxes are
21 paid in lieu of property taxes as determined in subdivision (z),
22 exceeds the initial assessed value. The state tax commission shall
23 prescribe the method for calculating captured assessed value.

24 (g) "Chief executive officer" means the mayor or city manager
25 of a city, the president or village manager of a village, or the
26 supervisor of a township or, if designated by the township board
27 for purposes of this act, the township superintendent or township

1 manager of a township.

2 (h) "Development area" means that area to which a development
3 plan is applicable.

4 (i) "Development plan" means that information and those
5 requirements for a development plan set forth in section 17.

6 (j) "Development program" means the implementation of the
7 development plan.

8 (k) "Downtown district" means that part of an area in a
9 business district that is specifically designated by ordinance of
10 the governing body of the municipality pursuant to this act. A
11 downtown district may include 1 or more separate and distinct
12 geographic areas in a business district as determined by the
13 municipality if the municipality enters into an agreement with a
14 qualified township under section 3(7) or if the municipality is a
15 city that surrounds another city and that other city lies between
16 the 2 separate and distinct geographic areas. If the downtown
17 district contains more than 1 separate and distinct geographic area
18 in the downtown district, the separate and distinct geographic
19 areas shall be considered 1 downtown district.

20 (l) "Eligible advance" means an advance made before August 19,
21 1993.

22 (m) "Eligible obligation" means an obligation issued or
23 incurred by an authority or by a municipality on behalf of an
24 authority before August 19, 1993 and its subsequent refunding by a
25 qualified refunding obligation. Eligible obligation includes an
26 authority's written agreement entered into before August 19, 1993
27 to pay an obligation issued after August 18, 1993 and before

1 December 31, 1996 by another entity on behalf of the authority.

2 (n) "Fire alarm system" means a system designed to detect and
3 annunciate the presence of fire, or by-products of fire. Fire alarm
4 system includes smoke detectors.

5 (o) "Fiscal year" means the fiscal year of the authority.

6 (p) "Governing body of a municipality" means the elected body
7 of a municipality having legislative powers.

8 (q) "Initial assessed value" means the assessed value, as
9 equalized, of all the taxable property within the boundaries of the
10 development area at the time the ordinance establishing the tax
11 increment financing plan is approved, as shown by the most recent
12 assessment roll of the municipality for which equalization has been
13 completed at the time the resolution is adopted. Property exempt
14 from taxation at the time of the determination of the initial
15 assessed value shall be included as zero. For the purpose of
16 determining initial assessed value, property for which a specific
17 local tax is paid in lieu of a property tax shall not be considered
18 to be property that is exempt from taxation. The initial assessed
19 value of property for which a specific local tax was paid in lieu
20 of a property tax shall be determined as provided in subdivision

21 (z). In the case of a municipality having a population of less than
22 35,000 that established an authority prior to 1985, created a
23 district or districts, and approved a development plan or tax
24 increment financing plan or amendments to a plan, and which plan or
25 tax increment financing plan or amendments to a plan, and which
26 plan expired by its terms December 31, 1991, the initial assessed
27 value for the purpose of any plan or plan amendment adopted as an

1 extension of the expired plan shall be determined as if the plan
2 had not expired December 31, 1991. For a development area
3 designated before 1997 in which a renaissance zone has subsequently
4 been designated pursuant to the Michigan renaissance zone act, 1996
5 PA 376, MCL 125.2681 to 125.2696, the initial assessed value of the
6 development area otherwise determined under this subdivision shall
7 be reduced by the amount by which the current assessed value of the
8 development area was reduced in 1997 due to the exemption of
9 property under section 7ff of the general property tax act, 1893 PA
10 206, MCL 211.7ff, but in no case shall the initial assessed value
11 be less than zero.

12 (r) "Municipality" means a city, village, or township.

13 (s) "Obligation" means a written promise to pay, whether
14 evidenced by a contract, agreement, lease, sublease, bond, or note,
15 or a requirement to pay imposed by law. An obligation does not
16 include a payment required solely because of default upon an
17 obligation, employee salaries, or consideration paid for the use of
18 municipal offices. An obligation does not include those bonds that
19 have been economically defeased by refunding bonds issued under
20 this act. Obligation includes, but is not limited to, the
21 following:

22 (i) A requirement to pay proceeds derived from ad valorem
23 property taxes or taxes levied in lieu of ad valorem property
24 taxes.

25 (ii) A management contract or a contract for professional
26 services.

27 (iii) A payment required on a contract, agreement, bond, or note

1 if the requirement to make or assume the payment arose before
2 August 19, 1993.

3 (iv) A requirement to pay or reimburse a person for the cost of
4 insurance for, or to maintain, property subject to a lease, land
5 contract, purchase agreement, or other agreement.

6 (v) A letter of credit, paying agent, transfer agent, bond
7 registrar, or trustee fee associated with a contract, agreement,
8 bond, or note.

9 (t) "On behalf of an authority", in relation to an eligible
10 advance made by a municipality, or an eligible obligation or other
11 protected obligation issued or incurred by a municipality, means in
12 anticipation that an authority would transfer tax increment
13 revenues or reimburse the municipality from tax increment revenues
14 in an amount sufficient to fully make payment required by the
15 eligible advance made by the municipality, or eligible obligation
16 or other protected obligation issued or incurred by the
17 municipality, if the anticipation of the transfer or receipt of tax
18 increment revenues from the authority is pursuant to or evidenced
19 by 1 or more of the following:

20 (i) A reimbursement agreement between the municipality and an
21 authority it established.

22 (ii) A requirement imposed by law that the authority transfer
23 tax increment revenues to the municipality.

24 (iii) A resolution of the authority agreeing to make payments to
25 the incorporating unit.

26 (iv) Provisions in a tax increment financing plan describing
27 the project for which the obligation was incurred.

1 (u) "Operations" means office maintenance, including salaries
2 and expenses of employees, office supplies, consultation fees,
3 design costs, and other expenses incurred in the daily management
4 of the authority and planning of its activities.

5 (v) "Other protected obligation" means:

6 (i) A qualified refunding obligation issued to refund an
7 obligation described in subparagraph (ii), (iii), or (iv), an
8 obligation that is not a qualified refunding obligation that is
9 issued to refund an eligible obligation, or a qualified refunding
10 obligation issued to refund an obligation described in this
11 subparagraph.

12 (ii) An obligation issued or incurred by an authority or by a
13 municipality on behalf of an authority after August 19, 1993, but
14 before December 31, 1994, to finance a project described in a tax
15 increment finance plan approved by the municipality in accordance
16 with this act before December 31, 1993, for which a contract for
17 final design is entered into by or on behalf of the municipality or
18 authority before March 1, 1994 or for which a written agreement
19 with a developer, titled preferred development agreement, was
20 entered into by or on behalf of the municipality or authority in
21 July 1993.

22 (iii) An obligation incurred by an authority or municipality
23 after August 19, 1993, to reimburse a party to a development
24 agreement entered into by a municipality or authority before August
25 19, 1993, for a project described in a tax increment financing plan
26 approved in accordance with this act before August 19, 1993, and
27 undertaken and installed by that party in accordance with the

1 development agreement.

2 (iv) An obligation incurred by the authority evidenced by or to
3 finance a contract to purchase real property within a development
4 area or a contract to develop that property within the development
5 area, or both, if all of the following requirements are met:

6 (A) The authority purchased the real property in 1993.

7 (B) Before June 30, 1995, the authority enters a contract for
8 the development of the real property located within the development
9 area.

10 (C) In 1993, the authority or municipality on behalf of the
11 authority received approval for a grant from both of the following:

12 (I) The department of natural resources for site reclamation
13 of the real property.

14 (II) The department of consumer and industry services for
15 development of the real property.

16 (v) An ongoing management or professional services contract
17 with the governing body of a county which was entered into before
18 March 1, 1994 and which was preceded by a series of limited term
19 management or professional services contracts with the governing
20 body of the county, the last of which was entered into before
21 August 19, 1993.

22 (vi) A loan from a municipality to an authority if the loan was
23 approved by the legislative body of the municipality on April 18,
24 1994.

25 (vii) Funds expended to match a grant received by a
26 municipality on behalf of an authority for sidewalk improvements
27 from the Michigan department of transportation if the legislative

1 body of the municipality approved the grant application on April 5,
2 1993 and the grant was received by the municipality in June 1993.

3 (viii) For taxes captured in 1994, an obligation described in
4 this subparagraph issued or incurred to finance a project. An
5 obligation is considered issued or incurred to finance a project
6 described in this subparagraph only if all of the following are
7 met:

8 (A) The obligation requires raising capital for the project or
9 paying for the project, whether or not a borrowing is involved.

10 (B) The obligation was part of a development plan and the tax
11 increment financing plan was approved by a municipality on May 6,
12 1991.

13 (C) The obligation is in the form of a written memorandum of
14 understanding between a municipality and a public utility dated
15 October 27, 1994.

16 (D) The authority or municipality captured school taxes during
17 1994.

18 (w) "Public facility" means a street, plaza, pedestrian mall,
19 and any improvements to a street, plaza, or pedestrian mall
20 including street furniture and beautification, park, parking
21 facility, recreational facility, right-of-way, structure, waterway,
22 bridge, lake, pond, canal, utility line or pipe, building, and
23 access routes to any of the foregoing, designed and dedicated to
24 use by the public generally, or used by a public agency. Public
25 facility includes an improvement to a facility used by the public
26 or a public facility as those terms are defined in section 1 of
27 1966 PA 1, MCL 125.1351, which improvement is made to comply with

1 the barrier free design requirements of the state construction code
2 promulgated under the Stille-DeRossett-Hale single state
3 construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

4 Public facility also includes the acquisition, construction,
5 improvement, and operation of a building owned or leased by the
6 authority to be used as a retail business incubator.

7 (x) "Qualified refunding obligation" means an obligation
8 issued or incurred by an authority or by a municipality on behalf
9 of an authority to refund an obligation if 1 or more of the
10 following apply:

11 (i) The obligation is issued to refund a qualified refunding
12 obligation issued in November 1997 and any subsequent refundings of
13 that obligation issued before January 1, 2010 or the obligation is
14 issued to refund a qualified refunding obligation issued on May 15,
15 1997 and any subsequent refundings of that obligation issued before
16 January 1, 2010 in an authority in which 1 parcel or group of
17 parcels under common ownership represents 50% or more of the
18 taxable value captured within the tax increment finance district
19 and that will ultimately provide for at least a 40% reduction in
20 the taxable value of the property as part of a negotiated
21 settlement as a result of an appeal filed with the state tax
22 tribunal. Qualified refunding obligations issued under this
23 subparagraph are not subject to the requirements of section 611 of
24 the revised municipal finance act, 2001 PA 34, MCL 141.2611, if
25 issued before January 1, 2010. The duration of the development
26 program described in the tax increment financing plan relating to
27 the qualified refunding obligations issued under this subparagraph

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is hereby extended to 1 year after the final date of maturity of the qualified refunding obligations.

(ii) The refunding obligation meets both of the following:

(A) The net present value of the principal and interest to be paid on the refunding obligation, including the cost of issuance, will be less than the net present value of the principal and interest to be paid on the obligation being refunded, as calculated using a method approved by the department of treasury.

(B) The net present value of the sum of the tax increment revenues described in subdivision (bb) (ii) and the distributions under section 13b to repay the refunding obligation will not be greater than the net present value of the sum of the tax increment revenues described in subdivision (bb) (ii) and the distributions under section 13b to repay the obligation being refunded, as calculated using a method approved by the department of treasury.

(iii) [THE REFUNDING OBLIGATION IS ISSUED TO REFUND AN OTHER PROTECTED OBLIGATION OR AN ELIGIBLE OBLIGATION AND THAT REFUNDING OBLIGATION IS ISSUED BEFORE DECEMBER 31, 2012. A REFUNDING OBLIGATION ISSUED UNDER THIS SUBPARAGRAPH IS A QUALIFIED REFUNDING OBLIGATION ONLY TO THE EXTENT OF THE PRINCIPAL AND INTEREST OUTSTANDING ON THE OBLIGATION BEING REFUNDED AT THE TIME THE REFUNDING OBLIGATION IS ISSUED.]

(y) "Qualified township" means a township that meets all of the following requirements:

(i) Was not eligible to create an authority prior to January 3, 2005.

(ii) Adjoins a municipality that previously created an authority.

(iii) Along with the adjoining municipality that previously created an authority, is a member of the same joint planning commission under the joint municipal planning act, 2003 PA 226, MCL

1 125.131 to 125.143.

2 (z) "Specific local tax" means a tax levied under 1974 PA 198,
3 MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA
4 255, MCL 207.651 to 207.668, the technology park development act,
5 1984 PA 385, MCL 207.701 to 207.718, and 1953 PA 189, MCL 211.181
6 to 211.182. The initial assessed value or current assessed value of
7 property subject to a specific local tax shall be the quotient of
8 the specific local tax paid divided by the ad valorem millage rate.
9 However, after 1993, the state tax commission shall prescribe the
10 method for calculating the initial assessed value and current
11 assessed value of property for which a specific local tax was paid
12 in lieu of a property tax.

13 (aa) "State fiscal year" means the annual period commencing
14 October 1 of each year.

15 (bb) "Tax increment revenues" means the amount of ad valorem
16 property taxes and specific local taxes attributable to the
17 application of the levy of all taxing jurisdictions upon the
18 captured assessed value of real and personal property in the
19 development area, subject to the following requirements:

20 (i) Tax increment revenues include ad valorem property taxes
21 and specific local taxes attributable to the application of the
22 levy of all taxing jurisdictions other than the state pursuant to
23 the state education tax act, 1993 PA 331, MCL 211.901 to 211.906,
24 and local or intermediate school districts upon the captured
25 assessed value of real and personal property in the development
26 area for any purpose authorized by this act.

27 (ii) Tax increment revenues include ad valorem property taxes

1 and specific local taxes attributable to the application of the
2 levy of the state pursuant to the state education tax act, 1993 PA
3 331, MCL 211.901 to 211.906, and local or intermediate school
4 districts upon the captured assessed value of real and personal
5 property in the development area in an amount equal to the amount
6 necessary, without regard to subparagraph (i), to repay eligible
7 advances, eligible obligations, and other protected obligations.

8 (iii) Tax increment revenues do not include any of the
9 following:

10 (A) Ad valorem property taxes attributable either to a portion
11 of the captured assessed value shared with taxing jurisdictions
12 within the jurisdictional area of the authority or to a portion of
13 value of property that may be excluded from captured assessed value
14 or specific local taxes attributable to such ad valorem property
15 taxes.

16 (B) Ad valorem property taxes excluded by the tax increment
17 financing plan of the authority from the determination of the
18 amount of tax increment revenues to be transmitted to the authority
19 or specific local taxes attributable to such ad valorem property
20 taxes.

21 (C) Ad valorem property taxes exempted from capture under
22 section 3(3) or specific local taxes attributable to such ad
23 valorem property taxes.

24 (iv) The amount of tax increment revenues authorized to be
25 included under subparagraph (ii) or (v), and required to be
26 transmitted to the authority under section 14(1), from ad valorem
27 property taxes and specific local taxes attributable to the

1 application of the levy of the state education tax act, 1993 PA
2 331, MCL 211.901 to 211.906, a local school district or an
3 intermediate school district upon the captured assessed value of
4 real and personal property in a development area shall be
5 determined separately for the levy by the state, each school
6 district, and each intermediate school district as the product of
7 sub-subparagraphs (A) and (B):

8 (A) The percentage that the total ad valorem taxes and
9 specific local taxes available for distribution by law to the
10 state, local school district, or intermediate school district,
11 respectively, bears to the aggregate amount of ad valorem millage
12 taxes and specific taxes available for distribution by law to the
13 state, each local school district, and each intermediate school
14 district.

15 (B) The maximum amount of ad valorem property taxes and
16 specific local taxes considered tax increment revenues under
17 subparagraph (ii) or (v).

18 (v) Tax increment revenues include ad valorem property taxes
19 and specific local taxes, in an annual amount and for each year
20 approved by the state treasurer, attributable to the levy by this
21 state under the state education tax act, 1993 PA 331, MCL 211.901
22 to 211.906, and by local or intermediate school districts, upon the
23 captured assessed value of real and personal property in the
24 development area of an authority established in a city with a
25 population of 750,000 or more to pay for, or reimburse an advance
26 for, not more than \$8,000,000.00 for the demolition of buildings or
27 structures on public or privately owned property within a

1 development area that commences in 2005, or to pay the annual
2 principal of or interest on an obligation, the terms of which are
3 approved by the state treasurer, issued by an authority, or by a
4 city on behalf of an authority, to pay not more than \$8,000,000.00
5 of the costs to demolish buildings or structures on public or
6 privately owned property within a development area that commences
7 in 2005.