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BILL



ANALYSIS

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Senate Bill 1026 (Substitute S-1 as reported)
Sponsor: Senator Ken Horn
Committee: Economic Development and International Investment

Date Completed: 10-31-16

RATIONALE

Many municipalities use tax increment financing (TIF) revenue for specific public purposes. There are several statutes under which a municipality may create an authority that may "capture" tax revenue attributable to increases in property value within an area or district ("tax increment revenue"), and use that money for identified purposes. The purposes vary and depend on the authority that collects the revenue and the statute under which the authority was created.

Concerns have been raised about TIF authorities' adherence to reporting requirements. Generally, statutes authorizing TIF require an authority to provide a financial report to certain governing bodies or State agencies or departments. However, it has been reported that few authorities implementing TIF comply with the reporting requirements. Some believe this occurs because there is confusion about what needs to be reported or what forms must be filed, filing difficulties, or a lack of penalties for noncompliance. To give all authorities an incentive to report on their TIF activities and finances regularly, create more transparency regarding the TIF process, and allow streamlined administration of TIF authorities across the State, it has been suggested that several TIF statutes be recodified under one act, and that penalties for noncompliance and further reporting requirements be created.

CONTENT

The bill would enact the "Recodified Tax Increment Financing Act" to do the following:

- **Recodify several TIF statutes.**
- **Establish reporting requirements for the authorities created previously or under the proposed Act and penalties for noncompliance with those requirements.**
- **Require authorities to hold informational meetings.**
- **Provide for the continuation of a liability or obligation of an authority under a statute that the bill would repeal.**

The bill would repeal the Historic Neighborhood Tax Increment Finance Authority Act and the Private Investment Infrastructure Funding Act.

(The Historic Neighborhood Tax Increment Finance Authority Act allows the establishment of a TIF authority within the boundaries of a historic district if the governing body of a municipality determines that is necessary to halt property value deterioration and increase property tax valuation in a residential district. The Private Investment Infrastructure Funding Act allows municipalities to enter into "negotiating partnerships", which are collaborative efforts between public entities governing the development and financing of public facilities; and allows public entities to solicit or negotiate with private sector investors for funding, and repay the investors with tax increment revenue.)

Recodified TIF Acts

The bill would recodify the downtown development authority Act, the Tax Increment Finance Authority Act, the Local Development Financing Act, the Nonprofit Street Railway Act, the Corridor Improvement Authority Act, the Water Resource Improvement Tax Increment Finance Authority Act, and the Neighborhood Improvement Authority Act. The recodified provisions of these Acts would be "Parts" of the proposed Act. (Some parts, such as the Nonprofit Street Railway Part, incorporate the name of the Act to be recodified, while other parts do not.)

Generally, each Act would be recodified with several changes that would be similar for each part. Except in the Nonprofit Street Railway Part, each part would omit existing provisions that are similar or identical to the following:

- The requirement that an authority annually submit to the governing body of the municipality and the State Tax Commission a report on the status of the tax increment financing plan.
- The ability of the Commission to institute proceedings to compel enforcement of the Act.
- The ability of the Commission to promulgate rules necessary for the administration of the Act.

Generally, each of the TIF Acts states that a tax increment finance plan cannot be abolished until the principal of and interest on bonds issued pursuant to the Act have been paid or funds sufficient to make the payment have been segregated. Except in the Nonprofit Street Railway Part, the bill states in each part that a TIF plan could not be abolished, allowed to expire, or otherwise terminated until the principal of, and interest on, bonds issued pursuant to the part had been paid or funds sufficient to make the payment had been segregated.

Reporting Regarding Authority

Under Part 9 of the proposed Act, each municipality that had created an authority or that created an authority would have to create a website or use the existing website of the municipality that was operated and regularly maintained with access to authority records and documents for the fiscal year beginning on the effective date of the bill, including all of the following:

- Minutes of all board meetings.
- Annual budget, including encumbered and unencumbered fund balances.
- Annual audits.
- Currently adopted development plan, if not included in a TIF plan.
- Currently adopted tax increment finance plan, if currently capturing tax increment revenue.
- Current authority staff contact information.
- Current contracts and other documents related to management of the authority that compose 5% of the authority's budget or an amount of \$2,500, whichever was lower.
- Current contracts and other documents related to services provided to the authority.

Additionally, the municipality would have to include on the website an updated synopsis of activities of the authority, which would have to include all of the following, if any:

- For any tax increment revenue described in the annual audit that was not spent within five years of its receipt, a description of the reasons for accumulating those funds, a time frame when the fund would be spent, the uses for which the fund would be spent, and a specific description of funds that had not been spent within 10 years of their receipt.
- A list of authority accomplishments, including progress made on development plan and tax increment finance plan goals and objectives for the immediately preceding fiscal year.
- A list of authority projects and investments, including active and completed projects for the immediately preceding fiscal year.
- A list of authority events and promotional campaigns for the immediately preceding fiscal year.

These reporting requirements would apply to records and documents related to fiscal years as follows:

- For the fiscal year in which the bill took effect, the records and documents for that fiscal year.
- For the fiscal year one year following the bill's effective date, the records and documents for that fiscal year and the immediately preceding fiscal year.
- For the fiscal year two years following the bill's effective date, the records and documents for that fiscal year and the two immediately preceding fiscal years.
- For the fiscal year three years following the bill's effective date, the records and documents for the fiscal year and the three immediately preceding fiscal years.
- For the fiscal year four years following the bill's effective date and each subsequent fiscal year, the records and documents for the fiscal year and the four immediately preceding fiscal years.

The reporting requirements would not take effect until 180 days after the end of an authority's current fiscal year as of the bill's effective date.

If the municipality creating an authority did not have an existing website and chose not to create a website, the municipality would have to maintain the records described in the bill at a physical location within the municipality that was open to the public.

Informational Meetings

Each year, the board of an authority would have to hold at least two informational meetings. At least 14 days before the date of an informational meeting, notice of the meeting would have to be posted on the municipality's or authority's website, and the board would have to mail notice of the meeting to the governing body of each taxing jurisdiction levying taxes that were subject to capture by an authority under the proposed Act. As an alternative to mailing notice of the informational meeting, the board of the authority could notify the clerk of the governing body of each taxing jurisdiction by electronic mail. The informational meetings could be held in conjunction with other public meetings of the authority or municipality.

TIF Account Reporting

Annually, on a form and in the manner prescribed by the Department of Treasury, an authority would have to submit to the governing body of the municipality, the governing body of a taxing unit levying taxes subject to capture by an authority, and the Department a report on the status of the tax increment financing account. The report would have to include all of the following:

- The name of the authority.
- The date the authority was formed, the date the TIF plan was set to expire or terminate, and whether the plan expired during the immediately preceding fiscal year.
- The date the authority began capturing tax increment revenue.
- The current base year taxable value of the tax increment financing district.
- The unencumbered and encumbered fund balance for the immediately preceding fiscal year.
- The amount and source of revenue in the account, including the amount of revenue from each taxing jurisdiction.
- The amount in any bond reserve account.
- The amount and purpose of expenditures from the account.
- The amount of principal and interest on any outstanding bonded indebtedness.
- The initial assessed value of the development area or authority district by property tax classification.
- The captured assessed value retained by the authority by property tax classification.
- The tax increment revenue received for the immediately preceding fiscal year.
- Any additional information the governing body of the municipality or the Department considered necessary.

The report would have to be filed with the Department of Treasury at the same time as the annual financial report was filed with the Department under the Uniform Budgeting and Accounting Act. The report would have to be made available to the public on the authority's website, or if the authority did not have a website, then on the municipality's website. However, if the municipality creating an authority did not have an existing website and chose not to create a website, the

municipality would have to maintain records at a physical location within the municipality that was open to the public.

Within 90 days of the bill's effective date, each authority would have to send a copy or an electronic mail link of its currently adopted development plan or its currently adopted tax increment finance plan, if separate from the development plan, to the Department. Within 90 days of amending a development plan or a TIF plan, an authority would have to send a copy of the amendment to the Department. Within 90 days of adopting a new development plan or a new TIF plan, an authority would have to send a copy of that new plan to the Department. Each of the documents would have to be sent in the form and manner determined by the Department.

Enforcement & Compliance

Under Part 9, the Department could institute proceedings to compel enforcement of the proposed Act and would have to send written notification of a violation to an authority that failed to comply with the Act, to each taxing jurisdiction that had tax increment revenue captured by the authority, and to the governing body of the municipality that established the authority. The written notification would have to specifically detail the authority's noncompliance with the Act.

The Department could promulgate rules necessary for the administration of the Act.

If the Department notified an authority in writing that the authority failed to comply with any provision of the Act, and after 60 days following receipt of that notice the authority did not comply, the authority could not capture any tax increment revenue that was in excess of amounts necessary to pay bonded indebtedness or other obligations for the period of noncompliance as determined by the Department. During the period of noncompliance, an authority could not amend or approve a tax increment financing plan. If the period of noncompliance exceeded two consecutive years, the authority could not capture TIF revenue that was in excess of amounts necessary to pay bonded indebtedness or other obligations without a resolution of authorization of the municipality that created the authority and each taxing jurisdiction whose ad valorem taxes were subject to capture by the authority. Any excess funds captured would have to be returned to the taxing jurisdiction from which they were captured according to the part under which they were captured.

The use of "authority" and "municipality" in Part 9 would refer to an authority and municipality as used in each part except the Nonprofit Street Railway Part.

Repealed Act Transition

The repeal of a statute or section of law by the bill would not relinquish any penalty, forfeiture, or liability, whether criminal or civil in nature, and that statute or section of law would have to be treated as still remaining in force as necessary for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of the penalty, forfeiture, or liability.

A bond, note, or any other obligation issued by or on behalf of an authority under a statute or section of law repealed by the bill would have to continue in effect under its original terms under the corresponding part of the proposed Act. A contractual right, duty, or obligation relating to an authority under a statute or section of law repealed by the bill would continue and remain with the authority under the corresponding part of the Act. A development plan or a TIF plan developed by an authority under a statute or section of law repealed by the bill would remain in effect with the authority under the corresponding part of the Act.

Members of a board of an authority created under a statute or section of law repealed by the bill with the same or similar name and functions would continue in office for the duration of the terms of office for which they were appointed. Members would have to be appointed under the proposed Act only as terms of the former members expired or vacancies occurred. Members of the board of an authority created under a statute or section of law repealed by the bill could be appointed to

the new board to succeed themselves subject to any limits for the total period of service set forth under the Act.

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

Authorities implementing TIF have captured tax dollars for years for different development projects. However, a lack of State oversight has encouraged the absence of transparency. According to Committee testimony, authorities created under the Brownfield Redevelopment Financing Act are the only authorities consistently reporting their finances. The Department of Treasury estimates that it receives reporting data from around 40% of TIF authorities statewide. Without proper reporting, there is a lack of accountability to taxpayers and to entities that would receive tax revenue if it were not captured. While TIF is a useful tool for a municipality to enhance its tax base and improve its communities through development projects, tax increment financing must be implemented in a transparent and accountable way. The proposed Act would ensure this by requiring authorities to gather and report more data, and by creating penalties for TIF authorities that did not comply with the new reporting requirements.

Supporting Argument

The State lacks data on the effectiveness of tax increment financing and the amount of tax dollars that TIF authorities capture. If the bill were enacted, the Department of Treasury consistently would receive data from TIF authorities across the State. The data could assist policymakers in assessing the value of TIF and its future applications.

Opposing Argument

While the proposed Act would promote accountability and transparency of TIF authorities, the problem of special millage capture would remain. Special millages are voted on by taxpayers for the purpose of raising money for specific causes, such as services for senior citizens, veterans, public safety, and road improvements. Under the bill, TIF authorities could continue to capture dollars raised from these millages, which take money away from a purpose directly approved by the taxpayers. The bill should include a provision exempting special millages from capture.

Opposing Argument

It is not clear what the Department of Treasury would do with the annual reports that TIF authorities would be required to submit. Some authorities already must submit annual reports to the State Tax Commission in the Department, although there is not a formal reporting document and, reportedly, Treasury staff do not review the data submitted. While the bill would authorize the Department to prescribe the form to be used and the manner of reporting, it does not specify a date by which the Department of Treasury would have to do so. The bill would not adequately define the Department's role or involvement and requires further clarification as to what the collected data would be used for.

Furthermore, the bill would require TIF authorities to report plans, activities, and financial information to other jurisdictions whose taxes are captured by the authorities, despite their lack of broad engagement in many communities, and despite the existing availability of the information. This would place the burden of notification onto authority staff with already limited capacity and would create duplication, when the other taxing jurisdictions merely have to request the information.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would increase administrative costs of the Michigan Department of Treasury by a minimal amount, increase the local administrative costs of some tax increment financing authorities (TIFAs), and, in cases of TIFA noncompliance with expanded reporting requirements, would

increase revenue to other local units of government. The expanded financial and activity reporting requirements under the bill would apply to downtown development authorities, tax increment financing authorities, local development finance authorities, corridor improvement authorities, water resource improvement authorities, and neighborhood improvement authorities. These TIFAs would be required to submit to the Department of Treasury reports that would be more detailed than those required under current law; make those reports publicly available either online or at the municipal premises; and hold informational meetings. The cost of complying with these requirements would vary by locality depending on the number and complexity of projects and the availability of authority or municipal personnel to prepare the reports. A TIFA that did not comply with the reporting requirements after receiving notice of noncompliance from the Department would be limited in the amount of tax increment revenue that it could collect to the amount necessary to pay bonded indebtedness and other obligations. A local unit of government subject to tax capture within a noncompliant TIFA could see increased local revenue if captured tax revenue in excess of the amount needed by the TIFA for bonded indebtedness were returned to the local government that levied the tax.

Fiscal Analyst: Elizabeth Pratt

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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.