

REPEAL AND RECODIFY CERTAIN TAX INCREMENT FINANCE ACTS

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Senate Bill 393 (H-1) as reported from House committee

Sponsor: Sen. Ken Horn

House Committee: Local Government

Senate Committee: Economic Development and International Investment

Analysis available at
<http://www.legislature.mi.gov>

Complete to 2-1-18

(Enacted as Public Act 57 of 2018)

BRIEF SUMMARY: Senate Bill 393 would create the Recodified Tax Increment Financing Act. Generally speaking, the act would repeal and recodify multiple acts related to tax increment finance authorities (TIFAs), subject the tax increment finance authorities to standard reporting requirements, and provide for the continuation of existing authorities created under the statutes being recodified. The bill would also repeal, without recodification, two TIFA acts.

FISCAL IMPACT: Senate Bill 393 would increase certain administrative and oversight costs of the Department of Treasury, increase tax increment finance authority (TIFA) administrative costs, and, in instances where TIFAs were deemed noncompliant, potentially increase local government revenues. (See *Fiscal Information*, below, for more information.)

THE APPARENT PROBLEM:

Under various Michigan laws, municipalities can create tax increment finance authorities to carry out different public purposes. Generally, a tax increment finance authority can capture the growth in property tax revenues in a specific area and use the funds to pay for certain eligible activities. For instance, a city can create a downtown development authority (DDA) and capture revenue from growth in property taxes in a designated downtown area, and use the funds to pay for streetscape improvement projects or landscape installations. Each statute uses the same basic tax increment financing structure but applies the mechanism to a different purpose. For example, downtown development authorities are focused on specified downtown areas, while corridor improvement authorities are focused on a specific commercial corridor (road) that can span municipalities.

Reportedly, while there are many success stories for these authorities, there are also negative anecdotes and perceptions about authority activities. Many believe that the authorities do not have enough accountability or transparency, especially at the state level. According to testimony, a study has found that of the 600 tax increment finance authorities in Michigan, only 90 reported required financial information to the Department of Treasury.¹ The low reporting rate may be due to a lack of knowledge about reporting requirements or the lack of penalties for noncompliance. In order for the state and the public to evaluate the most or least

¹ Separately, the Michigan Economic Development Corporation reports that 99% of brownfield redevelopment authorities comply with reporting requirements. Available online at: https://www.michiganbusiness.org/cm/Files/Reports_to_MI_Legislature_Page_Docs/Brownfield%20Redevelopment%20Financing%20Act%20CY%202016%20Legislative%20Report.pdf. SB 393 does not address the Brownfield Redevelopment Financing Act.

effective tax increment finance programs, legislation has been introduced to standardize the reporting requirements across all authorities and introduce penalties for noncompliance.

THE CONTENT OF THE BILL:

Repeal and Recodify

The bill would repeal the following acts and recodify them as parts of the proposed act:

- Downtown development authority act (1975 PA 197; part 2 of the act)
- The Tax Increment Finance Authority Act (1980 PA 450; part 3 of the act)
- The Local Development Financing Act (1986 PA 281; part 4 of the act)
- Nonprofit Street Railway Act (1867 PA 35; part 5 of the act)
- Corridor Improvement Authority Act (2005 PA 280; part 6 of the act)
- Water Resource Improvement Tax Increment Finance Authority Act (2008 PA 94; part 7 of the act)
- Neighborhood Improvement Authority Act (2007 PA 61; part 8 of the act)

The bill would repeal the following acts and not recodify them:

- Historical Neighborhood Tax Increment Finance Authority Act (2004 PA 530)
- Private Investment Infrastructure Funding Act (2010 PA 250)

[The Historical Neighborhood Tax Increment Finance Authority Act allows the governing body of a municipality to create a TIFA to halt property value deterioration, increase property tax valuation, and promote economic growth within the boundaries of a historic district. The Private Investment Infrastructure Funding Act allows municipalities to enter into partnerships between public entities for the development and financing of public facilities, solicit private investment for public facilities, and pledge tax increment revenue to repay the private investors for the public facility.]

General Reporting Requirements

The bill would create the following reporting requirements for six of the recodified acts—all except the Nonprofit Street Railway Act. [The Nonprofit Street Railway Act is not entirely a TIFA statute. It was amended by 2008 PA 486 to allow for the creation of a “transit operations finance zone” to use tax increment revenues to finance transit operations in a zone. This and the following sections of this analysis—Financial Reporting Requirements, Penalties for Noncompliance, and Informational Meetings—would not apply to a transit operations finance zone.]

To create uniform reporting requirements, the bill would omit existing reporting provisions that require TIFAs to submit information to the State Tax Commission and establish the Commission’s role in compelling enforcement and issuing rules for the six recodified acts. The proposed reporting requirements would apply to authorities that currently exist and authorities that would be created under the new act. The requirements would take effect 180 days after the end of an authority’s current fiscal year as of the effective date of the bill. The requirements would be as follows.

Each municipality that has created or that creates any of the six authorities must create a website, or use an existing municipality website, that is operated and regularly maintained with

access to authority records and documents for the fiscal year beginning on the effective date of the bill, including:

- Minutes of all board meetings.
- Annual budget and audits.
- Currently adopted development plan, if not included in a tax increment financing plan.
- Currently adopted tax increment finance plan, if capturing tax increment revenues.
- Authority staff contact information.
- A listing of current contracts and a description of those contracts and other documents related to authority management and services provided to the authority.

Additionally, the website must contain an annual updated synopsis of activities of the authority, including:

- Information regarding tax increment revenues described in the annual audit that are not spent within 5 years, including the reasons for accumulating the funds and uses for which the funds will be spent, a time frame when the funds will be spent, and the amount of and an explanation for any funds that have not been spent within 10 years of their receipt.
- A list of authority accomplishments, including progress on development plan and tax increment 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.

The records and document information required above would be phased in from the effective date of the bill. That is, for the fiscal year in which the act takes effect, information would be required for that fiscal year. For the fiscal year 1 year following the effective date of the act, the information would be required for that fiscal year and the immediately preceding fiscal year, and so on.

If the municipality that created an authority did not have an existing website and chose not to create one, the records must be maintained at a physical location within the municipality that is open to the public.

Financial Reporting Requirements

The bill would require the Department of Treasury (“department”) to create a form on which an authority capturing tax increment revenues would report the status of its tax increment finance account. The bill would require the department to consult with professional organizations that represent municipalities in developing this form, and finalize and publish the form within 60 days after the effective date of the bill. The report would be submitted annually to the governing body of the municipality, the governing body of a taxing unit levying taxes subject to capture by the authority, and the department.

The report would be required to include:

- The name of the authority.
- The date of authority formation, the date the tax increment finance plan was set to expire, and whether the financing plan expired during the immediately preceding fiscal year.

- The date the authority began capturing tax increment revenues.
- The current base year taxable value of the tax increment financing district.
- The encumbered and unencumbered fund balances 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 and the captured assessed value retained by the authority by property tax classification.
- The tax increment revenues received for the immediately preceding fiscal year.
- Whether the authority amended its development or tax increment financing plan within the immediately preceding fiscal year, with a link to the current plan that was amended.
- Any additional information the municipality governing body or department considers necessary.

The report would be required to be filed with the department at the same time as the annual financial report required under the Uniform Budgeting and Accounting Act.

The department would be required to collect the reports and annually compile a combined report summarizing the information reported and submit a copy of that combined report to each member of the legislature.

Also, within 90 days after the effective date of the act, each authority would be required to send the department a copy of, or a link to, its currently adopted development plan or its currently adopted tax increment finance plan, if separate from the development plan.

Penalties for Noncompliance

The department could institute proceedings to compel enforcement of the act and would be required to send written notification of any violation of the act to an authority that failed to comply with the act, to each taxing jurisdiction that had tax increment revenues captured by the authority, and to the governing body of the municipality that established the authority. The notification would be required to detail the authority's noncompliance with the act.

If the department notified an authority and the authority did not comply within 60 days, the authority could not capture any tax increment revenues in excess of the amounts necessary to pay bonded indebtedness and other obligations for the period of noncompliance. During the noncompliance period, an authority could not amend or approve a tax increment financing plan. If the noncompliance period exceeded 2 consecutive years, the authority could not capture the amount needed for debt payment without a resolution of authorization from the municipality that created the authority and each taxing jurisdiction whose taxes were subject to capture. Any excess funds captured would be returned to the taxing jurisdiction according to statute.

Informational Meetings

The bill would require the board of an authority to hold at least 2 informational meetings each year. Notice would have to be given on the municipality or authority website at least 14 days in advance. At least 14 days in advance, the board would be required to mail notice of the meeting to the governing body of each taxing jurisdiction levying taxes that are subject to capture by an authority. Alternatively, the board could notify the clerk of each other taxing jurisdiction by email. The informational meeting could be held in conjunction with other public meetings of the authority or municipality.

Continuation of Existing Authorities

Finally, the bill would include general statements and provisions to provide for the continuation of existing authorities, financial arrangements, and boards.

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

Any bond, note, or other obligation issued by an authority or the municipality under a statute or section of law repealed by the act would continue in effect under its original terms under the corresponding part of the act. A contractual right, duty, or obligation relating to an authority under a repealed statute or section of law would continue and remain with the authority, and a development plan or tax increment financing plan developed by an authority would remain in effect with the authority.

Members of the board of an authority would continue in office for the duration of the terms of office to which they were appointed, and members would only be appointed under the act as former members' terms expire or vacancies occur. Members of a board of an authority created under a repealed section of law could be appointed to the new board to succeed themselves, subject to any limits set forth in the act.

The recodification of the downtown development authority act in part 2 of the new act would be a continuation of the taxing authority authorized under the downtown development authority act for purposes of section 31 of article IX of the state constitution.

The bill would take effect January 1, 2019.

HOUSE COMMITTEE ACTION:

To alleviate concerns that the reporting requirements could be duplicative or burdensome for small TIFAs in particular, the House Committee on Local Government adopted a substitute that requires the department to work with municipal groups to ensure that the reporting form is manageable, easy to use, and not redundant, while at the same time providing the useful information the state is seeking.

FISCAL INFORMATION:

Under Senate Bill 393, the Department of Treasury would be responsible for compiling reports and ensuring compliance with the reporting requirements under the act. The extent of the costs is unknown at this time, but they are not likely to be significant.

Local TIFAs would be required to submit more detailed financial reports than are already required and hold at least two informational meetings annually. The cost to each TIFA would depend on the existence and complexity of ongoing projects. TIFAs are self-financed through various funding mechanisms and require no appropriation from the state. Any additional costs would either be absorbed under current TIFA administrative revenues or offset through increases in any of the various funding mechanisms.

A local TIFA that failed to comply with the reporting requirements after receiving notice of noncompliance from the Department of Treasury would have its tax increment revenue reduced to the amount necessary to pay bonded indebtedness and other obligations. Therefore, local units of government subject to tax capture by a noncompliant TIFA would realize increased revenues during the period of noncompliance by the TIFA assuming there were tax increment revenues collected in excess of that needed for bonded indebtedness and other obligations.

ARGUMENTS:

For:

Supporters believe that the bill will codify best practices for tax increment finance authorities. Many of the procedures and reporting requirements are required for designation in the Michigan Main Street program, a nationally affiliated program that uses a specific approach to downtown revitalization. Standardized reporting requirements will increase the accountability and transparency of these authorities, which collect and spend taxpayer dollars, but do so sometimes with little public knowledge or engagement. The proposed penalties will increase compliance with reporting requirements. Additionally, by requiring a public website and informational meetings, the bill will provide opportunity for the authorities to illustrate to the public their positive activities and events, as opposed to the basic financial statements that are currently included in municipal audits.

Tax increment finance authorities are often subject to debate and discussion. The first step in any policy debate is having sound data and reporting on which to base an analysis, draw conclusions, and suggest improvements. The bill does just that, and will allow future legislators to potentially make tweaks to the law in order to improve the effectiveness and efficiency of these valuable authorities.

Neutral:

The Michigan Association of Counties indicated a neutral position on the bill. Specifically, the association would like to see the issue of special millages addressed within this legislation. Special millages are those levied for a specific purpose—for instance, services for veterans within a county. These are able to be captured by a TIFA; the association believes that these millages should be excluded from capture, since they were voted on and approved for a specific purpose.

Response:

The intent of the legislation is to be a first step in the evaluation of TIFA policies—to collect data and increase transparency. The outcomes from this bill—potentially a data analysis report or dashboard-like evaluation interface—could then be used to make additional policy changes.

POSITIONS:

Representatives of the following entities testified in support of the bill:

Owosso Main Street/Downtown Development Association (1-17-18)
Michigan Municipal League (1-17-18)
Michigan Townships Association (1-17-18)

Representatives of the following entities indicated support for the bill:

Michigan Downtown Association (1-17-18; 1-31-18)
Northern Michigan Chamber Alliance (1-17-18)
Downtown Grand Rapids, Inc. (1-17-18)

A representative of the Michigan Association of Counties testified with a neutral position on the bill. (1-17-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.