



**House
Legislative
Analysis
Section**

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**ESTABLISH BUSINESS
IMPROVEMENT DISTRICTS**

**House Bill 4735 as introduced
Sponsor: Rep. Jason Allen**

**House Bill 4736 (Substitute H-1)
Sponsor: Rep. Samuel Buzz Thomas**

**Committee: Commerce
First Analysis (5-16-01)**

THE APPARENT PROBLEM:

Supporters of the business improvement district (BID) concept describe it as a mechanism for property owners and merchants to use to plan and finance supplemental services that will enhance the physical environment in a designated business area, such as beautification, private security, lighting, marketing, promotions, and the cleaning of sidewalks, common spaces, and parks. One proponent has termed it, “self-help through self-assessment”. Under such a program, property owners and business owners in a specified geographic area band together to create a district in which special assessments can be levied, typically based on property values, with the proceeds used to fund enhancement projects. The revenue stream can also be used to support bonds to pay for a variety of streetscape improvements, such as lighting, benches, and plantings. A BID is often a privately managed entity but it requires the authorization of the local unit of government to make the assessments binding and to collect the assessments. There are said to be about 1,200 BIDs in the United States and Canada. Michigan, however, does not have a statute governing the creation and operation of such districts. There is a BID in Detroit, but it is a voluntary organization. Legislation has been introduced that would govern the establishment and operation of such business improvement districts.

THE CONTENT OF THE BILLS:

House Bill 4736 would amend Public Act 120 of 1961 (MCL 125.990 et al.), sometimes called the principal shopping district act, to add a new chapter under which one or more business improvement districts could be established in a city or village. Such a district could be funded by special assessments levied against property within the district (other than residential and tax-exempt property) and would be authorized to operate under a district plan

for a seven-year period. (A district could subsequently be renewed for an additional seven years and a new plan adopted.) The establishment of such a district would require the submission of petitions by interested parties, approval of a district plan by affected property owners, approval of the district and the plan by the governing body of the local unit of government, and an election involving affected property owners conducted by the local clerk.

House Bill 4735 would make complementary amendments to the same act (MCL 125.981) to name the act’s existing provisions Chapter 1 and to specify that current references to “the act” would be references to that chapter. The existing act also refers to a “business improvement district”, but the term has a different meaning than it would have in the new Chapter 2 to be created by House Bill 4736.

Under House Bill 4736, a business improvement district could do the following for the benefit of property owners within the district:

- Acquire, construct, develop, improve, maintain, operate, or reconstruct park areas, planting areas, and related facilities;
- Acquire, construct, clean, improve, maintain, reconstruct, or relocate sidewalks, street curbing, street medians, fountains, and lighting;
- Develop and propose lighting standards;
- Acquire, plant, and maintain trees, shrubs, flowers, or other vegetation;
- Provide or contract for security services with other public or private entities and purchase equipment or technology related to security services;

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- Promote and sponsor cultural or recreational activities;
- Engage in economic development activities, including the promotion of business, retail, or industrial development, developer recruitment, business recruitment, business marketing, business retention, public relations, and market research;
- Engage in any other activity to enhance the economic prosperity, enjoyment, appearance, image, and safety of the district area; and
- Acquire by purchase or gift, maintain, or operate real or personal property necessary to implement the purposes of the district, and solicit and accept gifts and grants to further the district plan.

Supplemental Services. The bill would specify that the services provided by a business improvement district were to be supplemental to the municipal services and functions provided by the local government, and that the establishment of a district was not to result in the reduction of any such services.

Petitioning for a District. To establish a district, a petition would have to be filed with the city or village clerk bearing the signatures of property owners of parcels representing at least 20 percent of the total taxable value of all assessable property within the district. The petition would also have to include the boundaries of the district area. The bill would require that the majority of all parcels included in a district area, both by area and by taxable value, be assessable property (that is, not residential or tax-exempt property). A district area would have to be contiguous, with the exception of public streets, alleys, parks, and other public rights-of-way. A business improvement district could be established in a city or village even if there was already a principal shopping district or a business improvement district established under Chapter 1 of the act. However, property could not be in both a principal shopping district and a Chapter 2 business improvement district nor could property be in both a Chapter 1 and a Chapter 2 business improvement district.

Meeting of Owners. Upon the submission of a petition, the local clerk would have to notify all property owners within the district area of a public meeting regarding the establishment of a district to be held within 45 days. Notice would have to be sent by first-class mail no less than 10 days prior to the meeting. At the meeting, property owners could adopt a district plan for submission to and approval

by the local governing body. A district plan would have to include: a description of the district boundaries; the proposed initial board of directors; the method for removal, appointment, and replacement of the board; a description of planned projects; an estimate of the planned expenditures; the proposed source or sources of financing for the projects; if the financing included assessments, the amount of the assessments for each year and basis upon which they were to be imposed; a listing, by tax parcel identification number, of all parcels within the district area; and a plan of dissolution. A plan would be considered adopted if a majority of the property owners voting at the meeting approved the plan. Votes of property owners would be weighted in proportion to the amount of taxable value of their respective real property for the preceding calendar year, but in no case could one property owner have more than 25 percent of the votes eligible to be cast.

Local Unit Approval. If a plan was adopted, it would be presented to the local clerk, and the local governing body would hold a public hearing within 45 days to review the plan and any proposed assessments and to receive public comment. At the hearing, the governing body would have to approve or reject the establishment of the district and the district plan. Approval of the district and plan would serve as a determination by the city or village that any special assessment set forth in the plan, including the basis for allocating the special assessment, was appropriate (subject to subsequent approval of the district and district plan by district property owners).

Election Involving Property Owners. If the district and plan were approved by the local unit, an election would be held involving the district property owners. (A bond would have to be provided by the person who first filed the petition sufficient to reimburse the city or village for the cost of the election, with the bond not to exceed \$500.) The election would be conducted by mail. The proposal to establish the district and the district plan, including the initial board of directors, would be considered adopted if 60 percent of property owners voting in the election approved. Votes would be weighted as at the earlier election. This election (and the previous one) would not be considered an election subject to the Michigan Election Law.

Board of Directors. The day-to-day activities of the district and the implementation of the district plan would be managed by a board of directors. The board would have to consist of an odd number of directors totaling not less than 5 or more than 15. The board could include one director nominated by

the chief executive of the city or village and approved by the local governing body. The duties of the board would be prescribed by the district plan and would include developing administrative procedures for implementing the plan; recommending amendments to the plan; scheduling and conducting an annual meeting of owners; and developing a district plan for the next seven-year period. The board would be subject to the Open Meetings Act and the Freedom of Information Act. A district could contract with a nonprofit corporation and pay the corporation a reasonable fee for services provided. The bill would require that the articles of incorporation of such a nonprofit corporation would have to provide that it could promote a district and provide management services for the implementation of a district plan. The corporation would have to be exempt from federal income tax under sections 501(c)(4) or 501(c)(6) of the federal Internal Revenue Code.

Special Assessments and Loan. A district could be funded in whole or in part by one or more special assessments. An assessment would be in addition to any taxes or assessments otherwise imposed on the assessable property. An assessment could be levied only on the basis of the special benefits to assessable property afforded by the district plan. There would be a rebuttable presumption that the plan and any project had special benefits for all assessable property in the district. The local treasurer would levy and collect a district's special assessment, and the assessment would constitute a lien on the assessable property. The district or the local unit of government could institute a civil action to collect any unpaid assessment. Assessment revenues would be the funds of the district and not of the state or the local government. The funds, which would have to be deposited in a financial institution, could only be used to implement the district plan.

A district could also borrow money in anticipation of the receipt of assessments if 1) the loan was not requested or authorized, or would not mature, within 90 days of the expiration of the seven-year period; 2) the amount of the loan did not exceed 50 percent of the annual average assessment of the district for the previous year or, if the district had been existence for less than a year, did not exceed 25 percent of projected revenue; and 3) the loan repayment period did not extend beyond the seven-year period.

Renewal and Dissolution. Prior to the expiration of the seven-year period for which the district had been authorized, the board of directors could notify property owners of a special meeting to approve a new district plan for a new seven-year period. Re-

authorization of the district would require a 60 percent majority vote (weighted as before). If the new district plan reflected any new assessment or reflected the extension of an assessment beyond its previously approved duration, then the new or extended assessment would only be effective if approved by the local governing body.

The district could be dissolved by a 60 percent majority vote at an annual meeting. A dissolution would not take effect until all liquidated debts of the district had been paid and discharged. Any remaining funds would be refunded on a pro rata basis. If the amount remaining was so small as to make such refunding impracticable, it could be transferred to the local treasurer for deposit in the local general fund.

Audits and Reports. All expenditures would have to be audited annually by a certified public accountant and a copy of the audit would have to be transmitted to the board of directors, with copies available to property owners and the public. If an audit contained material exceptions and they were not substantially corrected within 90 days of the delivery of the audit, the district would be subject to dissolution, upon approval by the local governing board. The board of directors would also be required to publish an annual activity and financial report that would be available to the public.

FISCAL IMPLICATIONS:

There is no information at present. A fiscal analysis is in process, according to the House Fiscal Agency. (5-16-01)

ARGUMENTS:

For:

One proponent of business improvement districts has said that they "are based on a simple premise: Those with the greatest stake in an area's prosperity assume collective responsibility for its improvement – and only those who benefit from physical improvements or services pay for them". There are said to be some 1,200 BIDs in the United States and Canada. Supporters of the concept point to successful operations in Philadelphia, New York, Boston, Los Angeles, Des Moines, and Paterson, New Jersey. House Bills 4735 and 4736 would provide enabling legislation for the creation of such districts in cities and villages in Michigan. A number of representatives of Detroit business interests have supported such an approach. Under a BID, the

property owners and businesses in a designated area assess themselves in order to pay for programs and services that are supplemental to government services. The goal is to improve the area, attract traffic, and increase property values. As one study of these districts pointed out, “The motivation for property owners to establish a BID and thereby impose a compulsory levy on themselves is that the expected commercial return will exceed their personal contribution. The growth in BID formations across the United States reflects the recognition by property owners that the value of their asset . . . depends to a significant extent on the surrounding environment.” As a result, the interests of the participating property owners and merchants are expected to be reflected in the planning that precedes final approval of the district, including the proposed projects and programs that the assessments will fund. At the same time, local business owners take responsibility for the quality of the environment they are creating within the district. Sometimes such efforts can stimulate supportive action by the local government. Obviously, the compulsory assessment feature saves the time-consuming fundraising that a voluntary organization must carry out (and avoids the problem of “free riders”.) It ensures that those who benefit also pay.

It should be noted that the bills require that a BID be approved by the local unit of government, as well as by a supermajority of affected property owners. The local unit would have to hold a public hearing at which the public as well as affected property owners could express their views. By the time property owners vote on final approval, the BID’s plan of operation will have been developed and will be available for scrutiny, including the proposed initial board of directors and a description of planned projects. The bottom-up process of establishing a BID is designed, proponents note, so that it requires the involvement of those who want to make it happen, those who see the benefits that will result. They then must design a program so as to convince others of its benefits.

Against:

A number of questions have been raised about the mechanics of the bills and about how the BIDS would operate in relationship to local governments. While the bill refers to “special assessments”, it does not make it clear if these assessments would appear on the official tax roll for the purposes of collection. This needs to be clarified. Further, there is no process provided for a property owner to protest the amount of an assessment; this lack of due process could lead to court challenges. There is also no

provision for the charging of interest on late payments, which is the standard approach to ensuring that payments are made on time. The bill says that the services provided by the BID would be supplemental and that the local government is not to reduce public services within the district. How is this to be enforced? The bill is also ambiguous about the nature of the ownership of any structures financed by the district and, thus, about the obligation of the local unit to maintain them. Local units need control over certain kinds of structures and facilities (such as sidewalks) due to liability issues. Also, there is some question about whether bonds issued by the BID would qualify as tax-exempt, as such bonds would be if the local unit issued them. This is because the district would be essentially under private control. The bill requires the local clerk to conduct the election which determines if a BID will be established, and the local unit is to be reimbursed by BID organizers, up to \$500. Two suggestions have been made: 1) that actual costs be reimbursed; and 2) that the local unit be allowed to waive any reimbursement. (Otherwise, the Headlee Amendment would require state reimbursement for imposing a new duty on the clerk.) The question has also been raised as to why townships are not included in the legislation.

It should also be noted that the proposal does not provide property owners and business owners who are unhappy with the assessments or with the nature of the programs and services being funded with much of an opportunity to be heard or to be represented. The composition of the board is left to the district’s plan of operation. Further, it is possible for a few large property owners to override the interests of numerous smaller property owners. There is also, some people say, sometimes a tension between the interests of property owners and the interest of the local businesses, in cases where the businesses are tenants and not owners. Further, this kind of district can engage in projects that the community at large has no voice in.

Response:

Reportedly, the parties interested in this legislation are working on making modifications to the proposal in response to a variety of concerns and criticisms.

POSITIONS:

A representative from Detroit Downtown, Inc. testified in support of the bills. (5-15-01)

Detroit Renaissance supports the bills. (5-15-01)

The New Center Council, Inc. supports the bills. (5-15-01)

The Detroit Regional Chamber of Commerce has indicated support for the bills. (5-15-01)

The Eastside Industrial Council has indicated support for the bills. (5-15-01)

The Southwest Detroit Business Association has indicated support for the bills. (5-15-01)

The Michigan Municipal League supports the concept of the bills. (5-15-01)

The Michigan Department of Treasury has indicated that it has not yet taken a position on the bills. (5-15-01)

Analyst: C. Couch

■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.