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SFA

BILL ANALYSIS

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House Bill 4735 (Substitute H-1 as passed by the House)
House Bill 4736 (Substitute H-3 as passed by the House)
Sponsor: Representative Jason Allen (House Bill 4735)
Representative Samuel Buzz Thomas (House Bill 4736)
House Committee: Commerce
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 9-25-01

CONTENT

House Bill 4735 (H-1) would amend the shopping areas redevelopment Act to designate the current statute, which provides for the creation and operation of principal shopping districts and business improvement districts (BIDs), as Chapter 1 ("Principal Shopping District") of the Act. The bill also specifies that a special assessment under Chapter 1 would have to be levied against "assessable property" rather than "a parcel" in a principal shopping district or BID established under that chapter.

House Bill 4736 (H-3) would amend the shopping areas redevelopment Act to add a new Chapter 2 ("Business Improvement Districts"), which would provide for the creation and operation of a different type of BID. The bill would do all of the following:

- Allow a city or village to create a BID for a renewable seven-year period.
- Specify the procedures for establishing a BID, including a petition and public hearing, adoption of a district plan, approval of the governing body of the city or village in which the BID would be located, and approval by the property owners within the proposed BID.
- Require a board of directors to manage a BID's activities and implement its district plan.
- Allow a BID established under Chapter 2 to be funded by one or more assessments.
- Specify a process for amending a BID

plan, reauthorizing a BID, and dissolving a BID.

- Provide that, to the extent not protected by the governmental immunity Act, a city or village that approved a BID within its boundaries would be immune from civil or administrative liability arising from action of the BID.

A more detailed description of the bills follows.

House Bill 4735 (H-1)

The Act extends certain powers to cities with a plan for their physical development that includes an urban design plan designating a principal shopping district or includes the development of a principal shopping district, and to cities that establish a business improvement district by resolution. The cost of a principal shopping district project or a BID project may be financed by various methods, including the levying of special assessments against land and interests in land.

The Act specifies that a special assessment must be levied against a "parcel" on the basis of the special benefits to that parcel from the total project. The bill provides, instead, that a special assessment would have to be levied against "assessable property" on the basis of the special benefits to that parcel from the total project. "Assessable property" would mean real property in a principal shopping district or BID established under Chapter 1 other than 1) property classified as residential under the General Property Tax Act or 2) one or more classes of property owners whose

property either was exempt from the collection of taxes under the General Property Tax Act or, as a class, had been determined by the city's legislative body not to benefit from a project for which special assessments were to be levied.

The bill also would delete a provision that, to the extent that a parcel is used for residential purposes, the parcel is not considered to benefit from a project for which special assessments are levied.

Under the Act, there is a rebuttable presumption that a district project specially benefits all "nonresidential properties" located within the district. Under the bill, that presumption would apply instead to all assessable property.

House Bill 4736 (H-3)

BID Powers & Duties

A business improvement district established under Chapter 2 would be a public body corporate and could do one or more of the following for the benefit of property owners located in the district:

- Acquire, through purchase, lease or gift, 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 related equipment or technology.
- Promote and sponsor cultural or recreational activities.
- Engage in economic development activities, including promotion of business, retail, or industrial development, developer recruitment, business recruitment, business marketing, business retention, public relations efforts, and market research.
- Engage in other activity with the purpose of enhancing the economic prosperity, enjoyment, appearance, image, and safety of the district area.
- Acquire by purchase or gift, maintain, or

operate real or personal property necessary to implement Chapter 2.

- Solicit and accept gifts or grants to further the BID plan.

A BID could contract with and pay a reasonable fee to a nonprofit corporation or any other public or private entity for services provided. The bill specifies that services provided by a BID would be supplemental to the municipal services and functions provided in the district area by the city or village in which the BID was located. ("District area" would mean the area designated in the district plan as the area to be served by the BID. "District plan" would mean a set of goals, strategies, objectives, and guidelines for the operation of a BID, as approved at a meeting of property owners.)

A BID would have the authority to borrow money in anticipation of receiving assessments, if all of the following were satisfied:

- The loan would not be requested or authorized, or would not mature, within 90 days before the expiration of the seven-year period during which the BID was authorized to operate.
- The amount of the loan did not exceed 50% of the BID's annual average assessment revenue during the previous year or, in the case of a BID that had been in existence for less than one year, the loan did not exceed 25% of the projected annual assessment revenue.
- The loan repayment period did not extend beyond the BID's seven-year period.

A BID would have to comply with the Open Meetings Act and the Freedom of Information Act.

A BID established under Chapter 2 would have no authority other than that described in the Act.

BID Parameters

One or more BIDs could be established within a city or village. The majority of all parcels included in a BID area, both by area and by taxable value, would have to be "assessable property". (Under Chapter 2, "assessable property" would mean real property in a BID area other than property classified as

residential real property under the General Property Tax Act, or real property exempt from the collection of taxes under that Act.) A BID area would have to be contiguous, with the exception of public streets, alleys, parks, and other public rights-of-way.

A Chapter 2 BID could be established in a city or village even if the city or village had established a principal shopping district or BID under Chapter 1. Property could not be included, however, in more than one BID established under Chapter 1 or 2, or in both a principal shopping district and a BID established under Chapter 1 or 2.

Establishment of a BID

Petition & Hearing. A person could initiate the establishment of a BID under Chapter 2 by delivering a petition to the clerk of the city or village in which a proposed BID area was located. The petition would have to include the boundaries of the BID area; the signatures of owners of parcels representing at least 30% of the total taxable value of all assessable property within the BID area; and a listing, by tax parcel identification number, of all parcels within the BID area, separately identifying assessable property.

After a petition was filed, the clerk would have to notify all property owners within the BID area of a public meeting regarding the establishment of the BID to be held between 45 and 60 days after the petition was filed. The notice would have to be sent by first-class mail to property owners at least 14 days before the meeting. The notice would have to include the specific location and the scheduled date and time of the meeting.

District Plan. At the required meeting, the property owners could adopt a district plan for submission to and approval by the governing body of the city or village in which the BID was located. A district plan would have to include all of the following:

- A description of the boundaries of the BID area sufficient to identify each assessable property that would be included.
- The proposed initial board of directors, except for the board member who could be appointed by the city or village under the bill.
- The method for removal, appointment, and

replacement of the board.

- A description of projects planned during the BID's seven-year period, including the scope, nature, and duration of the projects.
- An estimate of the total amount of expenditures for projects planned during the BID's seven-year period.
- The proposed source or sources of financing for the projects.
- If the proposed financing included assessments, the amount of the assessments for each year and the basis upon which they were to be imposed on assessable property.
- A listing, by tax parcel identification number, of all parcels within the BID area, separately identifying assessable property.
- A plan of dissolution for the BID.

(The term "7-year period" would mean the period in which a BID was authorized to operate, beginning on the date the BID was created or renewed and ending seven calendar years after that date.)

A BID plan would be considered adopted by the property owners if a majority of them voting at the meeting approved the plan. The property owners' votes would have to be weighted in proportion to the amount of the taxable value of their respective real property for the preceding calendar year to the taxable value of all assessable property in the BID. The total number of votes assigned to any one property owner, however, could not be more than 25% of the total number of votes eligible to be cast in the election.

Any plan adopted under the bill would have to be presented to the clerk of the city or village in which the BID was located.

City or Village Approval. If a BID plan were adopted and presented to the city or village clerk, the governing body of the city or village would have to schedule a public hearing within 45 days to review the plan and any proposed assessment and to receive public comment. The clerk would have to notify all owners of parcels within the BID area of the hearing by first-class mail.

At the hearing, or at the next regularly scheduled meeting of the city or village governing body, the governing body would have to approve or reject the establishment of the BID and the district plan as adopted by

the property owners. If the governing body rejected establishment of the BID and the district plan, the property owners could reconvene a meeting and amend the plan, if approved by a majority of the property owners as in the initial adoption of the plan. The amended district plan then could be resubmitted to the city or village clerk, without a new petition, for approval or rejection at a meeting of the city or village governing body within 60 days after the amended plan was resubmitted. If a district plan were not rejected within 60 days amended plan was resubmitted, it would be considered approved by the city or village governing body. If the governing body rejected the amended plan, then it could not be resubmitted without the delivery of a new petition.

Approval of the BID and district plan would serve as a determination by the city or village that any assessment set forth in the plan, including the basis for allocating the assessment, was appropriate, subject only to the approval of the BID and the plan by the property owners.

Election. If a city or village governing body approved a BID and district plan, or if an amended district plan were considered approved because of the passage of 60 days, the city or village clerk would have to set an election within 60 days following the approval. The election would not be subject to the Michigan Election Law.

The clerk would have to send to the property owners a notice of the election, by first-class mail, at least 30 days before the election and publish the notice at least twice in a newspaper of general circulation in the city or village in which the BID area was located. The first publication would have to be at least 10 days but not more than 30 days before the election; the second notice would have to be published at least one week after the first publication.

All property owners as of the date of the delivery of the petition would be eligible to participate in the election. The election would have to be conducted by mail. Votes of property owners would be weighted in proportion to the amount of taxable value of their real property for the preceding calendar year compared with the taxable value of all assessable property in the BID. The total

number of votes assigned to any one property owner, however, could not equal more than 25% of the total number of votes eligible to be cast in the election.

A district plan and the proposal for establishing a BID, including the identity of the initial BID board of directors, would have to be considered adopted upon the approval of 60% of the property owners voting in the weighted election. Adoption of a BID and district plan would authorize the creation of the BID and the implementation of the plan for a seven-year period. Adoption of a BID and district plan and the creation of the BID would not relieve the BID from following, or would not waive any rights of the city or village to enforce, any laws, statutes, or ordinances.

Upon acceptance or rejection of a BID and district plan by the property owners, the resulting BID or the person filing the petition, at the request of the city or village, would have to reimburse the city or village for all or a part of the reasonable expenses incurred to comply with Chapter 2. The city or village governing body could forgive and choose not to collect all or part of those expenses.

BID Board

The day-to-day activities of a BID and implementation of a district plan would have to be managed by a board of directors. The board would have to consist of an odd number of directors and could not be smaller than five or larger than 15 in number. The board could include one member nominated by the chief executive of the city or village and approved by the city or village governing body.

The board's duties and responsibilities would have to be prescribed in the district plan and, to the extent applicable, would have to include all of the following:

- Developing administrative procedures relating to the implementation of the district plan.
- Recommending amendments to the district plan.
- Scheduling and conducting an annual meeting of the property owners.
- Developing a district plan for the next seven-year period.

BID Assessments

A BID could be funded in whole or in part by one or more assessments on assessable property, as provided in the district plan. An assessment under Chapter 2 would be in addition to any taxes or special assessments otherwise imposed on assessable property. An assessment could be imposed against assessable property only on the basis of the benefits to assessable property afforded by the district plan. There would be a rebuttable presumption that a district plan and any project specially benefitted all assessable property in a BID area.

If a district plan provided for an assessment, the treasurer of the city or village in which the BID area was located, as an agent of the BID, would have to impose an assessment on all assessable property within the BID area in the amount authorized by the district plan. Except as otherwise provided for delinquent assessments, the assessments would have to be collected by the treasurer from each property owner and remitted promptly to the BID. Assessment revenue would be the property of the BID and not the city or village or the State. The BID could assist the treasurer in collecting the assessment to keep the cost of collection at a minimum.

From the date on which an assessment was imposed, the full amount of the assessment and interest on it would constitute a lien on the property. The BID could institute a civil action to collect any delinquent assessment and interest. An assessment imposed under the Act would not be a special assessment collected under the General Property Tax Act.

An assessment would be delinquent if it were not paid within 90 days after it was imposed. Delinquent assessments would have to be collected by the BID, and would accrue interest at a rate of 1.5% per month until paid. A property owner could initiate an action in circuit court to contest whether an assessment exceeded the benefits to the assessable property under the Act.

BID Finances

Expenses incurred in implementing any project or service of a BID would have to be financed according to the district plan. All money collected from BID assessments would have to be deposited in a financial institution in the name of the BID. Assessment revenues could

be deposited in an interest-generating account. The BID could use the funds only to implement the district plan.

All expenditures by a BID would have to be audited annually by a certified public accountant (CPA). The audit would have to be completed within nine months of the close of the BID's fiscal year. Within 30 days after completing the audit, the CPA would have to transmit a copy of the audit to the board and make copies available to the property owners and the public. If an annual audit contained material exceptions that were not substantially corrected within 90 days of the audit's delivery, the BID would have to be dissolved according to its district plan upon approval of the dissolution by the city or village governing body.

The BID board would have to publish an annual activity and financial report, which would have to be available to the public. Each year, every property owner would have to be notified of the availability of the annual activity and financial report.

A BID would be exempt from the requirements of the Uniform Budgeting and Accounting Act.

Amendment, Reauthorization, & Dissolution of BID Plan

Amendment. A district plan could be amended. An amendment would be effective if approved by a majority of the property owners voting on the amendment at the BID's annual meeting or a special meeting called for that purpose, with the property owners' votes weighted as in the election approving the BID and district plan. A district plan amendment changing an assessment would be effective only if also approved by the governing body of the city or village in which the BID was located.

Reauthorization. Before the end of any seven-year period, a BID board would have to notify the property owners, by first-class mail at least 14 days before the meeting, of a special meeting to approve a new district plan for the next seven-year period. The notice would have to include the specific location, scheduled date, and time of the meeting.

Approval of a new district plan at the special meeting by 60% of the owners of assessable property voting at that meeting, with the vote being weighted, would constitute reauthorization of the BID for an additional seven-year period, beginning at the expiration of the seven-year period then in effect. If the new district plan reflected any new assessment, or reflected an extension of any assessment beyond the period previously approved by the city or village, the new or extended assessment would be effective only with the approval of the city or village governing body.

Dissolution. Upon written petition signed by 20% of the owners of assessable property within a BID area, the board would have to place on the agenda of the next annual meeting the issue of dissolution of the BID. The BID would be dissolved upon a vote of more than 50% of the owners of assessable property voting at an annual meeting, with the votes being weighted. A dissolution could not take effect until all liquidated debts of the BID had been paid and discharged.

Upon dissolution, the BID board would have to dispose of the remaining physical assets of the BID. The proceeds of the disposal of any physical assets and all money collected through assessments that were not required to defray the BID's expenses would have to be refunded on a pro rata basis to the persons from whom assessments were collected. If the BID board found that the refundable amount was so small that computing and refunding the money would be impracticable, it could be transferred to the treasurer of the city or village in which the BID was located for deposit in the treasury to the credit of the general fund.

Upon dissolution of a BID, any remaining assets would have to be transferred to the city or village treasurer for deposit in the treasury to the credit of the general fund.

MCL 125.981 et al. (H.B. 4735)
Proposed MCL 125.990-125.990m (H.B. 4736)

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills would have no fiscal impact on the State. Their impact on local units of government would be minimal, if any.

Fiscal Analyst: D. Zin

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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.