Legislative Analysis

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PRIVATE INVESTMENT INFRASTRUCTURE FUNDING

House Bill 5461 (Substitute H-1)
Sponsor: Rep. Tonya Schuitmaker
Committee: Transportation

Complete to 12-15-09

A SUMMARY OF HOUSE BILL 5461 AS REPORTED FROM COMMITTEE

The bill would create the Private Investment Infrastructure Funding Act, under which municipalities could enter into collaborative relationships with other public entities to develop public facilities and could, among other things, solicit private sector investment for the financing of public facilities through a bid process. Generally speaking, "public facilities" means transportation-related projects, including public transportation-related infrastructure, as well as other similar public infrastructure improvements. The term "municipality" would apply to cities, villages, and townships.

The bill also provides for tax increment financing arrangements whereby private investors could be repaid for their investment in public facilities out of tax increment revenues pledged by the collaborating municipalities.

The following is a detailed summary of the bill.

Forming Negotiating Partnerships
The bill would allow the governing board of a municipality to enter into one or more negotiating partnerships by adopting a resolution to that effect. The term "negotiating partnership" would refer to a collaborative effort between public entities governing the development and financing of eligible public facilities. A municipality could enter into such a partnership on its own initiative or at the request of an affected property owner upon a determination that such an arrangement was needed to promote economic development and public infrastructure improvement.

The members of a negotiating partnership would be the municipality or municipalities in which the public facility is to be located; and one of the following:

- If the public facility was under the jurisdiction of the Department of Transportation, the county road commission, or the drain commissioner, then the department, commission, or commissioner, whichever had jurisdiction.

- If the public facility was under the jurisdiction of the city, village, or township, then the county in which the public facility was located.

The party with jurisdiction over the public facility would be the administering agency and would administer the development of the public facility. Meetings and proceedings concerning a negotiating partnership would be subject to the Open Meetings Act and the Freedom of Information Act.

A municipality that had entered into a negotiating partnership could enter into an agreement with an adjoining municipality that had also entered into such a partnership, in order to jointly operate and administer those negotiating partnerships. This would have to be done through an interlocal agreement under the Urban Cooperation Act.

Duties and Powers of Negotiating Partnerships

In brief, a negotiating partnership could provide for one or more of the following activities: study and analyze the need for public facilities within the negotiated benefit area; plan and propose the construction, repair, preservation, or rehabilitation of a public facility; implement any plan of development of a public facility; make or enter into contracts necessary or incidental to its purposes; acquire, own, or dispose of land and other property; improve land and construct, rehabilitate, preserve, equip, and clear any public facility; fix, charge, and collect fees, rents, and charges for the use of facilities, buildings, and property, and pledge those revenues for the payment of debt; lease any facility or property; accept grants and donations of property, labor, or other things of value from public and private sources; acquire and construct public facilities; and add reasonable costs for administrative costs.

Financing of Public Facilities

The development of a public facility could be financed from one or more of the following sources: funds from parties to the agreement with the negotiating partnership; funds of the members of the negotiating partnership, as permitted by applicable law; fees charged to users of the infrastructure project; proceeds from captured taxes in a negotiated benefit area; proceeds from a special assessment district; federal, loans, grants, aid, etc.; donations, contributions, and gifts; and other sources acceptable to the negotiating partners.

Definition of Public Facilities

The term "public facility" would include a street, road, or highway, and improvements such as street furniture and beautification. It would also include a park, parking facility, recreational facility, right-of-way, structure, waterway, bridge, lake, pond, canal, utility line or pipe, or a building, including access routes designed and dedicated to use by the public or used by a public agency.

Private Sector Investors

The administering agency could negotiate with private sector investors or solicit such investors through a bid process to secure funding for a public facility. The agency and private sector investor could include the following costs in such financing: the cost of purchasing, acquiring, constructing, improving, enlarging, or repairing property in connection with a public facility; engineering, architectural, legal, accounting, and financial expenses; and the rate of interest and return of principal for the investor.

Tax Increment Revenues

An administering agency could, on behalf of the negotiating partnership, pledge all or a portion of the tax increment revenues to pay for a public facility. The agency could not pledge or commit any other funds of a municipality or public entity that is part of the negotiating partnership without the approval of the municipality or entity that is part of the partnership.

The agency, on behalf of both the partnership and the investors, could enter into a written agreement that would become part of the partnership and that would contain all of the following: the amount of tax increment revenue to be captured; the rate of interest and return of principal for investors; the anticipated rate of growth in property value within the benefit area; the payment schedule from the agency and lead fiduciary agency describing payments of principal and interest to investors; an acknowledgment from investors that they will be repaid from tax increment revenues and not from any other funds or property of municipalities or public entities; and the boundaries of the negotiated benefit area.

State and local school taxes could be captured only with the approval of the State Treasurer and only in an amount not to exceed 50 percent of those taxes for a period not to exceed 15 years. Tax increment revenues would not include revenues that affected tax jurisdictions had exempted from capture, revenues excluded or shared under a TIF plan, or revenues specifically levied for the payment of principal and interest on voter-approved debt or debt pledging the unlimited taxing power of the local governmental unit or specific taxes attributable to those property taxes.

Tax Increment Financing Plan

If an administering agency determined it necessary it could prepare and submit a tax increment financing plan to the governing body of the municipality. The plan would have to include a detailed plan of the development of the public facility; the designation of boundaries of the negotiated benefit area; a detailed explanation of the tax increment procedure; the maximum amount of indebtedness to be incurred; and the duration of the program. The plan would have to contain a statement of the estimated impact of tax increment financing on assessed values of all taxing jurisdictions in which the benefit area is located. The plan could provide for using part or all of the captured assessed value, but the portion intended for use by the administrative agency would have to be clearly stated.

Before a municipal governing body approved a TIF plan, it would have to provide a reasonable opportunity to the affected taxing jurisdictions to meet with the governing body. The agency would have to fully inform the taxing jurisdictions of the fiscal and economic implications of the proposed negotiated benefit area. The taxing jurisdictions could present their recommendations at the public hearing on the plan. The agency could enter into agreements with the taxing jurisdictions and the municipality in which the benefit area was located to share a portion of the captured assessed value.

The governing body of a taxing jurisdiction could exempt its taxes from capture by adopting a resolution within 60 days after the approval of the TIF plan. A separately levied millage for libraries could also be exempted at the request of the library board.

Lead Fiduciary Agency
Municipal and county treasurers would transmit tax increment revenues to the lead fiduciary agency designated in the negotiating partnership, and that agency could expend the revenues only under the terms of the TIF plan and the negotiating partnership. (The "lead fiduciary agency" would be the county or counties in which the public facility was located or other tax collecting unit whose taxes were subject to capture as determined by the negotiating partnership.

Annually, the lead fiduciary agency would have to submit to the governing board of each participating municipality, to each affected tax jurisdiction, and to the State Tax Commission, a report on the status of the TIF account. The report would have to include: the amount and source of revenue in the account, the amount in any reserve account, the amount and purpose of expenditures from the account, the amount of principal and interest on any outstanding debt, the initial assessed value of the negotiated benefit area, the captured assessed value retained by the administrative agency, the tax increment revenues received, the number of public facilities developed, and other information the considered necessary.

Dissolution
A negotiated partnership that has completed its purposes would be dissolved by resolution of each participating municipality, and any remaining property and assets would belong to the participating municipalities.

Rules
The State Tax Commission would be authorized to promulgate rules needed to administer the act.

FISCAL IMPACT:

As described earlier, the bill would allow for the creation of a new kind of tax increment financing authority, under which the growth in local property tax revenues within a designated benefit area could be captured from other taxing jurisdictions and redistributed for the purpose of developing certain public facilities. Revenues could be used to repay private investors for their financial support of public facilities. Local units could exempt their taxes from capture. School taxes could be captured only with the approval of the State Treasurer.

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