

**SUBSTITUTE FOR
HOUSE BILL NO. 5461**

A bill to provide for the establishment of a private source of funding for public infrastructure; to prescribe the powers and duties of certain public entities; to finance public infrastructure through public and private sources; to authorize the acquisition and disposal of interests in real and personal property; to authorize certain public and private entity partnerships; to authorize the creation and implementation of certain plans and negotiated benefit areas; to promote economic development; to authorize the use of tax increment financing; to prescribe powers and duties of certain state and local officials; to provide for rule promulgation; and to provide for enforcement of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "private investment infrastructure funding act".

3 Sec. 2. As used in this act:

4 (a) "Administering agency" means the department, the county
5 road commission, the county drain commissioner, or the city,
6 village, or township that has jurisdiction over the public
7 facility, as determined by the negotiating partnership. The
8 administering agency will administer the development of the public
9 facility.

10 (b) "Captured assessed value" means the amount in any state
11 fiscal year by which the current assessed value of the negotiated
12 benefit area, including the assessed value of property for which
13 specific local taxes are paid in lieu of property taxes as
14 determined in section 3(c), exceeds the initial assessed value. The
15 state tax commission shall prescribe the method for calculating
16 captured assessed value.

17 (c) "Chief executive officer" means the mayor or city manager
18 of a city, the president or village manager of a village, or the
19 supervisor of a township.

20 (d) "Department" means the state transportation department.

21 (e) "Fiscal year" means the fiscal year of the administering
22 agency.

23 (f) "Governing body" or "governing body of a municipality"
24 means the elected body of a municipality having legislative powers.

25 (g) "Initial assessed value" means the assessed value of all
26 the taxable property within the boundaries of the negotiated
27 benefit area at the time the tax increment financing plan is

1 approved, as shown by the most recent assessment roll of the
2 municipality at the time the resolution is adopted. Property exempt
3 from taxation at the time of the determination of the initial
4 assessed value shall be included as zero. For the purpose of
5 determining initial assessed value, property for which a specific
6 local tax is paid in lieu of a property tax shall not be considered
7 to be property that is exempt from taxation. The initial assessed
8 value of property for which a specific local tax was paid in lieu
9 of a property tax shall be determined as provided in section 3(c).

10 (h) "Lead fiduciary agency" is the county or counties in which
11 the public facility is located or other tax collecting unit whose
12 taxes are subject to capture under this act as determined by the
13 negotiating partnership.

14 (i) "Municipality" means a city, village, or township.

15 (j) "Negotiated benefit area" means the area of tax capture
16 whose boundaries are described by the negotiating partnership and
17 are within state boundaries.

18 (k) "Negotiating partnership" means a collaborative effort
19 between public entities located within this state governing the
20 development and financing of public facilities. The negotiating
21 partnership shall execute a written agreement which shall provide
22 who the lead fiduciary agency and the administering agency are.
23 Members of the negotiating partnership are as follows:

24 (i) The municipality or municipalities within the negotiated
25 benefit area in which the public facility is to be located.

26 (ii) One of the following:

27 (A) If the public facility to be improved or constructed is

1 under the jurisdiction of the department, the county road
2 commission, or the drain commissioner, then the department, the
3 county road commission, or the drain commissioner, as applicable,
4 and the county in which the public facility is located.

5 (B) If the public facility to be improved or constructed is
6 under the jurisdiction of the city, village, or township, then the
7 county in which the public facility is located.

8 Sec. 3. As used in this act:

9 (a) "Parcel" means an identifiable unit of land that is
10 treated as separate for valuation or zoning purposes.

11 (b) "Public facility" means a street, road, or highway, and
12 any improvements to a street, road, or highway, including street
13 furniture and beautification, park, parking facility, recreational
14 facility, right-of-way, structure, waterway, bridge, lake, pond,
15 canal, utility line or pipe, water or wastewater facilities, or
16 building, including access routes designed and dedicated to use by
17 the public generally, or used by a public agency. Public facility
18 also includes public-transportation-related infrastructure and
19 light and commuter rail line projects. A public facility does not
20 include a tunnel or bridge that includes an international border or
21 crossing.

22 (c) "Specific local tax" means a tax levied under 1974 PA 198,
23 MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA
24 255, MCL 207.651 to 207.668, the technology park development act,
25 1984 PA 385, MCL 207.701 to 207.718, or 1953 PA 189, MCL 211.181 to
26 211.182. The initial assessed value or current assessed value of
27 property subject to a specific local tax shall be the quotient of

1 the specific local tax paid divided by the ad valorem millage rate.
2 The state tax commission shall prescribe the method for calculating
3 the initial assessed value and current assessed value of property
4 for which a specific local tax was paid in lieu of a property tax.

5 (d) "State fiscal year" means the annual period commencing
6 October 1 of each year.

7 (e) "Tax increment revenues" means the amount of ad valorem
8 property taxes and specific local taxes attributable to the
9 application of the levy of all taxing jurisdictions upon the
10 captured assessed value of real and personal property in the
11 negotiated benefit area. Tax increment revenues do not include any
12 of the following:

13 (i) Taxes under the state education tax act, 1993 PA 331, MCL
14 211.901 to 211.906, except that portion of the taxes under the
15 state education tax act, 1993 PA 331, MCL 211.901 to 211.906, not
16 to exceed 50% of those taxes as determined by the state treasurer
17 for a period not to exceed 15 years, as determined by the state
18 treasurer, if the state treasurer determines that the capture under
19 this subparagraph is necessary to reduce unemployment, promote
20 economic growth, and increase capital investment in the
21 municipality.

22 (ii) Taxes levied by local or intermediate school districts,
23 except that portion of taxes levied by local or intermediate school
24 districts not to exceed 50% of those taxes as determined by the
25 state treasurer for a period not to exceed 15 years, as determined
26 by the state treasurer, if the state treasurer determines that the
27 capture under this subparagraph is necessary to reduce

1 unemployment, promote economic growth, and increase capital
2 investment in the municipality.

3 (iii) Ad valorem property taxes attributable either to a portion
4 of the captured assessed value shared with taxing jurisdictions
5 within the jurisdictional area of the administering agency or to a
6 portion of value of property that may be excluded from captured
7 assessed value or specific local taxes attributable to the ad
8 valorem property taxes.

9 (iv) Ad valorem property taxes excluded by the tax increment
10 financing plan of the administering agency from the determination
11 of the amount of tax increment revenues to be transmitted to the
12 administering agency or specific local taxes attributable to the ad
13 valorem property taxes.

14 (v) Ad valorem property taxes exempted from capture under
15 section 10(5) or specific local taxes attributable to the ad
16 valorem property taxes.

17 (vi) Ad valorem property taxes specifically levied for the
18 payment of principal and interest of obligations approved by the
19 electors or obligations pledging the unlimited taxing power of the
20 local governmental unit or specific taxes attributable to those ad
21 valorem property taxes.

22 Sec. 4. Except as otherwise provided in this act, a
23 municipality may enter into and establish multiple negotiating
24 partnerships to develop and finance public facilities.

25 Sec. 5. (1) If the governing body of a municipality determines
26 that it is necessary for the best interests of the public to
27 promote economic development and public infrastructure improvement,

1 the governing body may, on its own or from a written request of a
2 potentially affected property owner in the municipality, declare
3 its intention to enter into 1 or more negotiating partnerships to
4 develop public facilities as provided in this act.

5 (2) If the governing body of the municipality intends to
6 proceed with entering into 1 or more negotiating partnerships, it
7 shall adopt, by majority vote of its members, a resolution to that
8 effect. The adoption of the resolution is subject to any applicable
9 statutory or charter provisions in respect to the approval or
10 disapproval by the chief executive officer or other appropriate
11 officer of the municipality and the adoption of a resolution over
12 his or her veto. A copy of the resolution shall be filed with the
13 secretary of state promptly after its adoption and shall be
14 published at least once in a newspaper of general circulation in
15 the municipality.

16 (3) A municipality that has entered into a negotiating
17 partnership may enter into an agreement with an adjoining
18 municipality that has entered into a negotiating partnership to
19 jointly operate and administer those negotiating partnerships under
20 an interlocal agreement under the urban cooperation act of 1967,
21 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

22 Sec. 6. (1) Meetings and proceedings concerning a negotiating
23 partnership are subject to the open meetings act, 1976 PA 267, MCL
24 15.261 to 15.275.

25 (2) A writing prepared, owned, used, in the possession of, or
26 retained by the municipality concerning a negotiating partnership
27 is subject to the freedom of information act, 1976 PA 442, MCL

1 15.231 to 15.246.

2 Sec. 7. (1) The negotiating partnership may provide for 1 or
3 more of the following:

4 (a) Study and analyze the need for public facilities within
5 the negotiated benefit area and identify other potential negotiated
6 benefit areas.

7 (b) That the administering agency shall plan and propose the
8 construction, renovation, repair, remodeling, rehabilitation,
9 restoration, preservation, or reconstruction of a public facility
10 in a negotiated benefit area. The administering agency is
11 encouraged to develop a plan that reasonably conserves the natural
12 features of the site and reduces impervious surfaces.

13 (c) That the administering agency shall implement any plan of
14 development of a public facility in the negotiated benefit area
15 necessary to achieve the purposes of this act in accordance with
16 the powers granted by this act.

17 (d) That the administering agency shall make and enter into
18 contracts necessary or incidental to the exercise of its powers and
19 the performance of its duties.

20 (e) That the administering agency shall acquire by purchase or
21 otherwise, on terms and conditions and in a manner the
22 administrative agency considers proper, or own, convey, or
23 otherwise dispose of, or lease as lessor or lessee, land and other
24 property, real or personal, or rights or interests in the property,
25 that the administrative agency determines are reasonably necessary
26 to achieve the purposes of this act, and to grant or acquire
27 licenses, easements, and options.

1 (f) That the administering agency shall improve land and
2 construct, reconstruct, rehabilitate, restore and preserve, equip,
3 clear, improve, maintain, and repair any public facility, building,
4 and any necessary or desirable appurtenances to those buildings
5 provided in the negotiating partnership to be reasonably necessary
6 to achieve the purposes of this act, within the negotiated benefit
7 area for the use, in whole or in part, of any public or private
8 person or corporation, or a combination thereof.

9 (g) That the administering agency shall fix, charge, and
10 collect fees, rents, and charges for the use of any facility,
11 building, or property under its control or any part of the
12 facility, building, or property, and pledge the fees, rents, and
13 charges for the payment of any debts incurred pursuant to the
14 negotiating partnership. Fees, rents, and charges shall not include
15 the adding of a toll or employment of new user fees for any motor
16 vehicle access to a new or existing highway, road, street, highway
17 ramp, or bridge.

18 (h) That the administering agency may lease, in whole or in
19 part, any facility, building, or property under its control.

20 (i) That the administering agency may accept grants and
21 donations of property, labor, or other things of value from a
22 public or private source.

23 (j) That the administering agency may acquire and construct
24 public facilities.

25 (k) That the negotiating partnership may add reasonable
26 administrative costs for the administering agency as a result of
27 any agreement.

House Bill No. 5461 (H-4) as amended November 10, 2010

(2) The construction and operation of a public facility authorized in subsection (1) shall be in conformity with all laws relating to the use of state and federal funds [].

Sec. 8. (1) The development of the public facility may be financed from 1 or more of the following sources:

(a) Funds from parties to the agreement with the negotiating partnership, under the terms of the agreement.

(b) Funds of the members of the negotiating partnership, as permitted by applicable law.

(c) Fees charged to users of the infrastructure project.

(d) Proceeds from the capture of taxes in a negotiated benefit area under this act or other acts.

(e) Proceeds from a special assessment district.

(f) Federal loans, grants, aid, or appropriations, as permitted by federal law.

(g) Donations, contributions, and gifts.

(h) Any other source as may be accepted by the negotiating partnership.

(2) Money received by the administering agency and not covered under subsection (1) shall immediately be deposited to the credit of the administering agency, subject to disbursement under this act. Except as provided in this act, a municipality or public entity that is part of a negotiating partnership shall not obligate itself, and shall not be obligated, to pay any sums from public funds, other than money received by the municipality or public entity that is part of a negotiating partnership under this

1 section, for or on account of the activities of the administering
2 agency.

3 Sec. 9. (1) The administering agency on behalf of the
4 negotiating partnership may negotiate with private sector investors
5 or solicit private sector investors through a bid process to secure
6 funding for a public facility.

7 (2) The administering agency and private sector investor may
8 include the following costs in financing the development of the
9 public facility:

10 (a) The cost of purchasing, acquiring, constructing,
11 improving, enlarging, extending, or repairing property in
12 connection with the development of a public facility in the
13 negotiated benefit area.

14 (b) Any engineering, architectural, legal, accounting, or
15 financial expenses.

16 (c) The rate of interest and return of principal for the
17 private sector investor.

18 (3) The administering agency on behalf of the negotiating
19 partnership may pledge all or a portion of the tax increment
20 revenues as provided in the negotiating partnership to pay for the
21 public facility. If the revenue generated by the tax increment, as
22 negotiated by the negotiating partnership and the private sector
23 investor, turns out to be insufficient to provide the rate of
24 return expected by the investor, the municipality, the
25 administering agency, and the negotiating partnership are not under
26 any obligation to make up the difference for the investor. The
27 private sector investor shall look solely to the revenue generated

1 by the tax increment projected to generate funds for the interest
2 payments and the principal repayment. The administering agency
3 shall not pledge or commit any other funds of a municipality or
4 public entity that is part of the negotiating partnership to pay
5 for the financing or development of a public facility without the
6 approval of the municipality or public entity that is part of the
7 negotiating partnership.

8 (4) The administering agency on behalf of the negotiating
9 partnership and the private sector investors shall enter into a
10 written agreement which shall become part of the negotiating
11 partnership and shall contain all of the following:

12 (a) The amount of the tax increment revenue to be captured for
13 the public facility.

14 (b) The rate of interest and the return of principal for the
15 private sector investor.

16 (c) The anticipated rate of growth in the property value
17 within the negotiated benefit area.

18 (d) The payment schedule from the administering agency and the
19 lead fiduciary agency describing the payments of principal and
20 interest to the private sector investor.

21 (e) A statement from the private sector investor that they
22 acknowledge that they will be repaid for their investment only from
23 the tax increment revenues described in the negotiating partnership
24 and not from any other funds or property of the municipalities or
25 public entities of the negotiating partnership.

26 (f) The boundaries of the negotiated benefit area.

27 Sec. 10. (1) If an administering agency determines that it is

House Bill No. 5461 as amended December 2, 2010

1 necessary for the achievement of the purposes of this act, the
2 administering agency shall prepare and submit a tax increment
3 financing plan to the governing body of the municipality. The tax
4 increment financing plan shall include a detailed plan of the
5 development of the public facility, the designation of boundaries
6 of the negotiated benefit area, a detailed explanation of the tax
7 increment procedure, the maximum amount of indebtedness to be
8 incurred, and the duration of the program, and shall be in
9 compliance with section 11. The tax increment financing plan shall
10 contain a statement of the estimated impact of tax increment
11 financing on the assessed values of all taxing jurisdictions in
12 which the negotiated benefit area is located. The tax increment
13 financing plan may provide for the use of part or all of the
14 captured assessed value, but the portion intended to be used by the
15 administrative agency shall be clearly stated in the tax increment
16 financing plan.

17 (2) Approval of the tax increment financing plan shall comply
18 with the notice and disclosure provisions of this act.

19 (3) Before the governing body of the municipality approves the
20 tax increment financing plan, the governing body <<shall conduct a
public hearing on the proposed tax increment financing plan and>>
shall provide

21 reasonable opportunity to the taxing jurisdictions levying taxes
22 subject to capture to meet with the governing body. The
23 administering agency shall fully inform the taxing jurisdictions of
24 the fiscal and economic implications of the proposed negotiated
25 benefit area. The taxing jurisdictions may present their
26 recommendations at the public hearing on the tax increment
27 financing plan. The administering agency may enter into agreements

1 with the taxing jurisdictions and the governing body of the
2 municipality in which the negotiated benefit area is located to
3 share a portion of the captured assessed value of the negotiated
4 benefit area.

5 (4) A tax increment financing plan may be modified if the
6 modification is approved by the governing body.

7 (5) Except as otherwise provided in this subsection, not more
8 than 60 days after the approval of the tax increment financing
9 plan, the governing body in a taxing jurisdiction levying ad
10 valorem property taxes that would otherwise be subject to capture
11 may exempt its taxes from capture by adopting a resolution to that
12 effect and filing a copy with the clerk of the municipality in
13 which it is located and with the administrative agency. A taxing
14 jurisdiction levying ad valorem property taxes that would be
15 subject to capture may waive the 60-day period described in this
16 subsection by resolution. In the event that the governing body
17 levies a separate millage for public library purposes, at the
18 request of the public library board, that separate millage shall be
19 exempt from the capture. The resolution shall take effect when
20 filed with the clerk and remains effective until a copy of a
21 resolution rescinding that resolution is filed with that clerk.

22 Sec. 11. (1) The municipal and county treasurers shall
23 transmit tax increment revenues to the lead fiduciary agency
24 designated in the negotiating partnership.

25 (2) The lead fiduciary agency shall expend the tax increment
26 revenues received for the development program only under the terms
27 of the tax increment financing plan and the negotiating

1 partnership. Unused funds shall revert proportionately to the
2 respective taxing bodies. Tax increment revenues shall not be used
3 to circumvent existing property tax limitations. The governing body
4 of the municipality may abolish the tax increment financing plan if
5 it finds that the purposes for which it was established are
6 accomplished. However, the tax increment financing plan shall not
7 be abolished until the principal of, and interest on, the amounts
8 financed have been paid or funds sufficient to make the payment
9 have been segregated.

10 (3) Annually, the lead fiduciary agency shall submit to the
11 governing body of each municipality that is part of the negotiating
12 partnership, to the governing body of each taxing jurisdiction in
13 which taxes are captured under this act, and to the state tax
14 commission a report on the status of the tax increment financing
15 account. The report shall include the following:

- 16 (a) The amount and source of revenue in the account.
- 17 (b) The amount in any reserve account.
- 18 (c) The amount and purpose of expenditures from the account.
- 19 (d) The amount of principal and interest on any outstanding
20 debt.
- 21 (e) The initial assessed value of the negotiated benefit area.
- 22 (f) The captured assessed value retained by the administrative
23 agency.
- 24 (g) The tax increment revenues received.
- 25 (h) The number of public facilities developed.
- 26 (i) Any additional information the governing body considers
27 necessary.

1 Sec. 12. A negotiating partnership that has completed the
2 purposes for which it was organized shall be dissolved by
3 resolution of the governing body of each municipality that was a
4 part of the negotiating partnership. The property and assets of the
5 administering agency remaining after the satisfaction of the
6 obligations of the administering agency belong to the
7 municipalities that are part of the negotiating partnership.

8 Sec. 13. (1) The state tax commission may institute
9 proceedings to compel enforcement of this act.

10 (2) The state tax commission may promulgate rules necessary
11 for the administration of this act under the administrative
12 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.