

Act No. 250
Public Acts of 2010
Approved by the Governor
December 14, 2010
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**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Reps. Schuitmaker and Byrnes

ENROLLED HOUSE BILL No. 5461

AN ACT 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:

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

Sec. 2. As used in this act:

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

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

(c) “Chief executive officer” means the mayor or city manager of a city, the president or village manager of a village, or the supervisor of a township.

(d) “Department” means the state transportation department.

(e) “Fiscal year” means the fiscal year of the administering agency.

(f) “Governing body” or “governing body of a municipality” means the elected body of a municipality having legislative powers.

(g) “Initial assessed value” means the assessed value of all the taxable property within the boundaries of the negotiated benefit area at the time the tax increment financing plan is approved, as shown by the most recent assessment roll of the municipality at the time the resolution is adopted. Property exempt from taxation at the time of the determination of the initial assessed value shall be included as zero. For the purpose of determining initial assessed value, property for which a specific local tax is paid in lieu of a property tax shall not be considered to be property that is exempt from taxation. The initial assessed value of property for which a specific local tax was paid in lieu of a property tax shall be determined as provided in section 3(c).

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

(i) “Municipality” means a city, village, or township.

(j) “Negotiated benefit area” means the area of tax capture whose boundaries are described by the negotiating partnership and are within state boundaries.

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

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

(ii) One of the following:

(A) If the public facility to be improved or constructed is under the jurisdiction of the department, the county road commission, or the drain commissioner, then the department, the county road commission, or the drain commissioner, as applicable, and the county in which the public facility is located.

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

Sec. 3. As used in this act:

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

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

(c) “Specific local tax” means a tax levied under 1974 PA 198, MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the technology park development act, 1984 PA 385, MCL 207.701 to 207.718, or 1953 PA 189, MCL 211.181 to 211.182. The initial assessed value or current assessed value of property subject to a specific local tax shall be the quotient of the specific local tax paid divided by the ad valorem millage rate. The state tax commission shall prescribe the method for calculating the initial assessed value and current assessed value of property for which a specific local tax was paid in lieu of a property tax.

(d) “State fiscal year” means the annual period commencing October 1 of each year.

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

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

(ii) Taxes levied by local or intermediate school districts, except that portion of taxes levied by local or intermediate school districts not to exceed 50% of those taxes as determined by the state treasurer for a period not to exceed 15 years, as determined by the state treasurer; if the state treasurer determines that the capture under this subparagraph is necessary to reduce unemployment, promote economic growth, and increase capital investment in the municipality.

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

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

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

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

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

Sec. 5. (1) If the governing body of a municipality determines that it is necessary for the best interests of the public to promote economic development and public infrastructure improvement, the governing body may, on its own or from a written request of a potentially affected property owner in the municipality, declare its intention to enter into 1 or more negotiating partnerships to develop public facilities as provided in this act.

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

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

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

(2) A writing prepared, owned, used, in the possession of, or retained by the municipality concerning a negotiating partnership is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The administering agency on behalf of the negotiating partnership may pledge all or a portion of the tax increment revenues as provided in the negotiating partnership to pay for the public facility. If the revenue generated by the tax increment, as negotiated by the negotiating partnership and the private sector investor, turns out to be insufficient to provide the rate of return expected by the investor, the municipality, the administering agency, and the negotiating partnership are not under any obligation to make up the difference for the investor. The private sector investor shall look solely to the revenue generated by the tax increment projected to generate funds for the interest payments and the principal repayment. The administering agency shall not pledge or commit any other funds of a municipality or public entity that is part of the negotiating partnership to pay for the financing or development of a public facility without the approval of the municipality or public entity that is part of the negotiating partnership.

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

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

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

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

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

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

(f) The boundaries of the negotiated benefit area.

Sec. 10. (1) If an administering agency determines that it is necessary for the achievement of the purposes of this act, the administering agency shall prepare and submit a tax increment financing plan to the governing body of the municipality. The tax increment financing plan shall 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, and shall be in compliance with section 11. The tax increment financing plan shall contain a statement of the estimated impact of tax increment financing on the assessed values of all taxing jurisdictions in which the negotiated benefit area is located. The tax increment financing plan may provide for the use of part or all of the captured assessed value, but the portion intended to be used by the administrative agency shall be clearly stated in the tax increment financing plan.

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

(3) Before the governing body of the municipality approves the tax increment financing plan, the governing body shall conduct a public hearing on the proposed tax increment financing plan and shall provide reasonable opportunity to the taxing jurisdictions levying taxes subject to capture to meet with the governing body. The administering agency shall fully inform the taxing jurisdictions of the fiscal and economic implications of the proposed negotiated benefit area. The taxing jurisdictions may present their recommendations at the public hearing on the tax increment financing plan. The administering agency may enter into agreements with the taxing jurisdictions and the governing body of the municipality in which the negotiated benefit area is located to share a portion of the captured assessed value of the negotiated benefit area.

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

(5) Except as otherwise provided in this subsection, not more than 60 days after the approval of the tax increment financing plan, the governing body in a taxing jurisdiction levying ad valorem property taxes that would otherwise be subject to capture may exempt its taxes from capture by adopting a resolution to that effect and filing a copy with the clerk of the municipality in which it is located and with the administrative agency. A taxing jurisdiction levying

ad valorem property taxes that would be subject to capture may waive the 60-day period described in this subsection by resolution. In the event that the governing body levies a separate millage for public library purposes, at the request of the public library board, that separate millage shall be exempt from the capture. The resolution shall take effect when filed with the clerk and remains effective until a copy of a resolution rescinding that resolution is filed with that clerk.

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

(2) The lead fiduciary agency shall expend the tax increment revenues received for the development program only under the terms of the tax increment financing plan and the negotiating partnership. Unused funds shall revert proportionately to the respective taxing bodies. Tax increment revenues shall not be used to circumvent existing property tax limitations. The governing body of the municipality may abolish the tax increment financing plan if it finds that the purposes for which it was established are accomplished. However, the tax increment financing plan shall not be abolished until the principal of, and interest on, the amounts financed have been paid or funds sufficient to make the payment have been segregated.

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

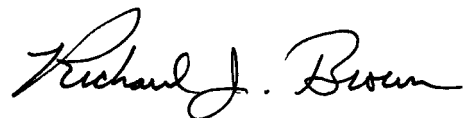
- (a) The amount and source of revenue in the account.
- (b) The amount in any reserve account.
- (c) The amount and purpose of expenditures from the account.
- (d) The amount of principal and interest on any outstanding debt.
- (e) The initial assessed value of the negotiated benefit area.
- (f) The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

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

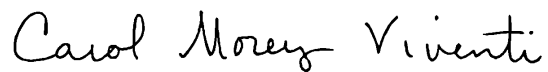
Sec. 13. (1) The state tax commission may institute proceedings to compel enforcement of this act.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor