

Legislative Analysis



PROHIBIT TIFAS FROM CAPTURING REVENUE FROM ZOO & ART INSTITUTE MILLAGES

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House Bill 4458 as enacted
Public Act 61 of 2013
Sponsor: Rep. Eileen Kowall

House Bill 4459 as enacted
Public Act 66 of 2013
Sponsor: Rep. Jim Townsend

House Bill 4462 as enacted
Public Act 68 of 2013
Sponsor: Rep. Jeff Farrington

House Bill 4460 as enacted
Public Act 67 of 2013
Sponsor: Rep. Phil Cavanaugh

House Bill 4463 as enacted
Public Act 63 of 2013
Sponsor: Rep. John Walsh

House Bill 4461 as enacted
Public Act 62 of 2013
Sponsor: Rep. Harold Haugh

House Bill 4464 as enacted
Public Act 64 of 2013
Sponsor: Rep. Gail Haines

House Committee: Tax Policy
Senate Committee: Finance
Complete to 6-20-13

A SUMMARY OF HOUSE BILLS 4458-4464 AS ENACTED 6-18-13

The bills would prohibit tax increment finance authorities (TIFAs) from capturing tax revenues generated under the Zoological Authorities Act or the Art Institute Authorities Act.

The bills would protect revenues that are derived from voter-approved taxes in Wayne, Oakland, and Macomb Counties for the support of the Detroit Zoo and the Detroit Institute of Art. (The status of the capturing of these taxes is in dispute; see [Background Information](#).)

Generally speaking, when local units of government create a tax increment financing authority, or TIFA, they establish a special district and then capture future increases in taxes within that district for the authority to use to finance public infrastructure improvement projects within the district; this can include the issuance of bonds to finance projects.¹ Each of the bills in this package would amend an act that creates a different kind of tax increment finance authority.

¹ See, Citizens Research Council, *Can Dedicated Millages and Tax Increment Financing Coexist in Michigan?*, CRC Notes 2013-1, January 2013, <http://www.crcmich.org/PUBLICAT/2010s/2013/note201301.html>

The Zoological Authorities Act (PA 49 of 2008) allows a county to form a zoological authority that contracts for zoological services with an accredited zoological institution. The authority can, with voter approval, levy a tax of up to 0.1 mill on all taxable property within a county to provide revenue for a zoological institution that was an existing accredited institution on the date of the vote. In 2008, the counties of Wayne, Oakland, and Macomb each established a zoological authority under the act, with voters in all three counties separately approving a 0.1 mill property tax for 20 years to operate the Detroit Zoo in August 2008.

The Art Institute Authorities Act (PA 296 of 2010) allows a county to establish an art institute authority that can levy a millage of up to 0.2 mill, with voter approval, to support "an encyclopedic [comprehensive] art museum whose primary art collection and facility . . . are owned by a municipality located in the state." Voters in Wayne, Oakland, and Macomb counties have each approved this millage for 10 years to support the Detroit Institute of Art.

House Bill 4458 would amend the Tax Increment Finance Act. (MCL 125.1801)

House Bill 4459 would amend the Downtown Development Authority Act. (MCL 125.1651)

House Bill 4460 would amend the Brownfield Redevelopment Financing Act. (MCL 125.2652)

House Bill 4461 would amend the Local Development Financing Act. (MCL 125.2152)

House Bill 4462 would amend the Corridor Improvement Authority Act. (MCL 125.2873)

House Bill 4463 would amend the Nonprofit Street Railway Act. (MCL 472.23)

House Bill 4464 would amend the Private Investment Infrastructure Act. (MCL 125.1873)

FISCAL IMPACT:

The bills would not change the overall amount of revenue collected by local units of government, but rather would potentially alter how that revenue is distributed by preventing the capture of revenue from voter-approved millages that support the Detroit Zoo and Detroit Institute of Arts.

BACKGROUND AND DISCUSSION:

The supporters of these bills argue that when the voters of Wayne, Oakland, and Macomb Counties approved millages to support the Detroit Zoo and the Detroit Institute of Arts it was their intent that all of the revenue go to support those institutions and that none be

siphoned off to support the various activities of tax increment finance authorities. There is a legal dispute over whether such "capture" of these revenues is permitted or required, with legal representatives of some tax increment finance authorities arguing that such capture is required under law. The bill would express clear legislative intent that the revenues are for the exclusive use of the Zoo and Art Institute.

Background Information on the Legal Dispute:

On February 25, 2009, (following the enactment of the Zoological Authorities Act and approval of the property tax millage to support the Detroit Zoo), the office of then-Attorney General Mike Cox issued an information letter (not a formal opinion) to then-Sen. Gilda Z. Jacobs concluding that:

*"the funds raised through the levy of a property tax millage by a zoological authority under the provisions of 2008 PA 49, MCL 123.1161 et seq., are not subject to capture by Downtown Development Authorities, Local Development Finance Authorities, Tax Increment Finance Authorities, Corridor Improvement Authorities, or Brownfield Redevelopment Authorities that existed prior to the creation of the zoological authority."*²

Earlier, in support of such a position, the information letter said, in part:

The Legislature clearly – and consistently – acted to make an integral part of the [tax increment authority] legislation the ability of existing local taxing jurisdictions to assert influence over the amount they would ordinarily receive to be captured by tax increment authorities. No language in the tax increment authority acts evidences an intention to capture property taxes raised by local tax jurisdictions that might be created in the future. In the instant case, the zoological authority would be created after the establishment of the tax increment authorities, to allow tax increment authorities to capture a portion of the taxes that would otherwise be paid to a zoological authority, when that zoological authority did not have the opportunity to either negotiate with the tax increment authority regarding the amount of taxes that would be captured or to pass a resolution exempting its taxes from capture, would be contrary to the clear intent of the Legislature and improper. In the absence of the express language requiring such an aberrational result, no such intent should be ascribed to the Legislature.

This viewpoint was concurred in by the staff of Attorney General Bill Schuette in an April 14, 2011, information letter to the executive director of the Detroit Zoological Society saying that a review of the 2009 letter "reveals that no intervening changes in the law have occurred. Thus, this office's conclusion remains the same as in the previous informational letter."³

In light of the information letter from the attorneys general, tax increment finance authorities in Oakland and Macomb have not been capturing the zoo and art institute

² A copy of the letter is available in the agenda packet of the December 3, 2012 meeting of the Wyandotte city council, <http://www.wyandotte.net/FrontDesk/AgendasAndMinutes/CityCouncil/2012/p121203.pdf>.

³ See footnote 2.

millages.⁴ It is also the position of the Wayne County Treasurer (based on the attorney general letters) that the zoo and art institute millages are not subject to capture by tax increment authorities. On several occasions in 2012, the county treasurer notified the several local units within the county that the zoological and arts millages should not be captured.⁵ In November 2012, the county treasurer notified local units that it will charge back the amount of any zoological or arts millage captured from the amounts payable to the local units from the Delinquent Tax Revolving Fund.

However, a number of local units within Wayne County on the advice of legal counsel are capturing tax increment revenues from the zoological millage. An October 2012 memorandum from the law firm of Miller, Canfield, Paddock and Stone concludes:

TIF authorities within the Zoo Authority taxing jurisdiction are authorized to capture the Zoo Millage, and the Zoo Authority is not authorized to exempt its Zoo Millage from capture. The general rule regarding TIF Authority tax capture is that tax increment revenues generated by taxes levied on captured assessed value within a TIF district are subject to capture by the TIF Authority unless a taxing jurisdiction has expressly exempted its taxes from capture pursuant to language allowing such an exemption under the relevant TIF statute, or a specific tax has been expressly excluded from capture pursuant to statute.

Neither the TIFA Act nor the BRA Act (except for a limited landfill exemption) authorizes a taxing jurisdiction whose taxes are subject to capture by the TIF Authority to exempt its taxes from capture. The DDA Act and the LDFA Act both provide a limited window during which a taxing jurisdiction may exempt its taxes from capture, but neither authorizes a taxing jurisdiction, or a tax, created after the TIF Authority is established or boundaries amended, to be exempt from the TIF Authority's power to capture taxes. The Village of Holly decision stresses courts' unwillingness to read language into the DDA Act that the legislature did not provide. While the specific exemptions from capture vary from one TIF statute to another, the legislature consciously excluded certain specified taxes from capture in each statute, which under Village of Holly, preclude other taxes from being exempted from capture unless the taxing unit levying the tax has validly opted out when authorized to do so.

Since the Zoo Millage has not been excluded from the definition of tax increment revenues and there is no other exemption which would apply to the Zoo Millage, the local treasurers and county treasurers are required to capture and transmit the portion of the Zoo Millage which is subject to capture to the TIF Authorities.⁶

In February 2013, several local units (and their related tax increment finance authorities) in Wayne County filed suit against the Wayne County treasurer, zoological authority, and art institute authority requesting the court to find that the zoological and art authority

⁴ See, for example, the Treasurer's Report from the March 5, 2013 meeting of the Oakland County Zoological Authority, http://www.oakgov.com/boc/Documents/minutes/dza/13_03_05zoominutes.pdf.

⁵ See footnote 2.

⁶ See footnote 2.

millages are subject to capture and prohibiting the Wayne County treasurer from instituting any "chargeback" or other punitive action against the local units for capturing the zoological and arts millages.⁷

On June 12, 2013, Wayne County Circuit Court Judge Daniel P. Ryan ruled in favor of the several local units finding that "the Legislature presumably knew at the time it enacted the Zoo and Art Acts that any millages levied pursuant to the Acts would be subject to capture by the TIF Authorities per the pre-existing statutory scheme. If the Legislature wished to exempt the Zoo and Art millages from capture, as it has subsequently done so with other statutes, it could have expressly done so in these relevant statutes. Simply put, the Defendant's remedy lies with the Legislature and it is not the function or the prerogative of the judiciary to substitute its will re-writing or acting as a super-legislature in this regard."

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■ 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.

⁷ Tax Increment Finance Authority of the City of Dearborn Heights et al. v. Wayne County Treasurer Raymond J. Wojtowicz, Wayne County Circuit Court, Case No. 13-001668-CZ.