

DOWNTOWN DEVELOPMENT ACT AMENDMENTS

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House Bill 5856

Sponsor: Rep. Eileen Kowall

Committee: Commerce

Complete to 9-30-14

A SUMMARY OF HOUSE BILL 5856 AS INTRODUCED 9-23-14

The bill would amend the Downtown Development Authority Act (PA 197 of 1975). Among other things, the bill would provide a more restrictive description of what constitutes a "downtown"; limit the amount of time a DDA could hold revenues; expand the content of an authority's required annual status report, and require that report be sent to all tax-levying units; prevent the use of DDA revenues on public services that are "generally provided" services, unless determined necessary; require a DDA to hold an annual meeting with at least 20 days' public notice; and require an authority to maintain a website containing its budgets, audits, board minutes, finance plans, amounts of revenues captured, and its use of revenues. The bill would also impose penalties on local units for violations of the act and repeal three tax increment finance statutes.

A downtown development authority is a type of tax increment finance authority available to a city, village, or township. Typically, a DDA captures the growth in tax revenue within a designated development area for use in financing a variety of public improvements in the area, as well as for such activities as property acquisition, marketing, and operations. The act says a municipality can create a DDA by resolution in order "to halt property value deterioration and increase property tax valuation where possible in its business district, to halt the causes of that deterioration, and to promote economic growth." DDAs often issue bonds to carry out their functions and use the captured tax revenue to pay the bonds.

A more detailed description of the bill follows.

Downtowns: Two New Findings

The DDA Act contains a list of legislative "findings" that serve as the motivating factors for the legislation. The bill would add two additional findings:

- (1) "That the establishment of authorities under this act is intended to revitalize and develop downtown areas with intensive private and public capital investment [where the downtown areas] are densely settled commercial cores that serve as social, economic, and cultural centers.
- (2) That downtowns in this state are multifunctional, geographically contiguous spaces where residents can shop, dine, live, worship, access government, and be entertained, and

that are compact and walkable and serve as a defining characteristic for the community's overall sense of place."

The bill would also amend the finding that currently says, "That government programs are desirable and necessary to eliminate the causes of property value deterioration," by changing "eliminate" to "address" and by adding "and to enhance local economic development."

Board Powers/Public Facilities

Under the section dealing with what a DDA board may do, the bill would amend a provision that allows a DDA to "acquire and construct public facilities." The bill would say a DDA could also demolish, reconstruct, develop, redevelop, use, operate, repair, maintain, improve, enlarge, or modify public facilities located within a development area.

The definition of the term "public facility" would be amended to add a road (in addition to a street), sidewalk, trail, lighting, and traffic flow modification to the current list of facilities. Under the bill, the term also would include the environmental remediation of property.

Provision of Public Services

Under the bill, a DDA could provide or cause to be provided public services within a downtown district that exceed the levels of public services that are generally provided only to the extent that those incremental increases in public services are determined by the authority to be necessary. An authority could not provide funding for additional public services outside the downtown district.

The bill provides this definition of "public service": A service commonly provided by the state, a county, or a municipality [including but not limited to] water, sanitary sewer, and storm water services; police, fire, jail, and other emergency services; street repair and maintenance services; operation and maintenance of parks and other public places; operation of public gathering places; snowplowing; and the operation and maintenance of other public facilities.

Time Limit on Spending Funds

Tax increment revenues would have to be spent within five years of their receipt; however, this could be extended to 15 years if the TIF plan specifically provides for all of the following: (1) the reasons for accumulating the funds, (2) a time frame for when the funds will be expended, and (3) the uses for which the funds will be expended. Also tax increment revenues could be accumulated as required under the terms of bonds issued under the act. Funds accumulated beyond the permitted time limits would revert proportionately to the respective taxing bodies, as is the case now with any surplus funds.

Website

The authority or municipality would have to create, operate, and regularly maintain a website with all authority records and documents, including: minutes of all board meetings, annual budget, annual audits, currently adopted development plan, currently

adopted tax increment finance plan, a list of all authority sponsored and managed events, authority staff contact information, all promotional and marketing materials, the amount of tax increment revenues captured for each taxing jurisdiction that levies ad valorem property taxes or specific local taxes within the boundaries of the authority, and other documents related to the management of the authority.

Annual Meeting

Each year, the board of a DDA would have to hold an annual meeting. Its purpose would be to highlight all of the successes and statistics over the past year and projects accomplished, events held, promotional and marketing programs undertaken, property tax valuation from the previous year, the outcomes related to authority activity, and to hear any questions, concerns, statements, or other information presented verbally or in writing at the meeting or in writing before the meeting.

Notice of the annual meeting would have to be posted on the municipality's website not less than 20 days before the date of the meeting. Not less than 20 days before the date of the meeting, the board would have to mail notice of the meeting to the governing body of each taxing jurisdiction levying taxes that are subject to capture by the authority.

Annual Status Report

The act currently requires a DDA to annually submit a status report to the governing body of the municipality and the State Tax Commission. The bill would require that the report also be sent to the governing body of any taxing unit levying taxes subject to capture by an authority.

Also, new report content would be required: the total new public investment in each of the development areas; the total value of all projects for which a building permit was issued for new private investment within each of the development areas; the total number of businesses that were established or left each of the areas; the total number of new buildings or additions to buildings; the totals received by the authority or other entities or person with which it is cooperating in sponsorships, cash, and in-kind services for events, programs, and projects within each development area; and the amount of any funds other than tax increment revenues used by the authority for any projects or activities in the areas.

Other required content would include information on outcomes resulting from the expenditures of revenues measuring all of the following: job growth; growth in the creation of new businesses; growth in existing businesses; commercial or industrial building vacancy rates; residential growth; increased activity from events, conventions, conferences, concerts, tourism, or similar activities or efforts; increased economic activity in the region in which the authority is located; evidence of the reversal of blight or deterioration in development areas or surrounding neighborhoods; and results of repurposing development areas to improve economic viability or vitality.

Development Plan Addition

The act requires a development plan be developed by an authority board when it decides to finance a project using revenue bonds, and delineates what a plan must contain. The bill adds that if the project or activity is a noncapital expense, the report must detail the nature of the activity or project, the benefits to the development area, and the economic development goals anticipated to result.

Revenues Exempt from Capture

Recent legislation specified that the revenues from voter-approved millages levied for the Detroit Zoo and the Detroit Institute of Arts could not be captured by a DDA. The bill would add that the revenues of the Huron-Clinton Metropolitan Authority also could not be captured.

Penalty for Violations

Under the DDA Act, the State Tax Commission can institute proceedings to compel enforcement. The bill would (1) authorize the STC to notify a DDA in writing when it was failing to comply with the act; and (2) if the STC sends such a notification, the authority could not capture any tax increment revenues in excess of the amount needed to pay bonded indebtedness or other obligations for the period of noncompliance, as determined by the STC. In such a case, excess funds would be returned to the taxing jurisdictions from which they came.

Repealers

The bill would repeal three acts: The Historic Neighborhood Tax Increment Finance Authority Act (PA 530 of 2004), the Neighborhood Improvement Authority Act (PA 61 of 2007), and the Private Investment Infrastructure Funding Act (PA 250 of 210).

FISCAL IMPACT:

House Bill 5856 would have an indeterminate fiscal impact on state and local government. The provisions of the bill would affect the operational scope and reporting responsibilities of downtown development authorities (DDA) in the following ways.

Downtowns: Two New Findings

As explained above, the bill would provide a more restrictive definition of what constitutes a downtown. This would have the practical effect of restricting the reach of DDAs operations and the area in which taxes could be captured.

The provisions of the bill would expand the finding from the elimination of property value deterioration to addressing property value deterioration and enhancing local economic development. This change would expand and clarify the purpose of DDA investments.

How these changes would impact local government revenues, property valuations, and DDA tax capture is uncertain.

Board Powers/Public Facilities and Provision of Public Services

The bill would expand a DDA's powers relative to public facilities from "acquire and construct" to include demolish, reconstruct, develop, redevelop, use, operate, repair, maintain, improve, enlarge, or modify public facilities in a development area. Additionally, the bill includes road, sidewalk, trail, lighting, traffic flow modification, and environmental remediation of property under the definition of public facility. These changes would increase the scope of the DDA powers and expand a DDA's ability to use tax capture for additional projects as noted under the bill.

The bill would also allow a DDA to provide public services (newly defined in bill – see above) within a downtown district that exceed current levels only to the extent that those incremental increases are determined by the authority to be necessary. This provision would expand the scope of allowable DDA projects and allow for additional or extended tax capture to cover the costs.

Local governments would not realize any of the increased revenues from taxes in the development area as DDAs could continue to use tax increment revenues for a broader range of projects and services in the development area. Local governments may realize additional revenues from overall increases in economic activity and in property values outside of the development area that would not have been realized without the projects undertaken by the DDA.

Assuming that projects and services undertaken by the DDA would not have taken place but for DDA involvement leads to a conclusion of positive fiscal impact for local governments. On the other hand, it is difficult to predict what would happen to property values, development, and services without the DDA in place. Therefore the overall impact on local units of government is difficult to determine.

Time Limit on Spending Funds

The bill would incorporate a 5-year or 15-year time limit on the spending of tax increment revenues from the time of receipt (depending on certain factors as described in the summary). If a DDA did not spend funds within the required time limit the funds would revert back to the local taxing body. It is unknown if this provision would accelerate DDA investment or allow local units of government to recoup unspent funds in a more timely fashion.

Website

The requirement that the DDA create, operate, and maintain a website with all required records and documents posted would impose certain costs on the DDA. The cost of developing and maintaining the website would differ on a case by case basis.

Annual Meeting

The requirement that a DDA hold an annual meeting would impose additional administrative and operating costs on the DDA assuming the DDA does not hold a similar meeting currently.

Annual Status Report

As is noted above, the bill would require the annual status report (currently required) to be submitted to the governing body of any taxing unit levying taxes subject to capture by the authority, in addition to the requirement that the status report be sent to the governing body of the municipality and the State Tax Commission. The bill adds additional reporting content that may add administrative and record keeping costs, assuming information required under the provision of the bills was not compiled by the DDA currently. Additionally, if an annual status report was not submitted and the State Tax Commission notified the DDA in writing that the DDA failed to comply with any provision of the act, the DDA would not be allowed to capture any tax increment revenues in excess of amounts necessary to pay bonded indebtedness. If a DDA were disallowed to continue collecting tax increment revenues under this provision for failure to comply with the provisions of the act, the taxing jurisdictions from which taxes were captured would realize increased revenue.

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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.