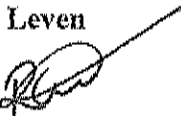


ROBERT CHARLES DAVIS
City of Marine City Attorney

TO: City Manager, Elaine Leven
FROM: Robert Charles Davis 
RE: 2016-10(A), Opinion of Counsel
Tax Increment Finance Authority Act / Statutory Review
DATE: December 9, 2016

PREAMBLE

If the defined statutory purposes exist, the City is allowed to create one (1) Authority under TIFA. TIFA is intended to provide a jump-start to areas of blight and declining property values. A TIFA District and taxing plan must be identified and development areas within the District must be approved. Development plans must be defined. When the development areas improve and the statutory purposes under TIFA are achieved, the City should take action to terminate the Authority by resolution.

I. PURPOSE

This is the first in a series of three (3) memorandums addressing the Tax Increment Finance Authority Act, 125.1801 et. seq. ("TIFA"). Specifically, this memorandum focuses on the statute giving rise to TIFA, including the purpose of TIFA, the mechanics of TIFA and the termination of TIFA. The City Commission -- as a "board" -- has a significant role from the beginning to the end of an Authority. The primary objective of this first memorandum is to provide the basics of TIFA to ensure that we all have a clear understanding of how the statute works.

II. LEGAL SUPPORT

A. What Is The Tax Increment Finance Authority Act?

The Tax Increment Finance Authority Act, otherwise known as TIFA, has an instructive preamble which states that TIFA is an "act" designed, in pertinent part, to prevent urban deterioration and encourage economic development. The preamble also sets forth what the balance of this statute is intended to address.

“An act to prevent urban deterioration and encourage economic development and activity and to encourage neighborhood revitalization and historic preservation; to provide for the establishment of tax increment finance authorities and to prescribe their powers and duties; to authorize the acquisition and disposal of interests in real and personal property; to provide for the creation and implementation of development plans; to provide for the creation of a board to govern an authority and to prescribe its powers and duties; to permit the issuance of bonds and other evidences of indebtedness by an authority; to permit the use of tax increment financing; to reimburse authorities for certain losses of tax increment revenues; and to prescribe the powers and duties of certain state agencies and officers. Amended by P.A.1988, No. 420, § 1, Imd. Eff. Dec. 27, 1988; P.A.1993, No. 322, § 1, Eff. March 15, 1994.”
(TIFA Preamble) (Emphasis Added)

TIFA is a state authorized vehicle designed to stop declining property values and to promote growth in a designated and defined area of the municipality at issue.

TIFA states that a municipality is limited to establishing only one Tax Increment Finance Authority. According to TIFA, the Authority shall be a public body corporate which shall have all of the powers necessary to carry out the purpose of its incorporation.

“Sec. 2. (1) A municipality may establish not more than 1 authority. An authority shall exercise its powers in all development areas designated pursuant to this act.

(2) The authority shall be a public body corporate which may sue and be sued in any court of this state. The authority possesses all the powers necessary to carry out the purpose of its incorporation. The enumeration of a power in this act shall not be construed as a limitation upon the general powers of the authority. The powers granted in this act to an authority may be exercised notwithstanding that bonds are not issued by the authority.” (MCL 125.1802) (Emphasis Added)

B. How is a Tax Increment Finance Authority Formed And Managed?

1. Declaration By “Resolution Of Intent” To Create And Provide For Operation Of An Authority.

The first step in creating an Authority is a resolution of intent. If the governing body (City Commission) of a municipality determines that it is in the best interests of the public to halt a decline in property values, increase property tax valuation, eliminate decline in property values and promote growth in an area, the governing body of a municipality may declare by resolution its intention (“Resolution of Intent”) to create and provide for the operation of an Authority. This is the first step in the process.

As stated, in order to establish an Authority, there are conditions that must exist and the conditions must be initially "determined" by the governing board -- the City Commission.

"Sec. 3. (1) If the governing body of a municipality determines that it is in the best interests of the public to halt a decline in property values, increase property tax valuation, eliminate the causes of the decline in property values, and to promote growth in an area in the municipality, the governing body of that municipality may declare by resolution its intention to create and provide for the operation of an authority." (MCL 125.1803) (Emphasis Added)

a. Michigan Attorney General Frank J. Kelley's AG Opinion As It Relates To The Conditions to Establish an Authority.

In 1986, Michigan Attorney General Frank J. Kelley examined this section of TIFA and issued an opinion ("Opinion"). Attorney General Kelley started his Opinion by noting that the Legislature authorized the governing body of a municipality to declare its intention to create a tax increment finance authority if it determines that it is in the public interest (1) to halt the decline in property values, (2) to increase property tax valuation, (3) to eliminate the causes of the decline in property values, and (4) to promote growth, in an area of the municipality. According to Attorney General Kelley, each of these four (4) conditions is a "precedent" prior to proceeding with the formation of a tax increment finance authority. Thus, all four (4) of these conditions must be present to establish an Authority in the first instance. In fact, all four (4) conditions must be determined to be present prior to establishing an Authority.

"In MCL 125.1803(1); MSA 3.540(203)(1), the Legislature has authorized the governing body of a municipality to declare its intention to create a tax increment finance authority if it determines that it is in the public interest (1) to halt the decline in property values, (2) to increase property tax valuation, (3) to eliminate the causes of the decline in property values, and (4) to promote growth, in an area of the municipality. A plain reading of the statute makes it clear that the governing body is to make each of these four conditions precedent determinations prior to proceeding with the formation of a tax increment finance authority. . . ." (AG Opinion No. 6335 Dated January 16, 1986) (Emphasis Added)

Michigan Attorney General Frank J. Kelley concluded that, in his opinion, a municipality is without authority to create a tax increment finance Authority in a geographical area where property values are not declining. Again, this is a condition precedent to establishing an Authority.

"It is my opinion in answer to your first question that pursuant to MCL 125.1803(1); MSA 3.540(203)(1), a municipality is without authority to create a tax increment finance authority in a

geographical area where property values are not declining.” (AG Opinion No. 6335 Dated January 16, 1986) (Emphasis Added)

Michigan Attorney General Frank Kelley also stated that a municipality is not authorized to establish a tax increment finance Authority based upon the decline in value of only one or two parcels of property in an area of the municipality. To the contrary, there must be a decline in the value of a significant number of parcels in that area of the municipality.

“In answer to your second question, it is my opinion that a municipality may establish a tax increment finance authority upon a factual finding of a decline in value of a significant number of parcels in an area of the municipality. It is my further opinion that a municipality is not authorized to establish a tax increment finance authority based upon the decline in value of one or two parcels of property in an area of the municipality.” (AG Opinion No. 6335 Dated January 16, 1986) (Emphasis Added)

b. Information Which Must Be Included In The Resolution of Intention To Create And Provide For The Operation Of Authority.

TIFA is clear with respect to the language which must be included in the Resolution of Intent. Again, this is the initial role of the City Commission. Specifically, a Resolution of Intent must set a date for the holding of a public hearing on the adoption of a proposed resolution creating the Authority and designating the boundaries of the tax increment finance Authority District.

“(2) In the resolution of intent, the governing body shall set a date for the holding of a public hearing on the adoption of a proposed resolution creating the authority and designating the boundaries of the authority district. . . .” (MCL 125.1803) (Emphasis Added)

Notice of a public hearing related to the adoption of a proposed Resolution creating an Authority must be published twice in a newspaper of general circulation in the municipality, not less than 20 nor more than 40 days before the date of the public hearing (“Notice”).

“Notice of the public hearing shall be published twice in a newspaper of general circulation in the municipality, not less than 20 nor more than 40 days before the date of the hearing.” (MCL 125.1803) (Emphasis Added)

According to TIFA, the Notice must be mailed to the property taxpayers of record in the proposed Authority District not less than 20 days before the hearing.

“Notice shall also be mailed to the property taxpayers of record in the proposed authority district not less than 20 days before the hearing.” (MCL 125.1803) (Emphasis Added)

The Notice must be mailed by certified mail to the governing body of each taxing jurisdiction levying taxes that would be subject to capture.

“Beginning June 1, 2005, the notice of hearing within the time frame described in this subsection shall be mailed by certified mail to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the authority is established and a tax increment financing plan is approved. Failure to receive the notice shall not invalidate these proceedings.” (MCL 125.1803) (Emphasis Added)

The Notice must state the date, time, and place of the hearing, and shall describe the boundaries of the proposed Authority’s District.

“The notice shall state the date, time, and place of the hearing, and shall describe the boundaries of the proposed authority district.” (MCL 125.1803) (Emphasis Added)

At the public hearing, a citizen, taxpayer, or property owner of the municipality has the right to be heard.

“At that hearing, a citizen, taxpayer, or property owner of the municipality has the right to be heard in regard to the establishment of the authority and the boundaries of the proposed authority district. The governing body of the municipality shall not incorporate land into the authority district not included in the description contained in the notice of public hearing, but it may eliminate described lands from the authority district in the final determination of the boundaries.” (MCL 125.1803) (Emphasis Added)

2. Resolution Establishing The Authority.

After the public hearing, if the governing body intends to proceed with the establishment of the Authority, it shall adopt -- by majority vote of its members -- a resolution establishing the Authority and designating the boundaries of the Authority district within which the Authority shall exercise its powers. The adoption is subject to any applicable statutory or charter provisions. Thus, the original Resolution of Intent creates the Authority and the District boundaries. The approved District is where the Authority “shall exercise its powers”. (MCL 125.1803)) Under controlling Michigan law, “shall” means mandatory.

“(3) After the public hearing, if the governing body intends to proceed with the establishment of the authority, it shall adopt, by majority vote of its members, a resolution establishing the authority and designating the boundaries of the authority district within which the authority shall exercise its powers. The adoption of the resolution is subject to any applicable statutory or charter provisions with respect to the approval or disapproval by the chief executive or other officer of the

municipality and the adoption of a resolution over his or her veto.” (MCL 125.1803) (Emphasis Added)

The Resolution must be filed with the Michigan Secretary of State promptly after its adoption and shall be published at least once in a newspaper of general circulation in the municipality.

“This 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.” (MCL 125.1803) (Emphasis Added)

Thereafter, only the governing body (City Commission) may alter or amend the boundaries of the District by following the same process used to establish the initial District as set forth above.

3. The TIFA Board.

TIFA states that an Authority shall be under the supervision and control of a Board selected by the governing body (City Commission) which may, by majority vote, designate any of the following to constitute the Board:

- The board of directors of the economic development corporation of the municipality;
- The trustees of the board of a downtown development authority;
- The trustees of the board of an urban redevelopment corporation;
- The members of the commission established pursuant to Act No. 344 of the Public Acts of 1945; and
- In a municipality that has a population of less than 5,000, the planning commission of the municipality.

4. Tax Increment Financing Plan

When the Authority determines that it is necessary for the achievement of the purposes of TIFA, the Authority shall prepare and submit a tax increment financing plan to the governing body. The tax increment financing plan shall include a development plan. (Note: TIFA Development Plans are discussed immediately below.)

“Sec. 13. (1) When the authority determines that it is necessary for the achievement of the purposes of this act, the authority shall prepare and submit a tax increment financing plan to the governing body. The plan shall be in compliance with section 14¹ and shall include a development plan as provided in section 16.²” (MCL 125.1813) (Emphasis Added)

Beyond including a Development Plan, the tax increment financing plan must also include an estimate of the captured assessed value for each year of the plan.

“...The plan shall also contain the following: ...

(b) An estimate of the captured assessed value for each year of the plan. The plan may provide for the use of part or all of the captured assessed value, but the portion intended to be used shall be clearly stated in the plan. The authority or municipality may exclude from captured assessed value growth in property value resulting solely from inflation. The plan shall set forth the method for excluding growth in property value resulting solely from inflation. The percentage of taxes levied for school operating purposes that is captured and used by the plan shall not be greater than the plan's percentage capture and use of taxes levied by a municipality or county for operating purposes. For purposes of the previous sentence, taxes levied by a county for operating purposes include only millage allocated for county or charter county purposes under the property tax limitation act, Act No. 62 of the Public Acts of 1933, being sections 211.201 to 211.217a of the Michigan Compiled Laws. This limitation does not apply to the portion of the captured assessed value shared pursuant to an agreement entered into before 1989 with a county or with a city in which an enterprise zone is approved under section 13 of the enterprise zone act, Act No. 224 of the Public Acts of 1985, being section 125.2113 of the Michigan Compiled Laws.” (MCL 125.1813)
(Emphasis Added)

In addition, the tax increment finance plan must include: the estimated tax increment revenues for each year; an explanation of the tax increment procedure; the maximum amount of bond indebtedness to be incurred; and the duration of the Development Plan and the tax increment plan.

“(c) The estimated tax increment revenues for each year of the plan.

(d) A detailed explanation of the tax increment procedure.

(e) The maximum amount of bonded indebtedness to be incurred.

(f) The amount of operating and planning expenditures of the authority and municipality, the amount of advances extended by or indebtedness incurred by the municipality, and the amount of advances by others to be repaid from tax increment revenues.

(g) The costs of the plan anticipated to be paid from tax increment revenues as received.

(h) The duration of the development plan and the tax increment plan.

(i) An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the development area is located.

“(2) Approval of the tax increment financing plan shall be in accordance with the notice, hearing, disclosure, and approval provisions of sections 17 and 18.³ When the development plan is part of the tax increment financing plan, only 1 hearing and approval procedure is required for the 2 plans together.” (MCL 125.1813) (Emphasis Added)

(3) Before the public hearing on the tax increment financing plan, the governing body shall provide a reasonable opportunity to the taxing jurisdictions in which the development is located to express their views and recommendations regarding the tax increment financing plan. The authority shall fully inform the taxing jurisdictions about the fiscal and economic implications of the proposed tax increment financing plan. The taxing jurisdictions may present their recommendations at the public hearing on the tax increment financing plan. The authority may enter into agreements with the taxing jurisdictions and the governing body of the municipality in which the development area is located to share a portion of the captured assessed value of the district.” (MCL 125.1813) (Emphasis Added)

The tax increment finance plan sets forth where the money will be coming from to finance the improvements to be performed in the Development Plan.

The tax increment financing plan must be approved in accordance with the notice, hearing and disclosure requirements noted in TIFA.

“(2) Approval of the tax increment financing plan shall be in accordance with the notice, hearing, disclosure, and approval provisions of sections 17 and 18.³ When the development plan is part of the tax increment financing plan, only 1 hearing and approval procedure is required for the 2 plans together.” (MCL 125.1813)

5. The Development Plan.

When the Authority Board decides to finance a project in a development area pursuant to TIFA, it shall prepare a Development Plan. The Development Plan is a key and defined step. The Development Plan shall (mandatory) contain a number of items including, but not limited to, the designation of boundaries of the development area, the improvements to be made, the estimated time to complete the improvement, and an estimate of the cost to complete the improvement. Thus, the requirements of a Development Plan are very specific and, by law, are mandatory.

"Sec. 16. (1) When a board decides to finance a project in a development area pursuant to this act, it shall prepare a development plan.

(2) To the extent necessary to accomplish the proposed development program the development plan shall contain:

(a) The designation of boundaries of the development area in relation to the boundaries of the authority district and any other development areas within the authority district.

(b) The designation of boundaries of the development area in relation to highways, streets, or otherwise.

(c) The location and extent of existing streets and other public facilities within the development area and the location, character, and extent of the categories of public and private land uses then existing and proposed for the development area, including residential, recreational, commercial, industrial, educational, and other uses and shall include a legal description of the development area.

(d) A description of improvements to be made in the development area, a description of any repairs and alterations necessary to make those improvements, and an estimate of the time required for completion of the improvements.

(e) The location, extent, character, and estimated cost of the improvements including rehabilitation contemplated for the development area and an estimate of the time required for completion.

(f) A statement of the construction or stages of construction planned, and the estimated time of completion of each stage.

(g) A description of any parts of the development area to be left as open space and the use contemplated for the space.

(h) A description of any portions of the development area which the authority desires to sell, donate, exchange, or lease to or from the municipality and the proposed terms.

(i) A description of desired zoning changes and changes in streets, street levels, intersections, and utilities.

(j) An estimate of the cost of the development, a statement of the proposed method of financing the development, and the ability of the authority to arrange the financing.

(k) Designation of the person or persons, natural or corporate, to whom all or a portion of the development is to be leased, sold, or conveyed and for whose benefit the project is being undertaken, if that information is available to the authority.

(l) The procedures for bidding for the leasing, purchasing, or conveying of all or a portion of the development upon its completion, if there is no express or implied agreement between the authority and persons, natural or corporate, that all or a portion of the development will be leased, sold, or conveyed to those persons.

(m) Estimates of the number of persons residing in the development area and the number of families and individuals to be displaced. If occupied residences are designated for acquisition and clearance by the authority, a development plan shall include a survey of the families and individuals to be displaced, including their income and racial composition, a statistical description of the housing supply in the community, including the number of private and public units in existence or under construction, the condition of those in existence, the number of owner-occupied and renter-occupied units, the annual rate of turnover of the various types of housing and the range of rents and sale prices, an estimate of the total demand for housing in the community, and the estimated capacity of private and public housing available to displaced families and individuals.

(n) A plan for establishing priority for the relocation of persons displaced by the development in any new housing in the development area.

(o) Provision for the costs of relocating persons displaced by the development, and financial assistance and reimbursement of expenses, including litigation expenses and expenses incident to the transfer of title, in accordance with the standards and provisions of the federal uniform relocation assistance and real property acquisition policies act of 1970, 42 U.S.C. 4601 to 4655.

(p) A plan for compliance with Act No. 227 of the Public Acts of 1972, being sections 213.321 to 213.332 of the Michigan Compiled Laws.

(q) Other material which the authority, local public agency, or governing body considers pertinent." (MCL 125.1816) (Emphasis Added)

The governing body (City), before adoption of a Resolution approving a Development Plan, shall hold a public hearing on the Development Plan. Notice of the time and place of the hearing shall be given by publication twice in a newspaper of general. Notice shall also be mailed to all property taxpayers of record in the development area not less than 20 days before the hearing. Beginning June 1, 2005, the notice of hearing within the time frame described in this subsection

shall be mailed by certified mail to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the development plan or the tax increment financing plan is approved or amended.

“Sec. 17. (1) The governing body, before adoption of a resolution approving or amending a development plan or approving or amending a tax increment financing plan, shall hold a public hearing on the development plan. Notice of the time and place of the hearing shall be given by publication twice in a newspaper of general circulation designated by the municipality, the first of which shall not be less than 20 days before the date set for the hearing. Notice shall also be mailed to all property taxpayers of record in the development area not less than 20 days before the hearing. Beginning June 1, 2005, the notice of hearing within the time frame described in this subsection shall be mailed by certified mail to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the development plan or the tax increment financing plan is approved or amended.” (MCL 125.1817) (Emphasis Added)

The governing body, after a public hearing, shall determine whether the Development Plan or tax increment financing plan constitutes a public purpose. If the governing body determines that the Development Plan or tax increment financing plan constitutes a public purpose, the governing body shall then approve or reject the plan by resolution based on certain specified considerations.

“Sec. 18. (1) The governing body, after a public hearing on the development plan or the tax increment financing plan, or both, with notice of the hearing given pursuant to section 17,¹ shall determine whether the development plan or tax increment financing plan constitutes a public purpose. If the governing body determines that the development plan or tax increment financing plan constitutes a public purpose, the governing body shall then approve or reject the plan, or approve it with modification, by resolution based on the following considerations:

- (a) The findings and recommendations of a development area citizens council, if a development area citizens council was formed.**
- (b) Whether the development plan meets the requirements set forth in section 16(2)² and the tax increment financing plan meets the requirements set forth in section 13(1).³**
- (c) Whether the proposed method of financing the development is feasible and the authority has the ability to arrange the financing.**
- (d) Whether the development is reasonable and necessary to carry out the purposes of this act.**

(e) Whether the amount of captured assessed value estimated to result from adoption of the plan is reasonable.

(f) Whether the land to be acquired within the development area is reasonably necessary to carry out the purposes of the plan and the purposes of this act.

(g) Whether the development plan is in reasonable accord with the approved master plan of the municipality, if an approved master plan exists.

(h) Whether public services, such as fire and police protection and utilities, are or will be adequate to service the development area.

(i) Whether changes in zoning, streets, street levels, intersections, and utilities are reasonably necessary for the project and for the municipality.” (MCL 125.1818) (Emphasis Added)

6. Amendments To A Development Plan.

Any subsequent amendments to an approved Development Plan must be submitted by the Authority to the governing body for approval following the same notice and public hearing provisions that are necessary for approval of the original plan. Thus, any amendment must come back to the City Commission.

“(2) Except as provided in this subsection, amendments to an approved development plan or tax increment plan must be submitted by the authority to the governing body for approval or rejection following the same notice and public hearing provisions that are necessary for approval or rejection of the original plan. Notice and hearing shall not be necessary for revisions in the estimates of captured assessed value and tax increment revenues.” (MCL 125.1818) (Emphasis Added)

7. The TIFA Budget.

TIFA states that the director of an Authority shall prepare and submit for the approval of the Board a budget for the operation of the authority for the ensuing fiscal year. Before the budget may be adopted by the TIFA Board, it must be first approved by the governing body -- the City Commission.

“Sec. 25. (1) The director of the authority shall prepare and submit for the approval of the board a budget for the operation of the authority for the ensuing fiscal year. The budget shall be prepared in the manner and contain the information required of municipal departments. Before the budget may be adopted by the board, it shall be approved

by the governing body. Funds of the municipality shall not be included in the budget of the authority except those funds authorized in this act or by the governing body.” (MCL 125.1825) (Emphasis Added)

C. What Are The Powers And Duties of the TIFA Authority?

There is a broad description of the powers of a TIFA board (“Board”). TIFA states that the Board of an Authority may prepare an analysis of economic changes taking place in the municipality and study the impact of growth.

“Sec. 7. The board may:

(a) Prepare an analysis of economic changes taking place in the municipality and its environs as those changes relate to urban deterioration in the development areas.

(b) Study and analyze the impact of growth upon development areas.” (MCL 125.1807) (Emphasis Added)

The Board may plan and propose the construction or renovation of a public facility, an existing building, or a multiple family dwelling unit which may be necessary to the execution of a plan and for the revitalization of the development area.

“(c) Plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility, an existing building, or a multiple family dwelling unit which may be necessary or appropriate to the execution of a plan which, in the opinion of the board, aids in the revitalization and growth of the development area.” (MCL 125.1807) (Emphasis Added)

The Board may implement an improvement to a public facility to comply with the barrier free design requirements of the State of Michigan construction code.

“(d) Plan, propose, and implement an improvement to a public facility within the development area to comply with the barrier free design requirements of the state construction code promulgated under the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being sections 125.1501 to 125.1531 of the Michigan Compiled Laws.” (MCL 125.1807) (Emphasis Added)

The Board may develop long-range plans.

“(e) Develop long-range plans, in cooperation with the agency which is chiefly responsible for planning in the municipality, designed to halt the decline of property values and to promote the growth of the

development area, and take such steps as may be necessary to implement the plans to the fullest extent possible." (MCL 125.1807) (Emphasis Added)

The Board may implement any plan of development in a development area necessary to achieve the purposes of TIFA.

"(f) Implement any plan of development in a development area necessary to achieve the purposes of this act, in accordance with the powers of the authority as granted by this act." . (MCL 125.1807) (Emphasis Added)

The Board may make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.

"(g) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties." (MCL 125.1807) (Emphasis Added)

The Board may purchase, demolish, rehabilitate or lease real or personal property.

"(h) Acquire by purchase or otherwise, on terms and conditions and in a manner the authority considers proper, own, convey, demolish, relocate, rehabilitate, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests therein, which the authority determines is reasonably necessary to achieve the purposes of this act, and to grant or acquire licenses, easements, and options with respect thereto." . (MCL 125.1807) (Emphasis Added)

The Michigan Court of Appeals has examined this power and ruled that the power to purchase property is broad and includes purchasing property even outside of the development district.

"In the present case, the trial court properly found that plaintiff failed to state a claim under either the EDCA or the TIFA. **The trial court found that while other portions of the TIFA limit the power of the authority to areas within a development district, the authority's power to purchase property contains no such limitations.** The court concluded the purchase of lands outside the development area is sometimes necessary if the board is to carry out its purpose. While home rule cities may not perform those functions not granted by the Legislature, the act imposes no such restrictions upon an authority established pursuant to the TIFA. **In fact, the clear and unambiguous statutory language grants defendant's Economic Development Corporation broad powers to purchase property and develop it.** When the language of the statute is clear, any judicial construction is foreclosed. *Joy Management Co. v. Detroit*, 176 Mich.App. 722, 730, 440 N.W.2d 654 (1989), lv. den. 433

Mich. 860 (1989).” (Wheatfield Tp. v. City of Williamston, 184 Mich. App. 745, 747; 458 N.W.2d 670, 671, (1990).) (Emphasis Added)

The Board may improve land, prepare sites for buildings, including the demolition of existing structures and construct, reconstruct, rehabilitate, restore, and preserve, equip, improve, maintain, repair, and operate any building, including any type of housing, and any necessary or desirable appurtenances thereto within the development area for use of any public or private person or corporation.

“(i) Improve land, prepare sites for buildings, including the demolition of existing structures and construct, reconstruct, rehabilitate, restore, and preserve, equip, improve, maintain, repair, and operate any building, including any type of housing, and any necessary or desirable appurtenances thereto, within the development area for the use, in whole or in part, of any public or private person or corporation, or a combination thereof.” (MCL 125.1807) (Emphasis Added)

The Board may fix, charge, and collect fees, rents and charges for the use of any building or property or any part of a building or property under its control.

“(j) Fix, charge, and collect fees, rents, and charges for the use of any building or property or any part of a building or property under its control, or a facility in the building or on the property, and pledge the fees, rents, and charges for the payment of revenue bonds issued by the authority.” .” (MCL 125.1807) (Emphasis Added)

The Board may lease any building or property or part of a building or property.

“(k) Lease any building or property or part of a building or property under its control.” .” (MCL 125.1807) (Emphasis Added)

The Board may accept grants and donations of property, labor or other things of value from a public or private source.

“(l) Accept grants and donations of property, labor, or other things of value from a public or private source.” .” (MCL 125.1807) (Emphasis Added)

The Board may acquire and construct public facilities.

“(m) Acquire and construct public facilities.” .” (MCL 125.1807) (Emphasis Added)

The Board may incur costs in connection with the performance of its authorized functions, including but not limited to, administrative costs and architects, engineers, legal and accounting fees.

“(n) Incur costs in connection with the performance of its authorized functions, including but not limited to, administrative costs, and architects, engineers, legal, and accounting fees.” (MCL 125.1807)
(Emphasis Added)

The powers of a TIFA Board as statutorily enumerated by TIFA are very broad.

E. Surplus Funds

MCL 125.1814 states that an Authority shall spend the tax increment revenues received for the development program only in accordance with the tax increment financing plan.

“(2) The authority shall expend the tax increment revenues received for the development program only in accordance with the tax increment financing plan.” (MCL 125.1814) (Emphasis Added)

If there are surplus funds, those surplus funds may be retained by the Authority for the payment of the principal and interest on outstanding tax increment bonds or for other purposes that, by resolution of the board, are determined to further the development program.

“Surplus funds may be retained by the authority for the payment of the principal of and interest on outstanding tax increment bonds or for other purposes that, by resolution of the board, are determined to further the development program.”

Any surplus funds not used for the payment of the bonds or for other purposes that were by resolution of the Board determined to further the development program, must revert proportionately to the respective taxing bodies.

“Any surplus funds not so used shall revert proportionately to the respective taxing bodies.” (MCL 125.1814) (Emphasis Added)

“These revenues shall not be used to circumvent existing property tax laws or a local charter that provides a maximum authorized rate for levy of property taxes.” (MCL 125.1814) (Emphasis Added)

The governing body (City Commission) may abolish the tax increment financing plan when it finds that the purposes of the plan are accomplished. However, there is an important caveat. The tax increment financing plan cannot be abolished until the bonds have been paid or sufficient money is set aside for that purpose.

“The governing body may abolish the tax increment financing plan when it finds that the purposes for which the plan was established are accomplished. However, the tax increment finance plan shall not be abolished until the principal of and interest on bonds issued pursuant to section 15¹ have been paid or funds sufficient to make the payment have been segregated.” (MCL 125.1814) (Emphasis Added)

In other words, the governing body must analyze the amount of outstanding bond indebtedness compared to the surplus funds.

F. The Termination of TIFA.

Once an Authority has completed the purposes for which it was organized, the Authority shall (mandatory) be dissolved by a resolution of the governing body -- the City Commission.

“Sec. 27. An authority which has completed the purposes for which it was organized shall be dissolved by resolution of the governing body. The property and assets of the authority remaining after the satisfaction of the obligations of the authority shall belong to the municipality.” (MCL 125.1827) (Emphasis Added)

IV. STATUTORY CONCLUSIONS

The statute is attached in its entirety. The Attorney General Opinion is attached in its entirety. The case law decision is attached in its entirety. Based on a review of these materials, the following conclusions are amplified:

- TIFA is a state law designed to prevent urban deterioration and encourage economic development. The Act has goals and objectives.
- A municipality is limited to establishing only one (1) Tax Increment Finance Authority.
- A TIFA Authority is a public body corporate which shall possess all of the powers necessary to carry out the purpose of its incorporation.
- A Resolution of Intent to establish an Authority must be premised on 4 necessary purposes: (1) to halt a decline in property values, (2) to increase property tax valuation, (3) eliminate decline in property values and (4) promote growth. These four (4) purposes must be determined by the City Commission.
- TIFA captures taxes according to an approved plan. Generally, actions are taken to raise taxable values by investments to a defined area financed by bonds. The rise in taxable values are captured and used to pay back the investment.

- A Resolution of Intent establishing a TIFA Authority must designate the boundaries of the Authority District within which the Authority shall exercise its powers. The District must be defined.
- A TIFA Authority shall be under the supervision and control of a Board selected by the City Commission.
- When the Board decides to finance a project in a Development Area, it shall prepare a Development Plan and adhere to the tax plan.
- The Development Plan shall contain the designation of boundaries of the Development Area, the improvements to be made, the estimated time to complete the improvement, and an estimate of the cost to complete the improvement. A Development Plan must be specific.
- Any amendments to a Development Plan must be submitted by the Authority to the City Commission for approval.
- The Board may implement any plan of development in a Development Area necessary to achieve the purposes of TIFA.
- Once an Authority has completed the purposes for which it was organized, it shall be dissolved by a resolution of the City Commission. The Authority should not be resolved until bonds are paid or sufficient funds to pay the bonds plus interest are escrowed.


Robert Charles Davis

THE TAX INCREMENT FINANCE AUTHORITY ACT
Act 450 of 1980

AN ACT to prevent urban deterioration and encourage economic development and activity and to encourage neighborhood revitalization and historic preservation; to provide for the establishment of tax increment finance authorities and to prescribe their powers and duties; to authorize the acquisition and disposal of interests in real and personal property; to provide for the creation and implementation of development plans; to provide for the creation of a board to govern an authority and to prescribe its powers and duties; to permit the issuance of bonds and other evidences of indebtedness by an authority; to permit the use of tax increment financing; to reimburse authorities for certain losses of tax increment revenues; and to prescribe the powers and duties of certain state agencies and officers.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 1988, Act 420, Imd. Eff. Dec. 27, 1988;—Am. 1993, Act 323, Eff. Mar. 15, 1994.

Popular name: TIFA

The People of the State of Michigan enact:

125.1801 Definitions.

Sec. 1. As used in this act:

(a) "Advance" means a transfer of funds made by a municipality to an authority or to another person on behalf of the authority. Evidence of the intent to repay an advance is required and may include, but is not limited to, an executed agreement to repay, provisions contained in a tax increment financing plan approved before the advance or before August 14, 1993, or a resolution of the authority or the municipality.

(b) "Assessed value" means 1 of the following:

(i) For valuations made before January 1, 1995, the state equalized valuation as determined under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(ii) For valuations made after December 31, 1994, taxable value as determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(c) "Authority" means a tax increment finance authority created under this act.

(d) "Authority district" means that area within which an authority exercises its powers and within which 1 or more development areas may exist.

(e) "Board" means the governing body of an authority.

(f) "Captured assessed value" means the amount in any 1 year by which the current assessed value of the development area, including the assessed value of property for which specific local taxes are paid in lieu of property taxes as determined in subdivision (w), exceeds the initial assessed value. The state tax commission shall prescribe the method for calculating captured assessed value.

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

(h) "Development area" means that area to which a development plan is applicable.

(i) "Development area citizens council" or "council" means that advisory body established pursuant to section 20.

(j) "Development plan" means that information and those requirements for a development set forth in section 16.

(k) "Development program" means the implementation of the development plan.

(l) "Eligible advance" means an advance made before August 19, 1993.

(m) "Eligible obligation" means an obligation issued or incurred by an authority or by a municipality on behalf of an authority before August 19, 1993 and its subsequent refunding by a qualified refunding obligation. Eligible obligation includes an authority's written agreement entered into before August 19, 1993 to pay an obligation issued after August 18, 1993 and before December 31, 1996 by another entity on behalf of the authority. Eligible obligation also includes an ongoing management contract or contract for professional services or development services that was entered into by the authority or a municipality on behalf of the authority in 1991, and related similar written agreements executed before 1984, if the 1991 agreement both provides for automatic annual renewal and incorporates by reference the prior related agreements; however, receipt by an authority of tax increment revenues authorized under subdivision (aa)(ii) in order to pay costs arising under those contracts shall be limited to:

(i) For taxes levied before July 1, 2005, the amount permitted to be received by an authority for an eligible obligation as provided in this act.

(ii) For taxes levied after June 30, 2005 and before July 1, 2006, \$3,000,000.00.

(iii) For taxes levied after June 30, 2006 and before July 1, 2007, \$3,000,000.00.

(iv) For taxes levied after June 30, 2007 and before July 1, 2008, \$3,000,000.00.

(v) For taxes levied after June 30, 2008 and before July 1, 2009, \$3,000,000.00.

(vi) For taxes levied after June 30, 2009 and before July 1, 2010, \$3,000,000.00.

(vii) For taxes levied after June 30, 2010 and before July 1, 2011, \$2,650,000.00.

(viii) For taxes levied after June 30, 2011 and before July 1, 2012, \$2,400,000.00.

(ix) For taxes levied after June 30, 2012 and before July 1, 2013, \$2,125,000.00.

(x) For taxes levied after June 30, 2013 and before July 1, 2014, \$1,500,000.00.

(xi) For taxes levied after June 30, 2014 and before July 1, 2015, \$1,150,000.00.

(xii) For taxes levied after June 30, 2015, \$0.00.

(n) "Fiscal year" means the fiscal year of the authority.

(o) "Governing body" means the elected body of a municipality having legislative powers.

(p) "Initial assessed value" means the assessed value, as equalized, of all the taxable property within the boundaries of the development area at the time the resolution establishing the tax increment financing plan is approved as shown by the most recent assessment roll of the municipality for which equalization has been completed 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 property that is exempt from taxation. The initial assessed value of property for which a specific tax was paid in lieu of a property tax shall be determined as provided in subdivision (w).

(q) "Municipality" means a city.

(r) "Obligation" means a written promise to pay, whether evidenced by a contract, agreement, lease, sublease, bond, or note, or a requirement to pay imposed by law. An obligation does not include a payment required solely because of default upon an obligation, employee salaries, or consideration paid for the use of municipal offices. An obligation does not include those bonds that have been economically defeased by refunding bonds issued under this act. Obligation includes, but is not limited to, the following:

(i) A requirement to pay proceeds derived from ad valorem property taxes or taxes levied in lieu of ad valorem property taxes.

(ii) A management contract or a contract for professional services.

(iii) A payment required on a contract, agreement, bond, or note if the requirement to make or assume the payment arose before August 19, 1993.

(iv) A requirement to pay or reimburse a person for the cost of insurance for, or to maintain, property subject to a lease, land contract, purchase agreement, or other agreement.

(v) A letter of credit, paying agent, transfer agent, bond registrar, or trustee fee associated with a contract, agreement, bond, or note.

(s) "On behalf of an authority", in relation to an eligible advance made by a municipality, or an eligible obligation or other protected obligation issued or incurred by a municipality, means in anticipation that an authority would transfer tax increment revenues or reimburse the municipality from tax increment revenues in an amount sufficient to fully make payment required by the eligible advance made by a municipality, or the eligible obligation or other protected obligation issued or incurred by the municipality, if the anticipation of the transfer or receipt of tax increment revenues from the authority is pursuant to or evidenced by 1 or more of the following:

(i) A reimbursement agreement between the municipality and an authority it established.

(ii) A requirement imposed by law that the authority transfer tax increment revenues to the municipality.

(iii) A resolution of the authority agreeing to make payments to the incorporating unit.

(iv) Provisions in a tax increment financing plan describing the project for which the obligation was incurred.

(t) "Other protected obligation" means:

(i) A qualified refunding obligation issued to refund an obligation described in subparagraph (ii) or (iii), an obligation that is not a qualified refunding obligation that is issued to refund an eligible obligation, or a qualified refunding obligation issued to refund an obligation described in this subparagraph.

(ii) An obligation issued or incurred by an authority or by a municipality on behalf of an authority after August 19, 1993, but before December 31, 1994, to finance a project described in a tax increment finance plan approved by the municipality in accordance with this act before December 31, 1993, for which a contract for final design is entered into by the municipality or authority before March 1, 1994.

(iii) An obligation incurred by an authority or municipality after August 19, 1993, to reimburse a party to a development agreement entered into by a municipality or authority before August 19, 1993, for a project described in a tax increment financing plan approved in accordance with this act before August 19, 1993, and

undertaken and installed by that party in accordance with the development agreement.

(iv) An obligation issued or incurred by an authority or by a municipality on behalf of an authority to implement a project described in a tax increment finance plan approved by the municipality in accordance with this act before August 19, 1993, that is located on land owned by a public university on the date the tax increment financing plan is approved, and for which a contract for final design is entered into before December 31, 1993.

(v) An ongoing management or professional services contract with the governing body of a county which was entered into before March 1, 1994 and which was preceded by a series of limited term management or professional services contracts with the governing body of the county, the last of which was entered into before August 19, 1993.

(vi) An obligation issued or incurred by a municipality under a contract executed on December 19, 1994 as subsequently amended between the municipality and the authority to implement a project described in a tax increment finance plan approved by the municipality under this act before August 19, 1993 for which a contract for final design was entered into by the municipality before March 1, 1994 provided that final payment by the municipality is made on or before December 31, 2001.

(vii) An obligation issued or incurred by an authority or by a municipality on behalf of an authority that meets all of the following qualifications:

(A) The obligation is issued or incurred to finance a project described in a tax increment financing plan approved before August 19, 1993 by a municipality in accordance with this act.

(B) The obligation qualifies as an other protected obligation under subparagraph (ii) and was issued or incurred by the authority before December 31, 1994 for the purpose of financing the project.

(C) A portion of the obligation issued or incurred by the authority before December 31, 1994 for the purpose of financing the project was retired prior to December 31, 1996.

(D) The obligation does not exceed the dollar amount of the portion of the obligation retired prior to December 31, 1996.

(viii) An obligation incurred by an authority that meets both of the following qualifications:

(A) The obligation is a contract of lease originally executed on December 20, 1994 between the municipality and the authority to partially implement the authority's development plan and tax increment financing plan.

(B) The obligation qualifies as an obligation under subparagraph (ii). The obligation described in this subparagraph may be amended to extend cash rental payments for a period not to exceed 30 years through the year 2039. The duration of the development plan and tax increment financing plan described in this subparagraph is extended to 1 year after the final date that the extended cash rental payments are due.

(u) "Public facility" means 1 or more of the following:

(i) A street, plaza, or pedestrian mall, and any improvements to a street, plaza, boulevard, alley, or pedestrian mall, including street furniture and beautification, park, parking facility, recreation facility, playground, school, library, public institution or administration building, right of way, structure, waterway, bridge, lake, pond, canal, utility line or pipeline, transit-oriented development, transit-oriented facility, and other similar facilities and necessary easements of these facilities designed and dedicated to use by the public generally or used by a public agency. As used in this subparagraph, public institution or administration building includes, but is not limited to, a police station, fire station, court building, or other public safety facility.

(ii) The acquisition and disposal of real and personal property or interests in real and personal property, demolition of structures, site preparation, relocation costs, building rehabilitation, and all associated administrative costs, including, but not limited to, architect's, engineer's, legal, and accounting fees as contained in the resolution establishing the district's development plan.

(iii) An improvement to a facility used by the public or a public facility as those terms are defined in section 1 of 1966 PA 1, MCL 125.1351, which improvement is made to comply with the barrier free design requirements of the state construction code promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(v) "Qualified refunding obligation" means an obligation issued or incurred by an authority or by a municipality on behalf of an authority to refund an obligation if 1 of the following applies:

(i) The refunding obligation meets both of the following:

(A) The net present value of the principal and interest to be paid on the refunding obligation, including the cost of issuance, will be less than the net present value of the principal and interest to be paid on the obligation being refunded, as calculated using a method approved by the department of treasury.

(B) The net present value of the sum of the tax increment revenues described in subdivision (aa)(ii) and the distributions under section 12a to repay the refunding obligation will not be greater than the net present value

of the sum of the tax increment revenues described in subdivision (aa)(ii) and the distributions under section 12a to repay the obligation being refunded, as calculated using a method approved by the department of treasury.

(ii) The refunding obligation is a tax increment refunding bond issued to refund a refunding bond that is an other protected obligation issued as a capital appreciation bond delivered to the Michigan municipal bond authority on December 21, 1994, or bonds issued to refund that bond, and the authority, by resolution of its board, authorized issuance of the refunding obligation before December 31, 2019 with a final maturity not later than 2039. The municipality by majority vote of the members of its governing body may pledge its full faith and credit for the payment of the principal of and interest on the refunding obligation. A refunding obligation issued under this subparagraph is not subject to the requirements of section 305(2), (3), (5), or (6), 501, 503, or 611 of the revised municipal finance act, 2001 PA 34, MCL 141.2305, 141.2501, 141.2503, and 141.2611. The duration of the development plan and the tax increment financing plan relating to the refunding obligations described in this subparagraph is extended to 1 year after the final date of maturity of the refunding obligation.

(w) "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, and 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. However, after 1993, 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.

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

(y) "Tax increment district" or "district" means that area to which the tax increment finance plan pertains.

(z) "Tax increment financing plan" means that information and those requirements set forth in sections 13 to 15.

(aa) "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 development area, subject to the following requirements:

(i) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions other than the state pursuant to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate school districts upon the captured assessed value of real and personal property in the development area for any purpose authorized by this act.

(ii) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of the state pursuant to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate school districts upon the captured assessed value of real and personal property in the development area in an amount equal to the amount necessary, without regard to subparagraph (i), to repay eligible advances, eligible obligations, and other protected obligations.

(iii) Tax increment revenues do not include any of the following:

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

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

(C) Ad valorem property taxes levied under 1 or more of the following or specific local taxes attributable to those ad valorem property taxes:

(I) The zoological authorities act, 2008 PA 49, MCL 123.1161 to 123.1183.

(II) The art institute authorities act, 2010 PA 296, MCL 123.1201 to 123.1229.

(iv) The amount of tax increment revenues authorized to be included under subparagraph (ii), and required to be transmitted to the authority under section 14(1), from ad valorem property taxes and specific local taxes attributable to the application of the levy of the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, a local school district or an intermediate school district upon the captured assessed value of real and personal property in a development area shall be determined separately for the levy by the state, each school district, and each intermediate school district as the product of sub-subparagraphs (A) and (B):

(A) The percentage which the total ad valorem taxes and specific local taxes available for distribution by law to the state, local school district, or intermediate school district, respectively, bear to the aggregate amount of ad valorem millage taxes and specific taxes available for distribution by law to the state, each local

school district, and each intermediate school district.

(B) The maximum amount of ad valorem property taxes and specific local taxes considered tax increment revenues under subparagraph (ii).

(bb) "Transit-oriented development" means infrastructure improvements that are located within 1/2 mile of a transit station or transit-oriented facility that promotes transit ridership or passenger rail use as determined by the board and approved by the municipality in which it is located.

(cc) "Transit-oriented facility" means a facility that houses a transit station in a manner that promotes transit ridership or passenger rail use.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 1985, Act 193, Imd. Eff. Dec. 20, 1985;—Am. 1993, Act 322, Eff. Mar. 15, 1994;—Am. 1994, Act 281, Imd. Eff. July 11, 1994;—Am. 1994, Act 329, Imd. Eff. Oct. 14, 1994;—Am. 1996, Act 271, Imd. Eff. June 12, 1996;—Am. 1997, Act 201, Imd. Eff. Jan. 13, 1998;—Am. 1998, Act 499, Imd. Eff. Jan. 5, 1999;—Am. 2005, Act 29, Imd. Eff. May 25, 2005;—Am. 2008, Act 453, Imd. Eff. Jan. 9, 2009;—Am. 2010, Act 245, Imd. Eff. Dec. 14, 2010;—Am. 2013, Act 61, Imd. Eff. June 18, 2013;—Am. 2014, Act 38, Imd. Eff. Mar. 20, 2014.

Compiler's note: Enacting section 1 of Act 201 of 1997 provides:

"The provisions of section 1 and section 12a, as amended by this amendatory act, are retroactive and effective for taxes levied after 1993."

Popular name: TIFA

125.1801a Short title.

Sec. 1a. This act shall be known and may be cited as "the tax increment finance authority act".

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1802 Authority; establishment; public body corporate; powers generally.

Sec. 2. (1) A municipality may establish not more than 1 authority. An authority shall exercise its powers in all development areas designated pursuant to this act.

(2) The authority shall be a public body corporate which may sue and be sued in any court of this state. The authority possesses all the powers necessary to carry out the purpose of its incorporation. The enumeration of a power in this act shall not be construed as a limitation upon the general powers of the authority. The powers granted in this act to an authority may be exercised notwithstanding that bonds are not issued by the authority.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1803 Resolution of intent; determinations; notice of public hearing; adoption, filing, and publication of resolution establishing authority and designating boundaries of authority district; alteration or amendment of boundaries; validity of proceedings establishing authority.

Sec. 3. (1) If the governing body of a municipality determines that it is in the best interests of the public to halt a decline in property values, increase property tax valuation, eliminate the causes of the decline in property values, and to promote growth in an area in the municipality, the governing body of that municipality may declare by resolution its intention to create and provide for the operation of an authority.

(2) In the resolution of intent, the governing body shall set a date for the holding of a public hearing on the adoption of a proposed resolution creating the authority and designating the boundaries of the authority district. Notice of the public hearing shall be published twice in a newspaper of general circulation in the municipality, not less than 20 nor more than 40 days before the date of the hearing. Notice shall also be mailed to the property taxpayers of record in the proposed authority district not less than 20 days before the hearing. Beginning June 1, 2005, the notice of hearing within the time frame described in this subsection shall be mailed by certified mail to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the authority is established and a tax increment financing plan is approved. Failure to receive the notice shall not invalidate these proceedings. The notice shall state the date, time, and place of the hearing, and shall describe the boundaries of the proposed authority district. At that hearing, a citizen, taxpayer, or property owner of the municipality has the right to be heard in regard to the establishment of the authority and the boundaries of the proposed authority district. The governing body of the municipality shall not incorporate land into the authority district not included in the description contained in the notice of public hearing, but it may eliminate described lands from the authority district in the final determination of the boundaries.

(3) After the public hearing, if the governing body intends to proceed with the establishment of the

authority, it shall adopt, by majority vote of its members, a resolution establishing the authority and designating the boundaries of the authority district within which the authority shall exercise its powers. The adoption of the resolution is subject to any applicable statutory or charter provisions with respect to the approval or disapproval by the chief executive or other officer of the municipality and the adoption of a resolution over his or her veto. This 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.

(4) The governing body may alter or amend the boundaries of the authority district to include or exclude lands from the authority district in accordance with the same requirements prescribed for adopting the resolution creating the authority.

(5) The validity of the proceedings establishing an authority shall be conclusive unless contested in a court of competent jurisdiction within 60 days after the last of the following takes place:

- (a) Publication of the resolution as adopted.
- (b) Filing of the resolution with the secretary of state.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 1983, Act 148, Imd. Eff. July 18, 1983;—Am. 2005, Act 14, Imd. Eff. May 4, 2005.

Popular name: TIFA

125.1804 Board; composition; chairperson; oath of member; rules governing procedure and meetings; meetings open to public; removal of member; publicizing expense items; financial records open to public.

Sec. 4. (1) The authority shall be under the supervision and control of a board chosen by the governing body which may by majority vote designate any 1 of the following to constitute the board:

(a) The board of directors of the economic development corporation of the municipality established pursuant to the economic development corporations act, Act No. 338 of the Public Acts of 1974, as amended, being sections 125.1601 to 125.1636 of the Michigan Compiled Laws.

(b) The trustees of the board of a downtown development authority established pursuant to Act No. 197 of the Public Acts of 1975, as amended, being sections 125.1651 to 125.1680 of the Michigan Compiled Laws.

(c) The trustees of the board of an urban redevelopment corporation established pursuant to the urban redevelopment corporations law, Act No. 250 of the Public Acts of 1941, as amended, being sections 125.901 to 125.922 of the Michigan Compiled Laws.

(d) The members of the commission established pursuant to Act No. 344 of the Public Acts of 1945, being sections 125.71 to 125.84 of the Michigan Compiled Laws.

(e) In a municipality that has a population of less than 5,000, the planning commission of the municipality established pursuant to Act No. 285 of the Public Acts of 1931, being sections 125.31 to 125.45 of the Michigan Compiled Laws.

(f) Not less than 7 nor more than 13 persons appointed by the chief executive officer of the municipality subject to the approval of the governing body. Of the members appointed, an equal number, as near as practicable, shall be appointed for 1 year, 2 years, 3 years, and 4 years. A member shall hold office until the member's successor is appointed. Thereafter, each member shall serve for a term of 4 years. An appointment to fill a vacancy shall be made by the chief executive officer of the municipality for the unexpired term only. Members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses.

(2) The chairperson of the board shall be elected by the board.

(3) Before assuming the duties of office, a member shall qualify by taking and subscribing to the constitutional oath of office.

(4) The board shall adopt rules governing its procedure and the holding of regular meetings, subject to the approval of the governing body. Special meetings may be held when called in the manner provided in the rules of the board. Meetings of the board shall be open to the public, in accordance with the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(5) Pursuant to notice and an opportunity to be heard, a member of the board appointed pursuant to subsection (1)(f) may be removed before the expiration of his or her term for cause by the governing body. Removal of a member is subject to the review by the circuit court.

(6) All expense items of the authority shall be publicized annually and the financial records shall be open to the public pursuant to the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 1987, Act 68, Imd. Eff. June 25, 1987.

Popular name: TIFA

125.1805 Board; employment, compensation, term, oath, and bond of director; chief executive office; duties of director; absence or disability of director; reports; employment, compensation, and duties of treasurer and secretary; retention and duties of legal counsel; employment of other personnel; participation in municipal retirement and insurance programs.

Sec. 5. (1) The board may employ and fix the compensation of a director, subject to the approval of the governing body. The director shall serve at the pleasure of the board. A member of the board is not eligible to hold the position of director. Before entering upon the duties of the office, the director shall take and subscribe to the constitutional oath and furnish bond by posting a bond in the penal sum determined in the resolution establishing the authority, payable to the authority for use and benefit of the authority, approved by the board, and filed with the clerk of the municipality. The premium on the bond shall be considered an operating expense of the authority, payable from funds available to the authority for expenses of operation. The director shall be the chief executive office of the authority. Subject to the approval of the board, the director shall supervise and be responsible for the preparation of plans and the performance of the functions of the authority in the manner authorized by this act. The director shall attend the meetings of the board and shall render to the board and to the governing body a regular report covering the activities and financial condition of the authority. If the director is absent or disabled, the board may designate a qualified person as acting director to perform the duties of the office. Before entering upon the duties of the office, the acting director shall take and subscribe to the constitutional oath and furnish bond as required of the director. The director shall furnish the board with information or reports governing the operation of the authority as the board requires.

(2) The board may appoint or employ and fix the compensation of a treasurer who shall keep the financial records of the authority, and who, together with the director, if a director is appointed, shall approve all vouchers for the expenditure of funds of the authority. The treasurer shall perform such other duties as may be delegated by the board and shall furnish bond in an amount as prescribed by the board.

(3) The board may appoint or employ and fix the compensation of a secretary, who shall maintain custody of the official seal and of records, books, documents, or other papers not required to be maintained by the treasurer. The secretary shall attend meetings of the board and keep a record of its proceedings and shall perform such other duties as may be delegated by the board.

(4) The board may retain legal counsel to advise the board in the proper performance of its duties. The legal counsel shall represent the authority in actions brought by or against the authority.

(5) The board may employ other personnel considered necessary by the board.

(6) The employees of an authority may be eligible to participate in municipal retirement and insurance programs of the municipality as if they were civil service employees on the same basis as civil service employees.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Compiler's note: In subsection (1), the sentence "The director shall be the chief executive office of the authority." evidently should read "The director shall be the chief executive officer of the authority."

Popular name: TIFA

125.1807 Board; powers generally.

Sec. 7. The board may:

(a) Prepare an analysis of economic changes taking place in the municipality and its environs as those changes relate to urban deterioration in the development areas.

(b) Study and analyze the impact of growth upon development areas.

(c) Plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility, an existing building, or a multiple family dwelling unit which may be necessary or appropriate to the execution of a plan which, in the opinion of the board, aids in the revitalization and growth of the development area.

(d) Plan, propose, and implement an improvement to a public facility within the development area to comply with the barrier free design requirements of the state construction code promulgated under the state construction code act of 1972, Act No. 230 of the Public Acts of 1972, being sections 125.1501 to 125.1531 of the Michigan Compiled Laws.

(e) Develop long-range plans, in cooperation with the agency which is chiefly responsible for planning in the municipality, designed to halt the decline of property values and to promote the growth of the development area, and take such steps as may be necessary to implement the plans to the fullest extent

possible.

(f) Implement any plan of development in a development area necessary to achieve the purposes of this act, in accordance with the powers of the authority as granted by this act.

(g) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.

(h) Acquire by purchase or otherwise, on terms and conditions and in a manner the authority considers proper, own, convey, demolish, relocate, rehabilitate, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests therein, which the authority determines is reasonably necessary to achieve the purposes of this act, and to grant or acquire licenses, easements, and options with respect thereto.

(i) Improve land, prepare sites for buildings, including the demolition of existing structures and construct, reconstruct, rehabilitate, restore, and preserve, equip, improve, maintain, repair, and operate any building, including any type of housing, and any necessary or desirable appurtenances thereto, within the development area for the use, in whole or in part, of any public or private person or corporation, or a combination thereof.

(j) Fix, charge, and collect fees, rents, and charges for the use of any building or property or any part of a building or property under its control, or a facility in the building or on the property, and pledge the fees, rents, and charges for the payment of revenue bonds issued by the authority.

(k) Lease any building or property or part of a building or property under its control.

(l) Accept grants and donations of property, labor, or other things of value from a public or private source.

(m) Acquire and construct public facilities.

(n) Incur costs in connection with the performance of its authorized functions, including but not limited to, administrative costs, and architects, engineers, legal, and accounting fees.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 1985, Act 193, Imd. Eff. Dec. 20, 1985.

Popular name: TIFA

Administrative rules: R 408.30101 et seq. of the Michigan Administrative Code.

125.1808 Board serving as planning commission; agenda.

Sec. 8. If a board created under this act serves as the planning commission under section 2 of Act No. 285 of the Public Acts of 1931, being section 125.32 of the Michigan Compiled Laws, the board shall include planning commission business in its agenda.

History: Add. 1987, Act 68, Imd. Eff. June 25, 1987.

Popular name: TIFA

125.1809 Authority as instrumentality of political subdivision.

Sec. 9. The authority shall be considered an instrumentality of a political subdivision for purposes of Act No. 227 of the Public Acts of 1972, being sections 213.321 to 213.332 of the Michigan Compiled Laws.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1810 Taking, transfer, and use of private property by municipality.

Sec. 10. A municipality may take private property under Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws, for the purpose of transfer to the authority, and may transfer the property to the authority for use as authorized in the development program, on terms and conditions it considers appropriate. The taking, transfer, and use shall be considered necessary for public purposes and for the benefit of the public.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1811 Financing activities of authority; sources.

Sec. 11. The activities of the authority shall be financed from 1 or more of the following sources:

(a) Contributions to the authority for the performance of its functions.

(b) Revenues from any property, building, or facility owned, leased, licensed, or operated by the authority or under its control, subject to the limitations imposed upon the authority by trusts or other agreements.

(c) Tax increment revenues received pursuant to a tax increment financing plan established under sections 13 to 15.

(d) Proceeds of tax increment bonds issued pursuant to section 15.

(e) Proceeds of revenue bonds issued pursuant to section 12.

(f) Money obtained from any other sources approved by the governing body of the municipality or

otherwise authorized by law for use by the authority or the municipality to finance a development program.

(g) Money obtained pursuant to section 12a.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 1993, Act 322, Eff. Mar. 15, 1994.

Popular name: TIFA

125.1812 Borrowing money; issuing negotiable revenue bonds; full faith and credit.

Sec. 12. (1) The authority may borrow money and issue its negotiable revenue bonds pursuant to Act No. 94 of the Public Acts of 1933, as amended, being section 141.101 to 141.139 of the Michigan Compiled Laws. Revenue bonds issued by the authority shall not, except as hereinafter provided, be considered a debt of the municipality or of the state.

(2) The municipality by majority vote of the members of its governing body may pledge its full faith and credit limited tax to support the authority's revenue bonds.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1812a Insufficient tax increment revenues for repayment of advance or payment of obligation; appropriation and distribution to authority; filing, time, and contents of claim; distribution of amounts in 2 equal payments; appropriation and distribution of aggregate amount; limitations; distribution subject to lien; obligation as debt or liability; certification of distribution amount; basis for calculations of distributions and claims reports; debt payment period.

Sec. 12a. (1) If the amount of tax increment revenues lost as a result of the reduction of taxes levied by local school districts for school operating purposes required by the millage limitations under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, reduced by the amount of tax increment revenues received from the capture of taxes levied under or attributable to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, will cause the tax increment revenues received in a fiscal year by an authority under section 14 to be insufficient to repay an eligible advance or to pay an eligible obligation, the legislature shall appropriate and distribute to the authority the amount described in subsection (5).

(2) Not less than 30 days before the first day of a fiscal year, an authority eligible to retain tax increment revenues from taxes levied by a local or intermediate school district or this state, or to receive a distribution under this section for that fiscal year shall file a claim with the department of treasury. The claim shall include the following information:

(a) The property tax millage rates levied in 1993 by local school districts within the jurisdictional area of the authority for school operating purposes.

(b) The property tax millage rates expected to be levied by local school districts within the jurisdictional area of the authority for school operating purposes for that fiscal year.

(c) The tax increment revenues estimated to be received by the authority for that fiscal year based upon actual property tax levies of all taxing jurisdictions within the jurisdictional area of the authority plus any tax increment revenues the authority would have received for the fiscal year from property that is exempt from taxation pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, based on the property's taxable value at the time the zone is designated.

(d) The tax increment revenues the authority estimates it would have received for that fiscal year if property taxes were levied by local school districts within the jurisdictional area of the authority for school operating purposes at the millage rates described in subdivision (a) and if no property taxes were levied by this state under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.

(e) A list and documentation of eligible obligations and eligible advances and the payments due on each of those eligible obligations or eligible advances in that fiscal year, and the total amount of all the payments due on those eligible obligations and eligible advances in that fiscal year.

(f) The amount of money, other than tax increment revenues, estimated to be received in that fiscal year by the authority that is primarily pledged to, and to be used for, the payment of an eligible obligation or the repayment of an eligible advance. That amount shall not include excess tax increment revenues of the authority that are permitted by law to be retained by the authority for purposes that further the development program. However, that amount shall include money to be obtained from sources authorized by law, which law is enacted on or after December 1, 1993, for use by the municipality or authority to finance a development project.

(g) The amount of a distribution received pursuant to this act for a fiscal year in excess of or less than the distribution that would have been required if calculated upon actual tax increment revenues received for that

fiscal year.

(h) A list and documentation of other protected obligations and the payments due on each of those other protected obligations in that fiscal year, and the total amount of all the payments due on those other protected obligations in that fiscal year.

(3) For the fiscal year that commences after September 30, 1993 and before October 1, 1994, an authority may make a claim with all information required by subsection (2) at any time after March 15, 1994.

(4) After review and verification of claims submitted pursuant to this section, amounts appropriated by the state in compliance with this act shall be distributed as 2 equal payments on March 1 and September 1 after receipt of a claim. An authority shall allocate a distribution it receives for an eligible obligation issued on behalf of a municipality to the municipality.

(5) Subject to subsections (6) and (7), the aggregate amount to be appropriated and distributed pursuant to this section to an authority shall be the sum of the amounts determined pursuant to subdivisions (a) and (b) minus the amount determined pursuant to subdivision (c), as follows:

(a) The amount by which the tax increment revenues the authority would have received for the fiscal year, if property taxes were levied by local school districts on property, including property that is exempt from taxation pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, based on the property's taxable value at the time the zone is designated, for school operating purposes at the millage rates described in subsection (2)(a) and if no property taxes were levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, exceed the sum of tax increment revenues the authority actually received for the fiscal year plus any tax increment revenues the authority would have received for the fiscal year from property that is exempt from taxation pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, based on the property's taxable value at the time the zone is designated.

(b) A shortfall required to be reported pursuant to subsection (2)(g) that had not previously increased a distribution.

(c) An excess amount required to be reported pursuant to subsection (2)(g) that had not previously decreased a distribution.

(6) The amount distributed under subsection (5) shall not exceed the difference between the amount described in subsection (2)(e) and the sum of the amounts described in subsection (2)(c) and (f).

(7) If, based upon the tax increment financing plan in effect on August 19, 1993, the payment due on eligible obligations or eligible advances anticipates the use of excess prior year tax increment revenues permitted by law to be retained by the authority, and if the sum of the amounts described in subsection (2)(c) and (f) plus the amount to be distributed under subsections (5) and (6) is less than the amount described in subsection (2)(e), the amount to be distributed under subsections (5) and (6) shall be increased by the amount of the shortfall. However, the amount authorized to be distributed pursuant to this section shall not exceed that portion of the cumulative difference, for each preceding fiscal year, between the amount that could have been distributed pursuant to subsection (5) and the amount actually distributed pursuant to subsections (5) and (6) and this subsection.

(8) A distribution under this section replacing tax increment revenues pledged by an authority or a municipality is subject to the lien of the pledge, whether or not there has been physical delivery of the distribution.

(9) Obligations for which distributions are made pursuant to this section are not a debt or liability of this state; do not create or constitute an indebtedness, liability, or obligation of this state; and are not and do not constitute a pledge of the faith and credit of this state.

(10) Not later than July 1 of each year, the authority shall certify to the local tax collecting treasurer the amount of the distribution required under subsection (5), calculated without regard to the receipt of tax increment revenues attributable to local or intermediate school district taxes or attributable to taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.

(11) Calculations of distributions under this section and claims reports required to be made under subsection (2) shall be made on the basis of each development area of the authority.

(12) The state tax commission may provide that the reimbursement calculations under this section and the calculation of allowable capture of school taxes shall be made for each calendar year's tax increment revenues using a 12-month debt payment period used by the authority and approved by the state tax commission.

History: Add. 1993, Act 322, Eff. Mar. 15, 1994;—Am. 1994, Act 281, Imd. Eff. July 11, 1994;—Am. 1996, Act 271, Imd. Eff. June 12, 1996;—Am. 1996, Act 453, Imd. Eff. Dec. 19, 1996;—Am. 1997, Act 201, Imd. Eff. Jan. 13, 1998.

Compiler's note: Enacting section 1 of Act 201 of 1997 provides:

"The provisions of section 1 and section 12a, as amended by this amendatory act, are retroactive and effective for taxes levied after 1993."

Popular name: TIFA

Rendered Thursday, December 8, 2016

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125.1812b Retention and payment of taxes levied under state education tax act; conditions; application by authority for approval; information to be included; approval, modification, or denial of application by department of treasury; appropriation and distribution of amount; calculation of aggregate amount; lien; reimbursement calculations; legislative intent.

Sec. 12b. (1) If the amount of tax increment revenues lost as a result of the personal property tax exemptions provided by section 1211(4) of the revised school code, 1976 PA 451, MCL 380.1211, section 3 of the state education tax act, 1993 PA 331, MCL 211.903, section 14(4) of 1974 PA 198, MCL 207.564, and section 9k of the general property tax act, 1893 PA 206, MCL 211.9k, will reduce the allowable school tax capture received in a fiscal year, then, notwithstanding any other provision of this act, the authority, with approval of the department of treasury under subsection (3), may request the local tax collecting treasurer to retain and pay to the authority taxes levied within the municipality under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, to be used for the following:

- (a) To repay an eligible advance.
- (b) To repay an eligible obligation.
- (c) To repay an other protected obligation.

(2) Not later than June 15, 2008, not later than September 30, 2009, and not later than June 1 of each subsequent year, an authority eligible under subsection (1) to have taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, retained and paid to the authority under this section, shall apply for approval with the department of treasury. The application for approval shall include the following information:

(a) The property tax millage rates expected to be levied by local school districts within the jurisdictional area of the authority for school operating purposes for that fiscal year.

(b) The tax increment revenues estimated to be received by the authority for that fiscal year based upon actual property tax levies of all taxing jurisdictions within the jurisdictional area of the authority.

(c) The tax increment revenues the authority estimates it would have received for that fiscal year if the personal property tax exemptions described in subsection (1) were not in effect.

(d) A list of eligible obligations, eligible advances, and other protected obligations, the payments due on each of those in that fiscal year, and the total amount of all the payments due on all of those in that fiscal year.

(e) The amount of money, other than tax increment revenues, estimated to be received in that fiscal year by the authority that is primarily pledged to, and to be used for, the payment of an eligible obligation, the repayment of an eligible advance, or the payment of an other protected obligation. That amount shall not include excess tax increment revenues of the authority that are permitted by law to be retained by the authority for purposes that further the development program. However, that amount shall include money to be obtained from sources authorized by law, which law is enacted on or after December 1, 1993, for use by the municipality or authority to finance a development plan.

(f) The amount of a distribution received pursuant to this act for a fiscal year in excess of or less than the distribution that would have been required if calculated upon actual tax increment revenues received for that fiscal year.

(3) Not later than August 15, 2008; for 2009 only, not later than 30 days after the effective date of the amendatory act that amended this sentence; and not later than August 15 of each subsequent year, based on the calculations under subsection (5), the department of treasury shall approve, modify, or deny the application for approval to have taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, retained and paid to the authority under this section. If the application for approval contains the information required under subsection (2)(a) through (f) and appears to be in substantial compliance with the provisions of this section, then the department of treasury shall approve the application. If the application is denied by the department of treasury, then the department of treasury shall provide the opportunity for a representative of the authority to discuss the denial within 21 days after the denial occurs and shall sustain or modify its decision within 30 days after receiving information from the authority. If the application for approval is approved or modified by the department of treasury, the local tax collecting treasurer shall retain and pay to the authority the amount described in subsection (5) as approved by the department. If the department of treasury denies the authority's application for approval, the local tax collecting treasurer shall not retain or pay to the authority the taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906. An approval by the department does not prohibit a subsequent audit of taxes retained in accordance with the procedures currently authorized by law.

(4) Each year, the legislature shall appropriate and distribute an amount sufficient to pay each authority the following:

(a) If the amount to be retained and paid under subsection (3) is less than the amount calculated under subsection (5), the difference between those amounts.

(b) If the application for approval is denied by the department of treasury, an amount verified by the department equal to the amount calculated under subsection (5).

(5) Subject to subsection (6), the aggregate amount under this section shall be the sum of the amounts determined under subdivisions (a) and (b) minus the amount determined under subdivision (c), as follows:

(a) The amount by which the tax increment revenues the authority would have received and retained for the fiscal year, excluding taxes exempt under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff, if the personal property tax exemptions described in subsection (1) were not in effect, exceed the tax increment revenues the authority actually received for the fiscal year.

(b) A shortfall required to be reported under subsection (2)(f) that had not previously increased a distribution.

(c) An excess amount required to be reported under subsection (2)(f) that had not previously decreased a distribution.

(6) A distribution or taxes retained under this section replacing tax increment revenues pledged by an authority or a municipality are subject to any lien of the pledge described in subsection (1), whether or not there has been physical delivery of the distribution.

(7) Obligations for which distributions are made under this section are not a debt or liability of this state; do not create or constitute an indebtedness, liability, or obligation of this state; and are not and do not constitute a pledge of the faith and credit of this state.

(8) Not later than September 15 of each year, the authority shall provide a copy of the application for approval approved by the department of treasury to the local tax collecting treasurer and provide the amount of the taxes retained and paid to the authority under subsection (5).

(9) Calculations of amounts retained and paid and appropriations to be distributed under this section shall be made on the basis of each development area of the authority.

(10) The state tax commission may provide that the reimbursement calculations under this section and the calculation of allowable capture of school taxes shall be made for each calendar year's tax increment revenues using a 12-month debt payment period used by the authority and approved by the state tax commission.

(11) It is the intent of the legislature that, to the extent that the total amount of taxes levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, that are allowed to be retained under this section and section 11b of the local development financing act, 1986 PA 281, MCL 125.2161b, section 15a of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2665a, and section 13c of 1975 PA 197, MCL 125.1663c, exceeds the difference of the total school aid fund revenue for the tax year minus the estimated amount of revenue the school aid fund would have received for the tax year had the tax exemptions described in subsection (1) and the earmark created by section 515 of the Michigan business tax act, 2007 PA 36, MCL 208.1515, not taken effect, the general fund shall reimburse the school aid fund the difference.

History: Add. 2008, Act 156, Imd. Eff. June 5, 2008;—Am. 2009, Act 214, Imd. Eff. Jan. 4, 2010.

Popular name: TIFA

125.1813 Preparation and submission of tax increment financing plan; contents and approval of plan; public hearing; taxing jurisdictions.

Sec. 13. (1) When the authority determines that it is necessary for the achievement of the purposes of this act, the authority shall prepare and submit a tax increment financing plan to the governing body. The plan shall be in compliance with section 14 and shall include a development plan as provided in section 16. The plan shall also contain the following:

(a) A statement of the reasons that the plan will result in the development of captured assessed value that could not otherwise be expected. The reasons may include, but are not limited to, activities of the municipality, authority, or others undertaken before formulation or adoption of the plan in reasonable anticipation that the objectives of the plan would be achieved by some means.

(b) An estimate of the captured assessed value for each year of the plan. The plan may provide for the use of part or all of the captured assessed value, but the portion intended to be used shall be clearly stated in the plan. The authority or municipality may exclude from captured assessed value growth in property value resulting solely from inflation. The plan shall set forth the method for excluding growth in property value resulting solely from inflation. The percentage of taxes levied for school operating purposes that is captured and used by the plan shall not be greater than the plan's percentage capture and use of taxes levied by a municipality or county for operating purposes. For purposes of the previous sentence, taxes levied by a county for operating purposes include only millage allocated for county or charter county purposes under the property tax limitation act, Act No. 62 of the Public Acts of 1933, being sections 211.201 to 211.217a of the

Michigan Compiled Laws. This limitation does not apply to the portion of the captured assessed value shared pursuant to an agreement entered into before 1989 with a county or with a city in which an enterprise zone is approved under section 13 of the enterprise zone act, Act No. 224 of the Public Acts of 1985, being section 125.2113 of the Michigan Compiled Laws.

- (c) The estimated tax increment revenues for each year of the plan.
- (d) A detailed explanation of the tax increment procedure.
- (e) The maximum amount of bonded indebtedness to be incurred.
- (f) The amount of operating and planning expenditures of the authority and municipality, the amount of advances extended by or indebtedness incurred by the municipality, and the amount of advances by others to be repaid from tax increment revenues.
- (g) The costs of the plan anticipated to be paid from tax increment revenues as received.
- (h) The duration of the development plan and the tax increment plan.
- (i) An estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the development area is located.

(2) Approval of the tax increment financing plan shall be in accordance with the notice, hearing, disclosure, and approval provisions of sections 17 and 18. When the development plan is part of the tax increment financing plan, only 1 hearing and approval procedure is required for the 2 plans together.

(3) Before the public hearing on the tax increment financing plan, the governing body shall provide a reasonable opportunity to the taxing jurisdictions in which the development is located to express their views and recommendations regarding the tax increment financing plan. The authority shall fully inform the taxing jurisdictions about the fiscal and economic implications of the proposed tax increment financing plan. The taxing jurisdictions may present their recommendations at the public hearing on the tax increment financing plan. The authority may enter into agreements with the taxing jurisdictions and the governing body of the municipality in which the development area is located to share a portion of the captured assessed value of the district.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 1982, Act 492, Imd. Eff. Dec. 30, 1982;—Am. 1983, Act 148, Imd. Eff. July 18, 1983;—Am. 1986, Act 294, Imd. Eff. Dec. 22, 1986;—Am. 1988, Act 420, Imd. Eff. Dec. 27, 1988;—Am. 1989, Act 120, Imd. Eff. June 28, 1989;—Am. 1993, Act 322, Eff. Mar. 15, 1994.

Compiler's note: Section 2 of Act 420 of 1988 provides: "This amendatory act is effective beginning with taxes levied in 1989."

Popular name: TIFA

125.1814 Transmitting and expending tax increment revenues; disposition of surplus funds; abolition of tax increment financing plan; financial report.

Sec. 14. (1) The municipal and county treasurers shall transmit to the authority tax increment revenues.

(2) The authority shall expend the tax increment revenues received for the development program only in accordance with the tax increment financing plan. Surplus funds may be retained by the authority for the payment of the principal of and interest on outstanding tax increment bonds or for other purposes that, by resolution of the board, are determined to further the development program. Any surplus funds not so used shall revert proportionately to the respective taxing bodies. These revenues shall not be used to circumvent existing property tax laws or a local charter that provides a maximum authorized rate for levy of property taxes. The governing body may abolish the tax increment financing plan when it finds that the purposes for which the plan was established are accomplished. However, the tax increment finance plan shall not be abolished until the principal of and interest on bonds issued pursuant to section 15 have been paid or funds sufficient to make the payment have been segregated.

(3) The authority shall submit annually to the governing body and the state tax commission a financial report on the status of the tax increment financing plan. The report shall include the following:

- (a) The amount and source of tax increments received.
- (b) The amount in any bond reserve account.
- (c) The amount and purpose of expenditures of tax increment revenues.
- (d) The amount of principal and interest on any outstanding bonded indebtedness.
- (e) The initial assessed value of the development area.
- (f) The captured assessed value retained by the authority.
- (g) The number of jobs created as a result of the implementation of the tax increment financing plan.
- (h) Any additional information the governing body or the state tax commission considers necessary.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 1983, Act 148, Imd. Eff. July 18, 1983;—Am. 1986, Act 294, Imd. Eff. Dec. 22, 1986;—Am. 1988, Act 420, Imd. Eff. Dec. 27, 1988;—Am. 1993, Act 322, Eff. Mar. 15, 1994.

Compiler's note: Section 2 of Act 420 of 1988 provides: "This amendatory act is effective beginning with taxes levied in 1989."

Popular name: TIFA

125.1815 Tax increment bonds; qualified refunding obligation.

Sec. 15. (1) By resolution of its board, the authority may authorize, issue, and sell its tax increment bonds, subject to the limitations set forth in this section, to finance a development program. The bonds are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bonds issued under this section shall be considered a single series for the purposes of the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) The municipality by majority vote of the members of its governing body may pledge its full faith and credit for the payment of the principal of and interest on the authority's tax increment bonds. The municipality may pledge as additional security for the bonds any money received by the authority or the municipality pursuant to section 11.

(3) Notwithstanding any other provision of this act, if the state treasurer determines that an authority or municipality can issue a qualified refunding obligation and the authority or municipality does not make a good faith effort to issue the qualified refunding obligation as determined by the state treasurer, the state treasurer may reduce the amount claimed by the authority or municipality under section 12a by an amount equal to the net present value saving that would have been realized had the authority or municipality refunded the obligation or the state treasurer may require a reduction in the capture of tax increment revenues from taxes levied by a local or intermediate school district or this state by an amount equal to the net present value savings that would have been realized had the authority or municipality refunded the obligation. This subsection does not authorize the state treasurer to require the authority or municipality to pledge security greater than the security pledged for the obligation being refunded.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 1993, Act 322, Eff. Mar. 15, 1994;—Am. 1996, Act 271, Imd. Eff. June 12, 1996;—Am. 2002, Act 190, Imd. Eff. Apr. 24, 2002.

Popular name: TIFA

125.1816 Development plan; preparation; contents.

Sec. 16. (1) When a board decides to finance a project in a development area pursuant to this act, it shall prepare a development plan.

(2) To the extent necessary to accomplish the proposed development program the development plan shall contain:

(a) The designation of boundaries of the development area in relation to the boundaries of the authority district and any other development areas within the authority district.

(b) The designation of boundaries of the development area in relation to highways, streets, or otherwise.

(c) The location and extent of existing streets and other public facilities within the development area and the location, character, and extent of the categories of public and private land uses then existing and proposed for the development area, including residential, recreational, commercial, industrial, educational, and other uses and shall include a legal description of the development area.

(d) A description of improvements to be made in the development area, a description of any repairs and alterations necessary to make those improvements, and an estimate of the time required for completion of the improvements.

(e) The location, extent, character, and estimated cost of the improvements including rehabilitation contemplated for the development area and an estimate of the time required for completion.

(f) A statement of the construction or stages of construction planned, and the estimated time of completion of each stage.

(g) A description of any parts of the development area to be left as open space and the use contemplated for the space.

(h) A description of any portions of the development area which the authority desires to sell, donate, exchange, or lease to or from the municipality and the proposed terms.

(i) A description of desired zoning changes and changes in streets, street levels, intersections, and utilities.

(j) An estimate of the cost of the development, a statement of the proposed method of financing the development, and the ability of the authority to arrange the financing.

(k) Designation of the person or persons, natural or corporate, to whom all or a portion of the development is to be leased, sold, or conveyed and for whose benefit the project is being undertaken, if that information is available to the authority.

(l) The procedures for bidding for the leasing, purchasing, or conveying of all or a portion of the development upon its completion, if there is no express or implied agreement between the authority and persons, natural or corporate, that all or a portion of the development will be leased, sold, or conveyed to

those persons.

(m) Estimates of the number of persons residing in the development area and the number of families and individuals to be displaced. If occupied residences are designated for acquisition and clearance by the authority, a development plan shall include a survey of the families and individuals to be displaced, including their income and racial composition, a statistical description of the housing supply in the community, including the number of private and public units in existence or under construction, the condition of those in existence, the number of owner-occupied and renter-occupied units, the annual rate of turnover of the various types of housing and the range of rents and sale prices, an estimate of the total demand for housing in the community, and the estimated capacity of private and public housing available to displaced families and individuals.

(n) A plan for establishing priority for the relocation of persons displaced by the development in any new housing in the development area.

(o) Provision for the costs of relocating persons displaced by the development, and financial assistance and reimbursement of expenses, including litigation expenses and expenses incident to the transfer of title, in accordance with the standards and provisions of the federal uniform relocation assistance and real property acquisition policies act of 1970, 42 U.S.C. 4601 to 4655.

(p) A plan for compliance with Act No. 227 of the Public Acts of 1972, being sections 213.321 to 213.332 of the Michigan Compiled Laws.

(q) Other material which the authority, local public agency, or governing body considers pertinent.

(3) It shall not be necessary for the board to prepare a development plan pursuant to this section where a development plan that adequately provides for accomplishing the proposed development program has already been prepared by any of the organizations described in section 4(1)(a) to (d) and where the development plan has been approved by the board and governing body pursuant to sections 17 and 18.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1817 Public hearing on development plan; publication, mailing, and contents of notice; presentation of data; record.

Sec. 17. (1) The governing body, before adoption of a resolution approving or amending a development plan or approving or amending a tax increment financing plan, shall hold a public hearing on the development plan. Notice of the time and place of the hearing shall be given by publication twice in a newspaper of general circulation designated by the municipality, the first of which shall not be less than 20 days before the date set for the hearing. Notice shall also be mailed to all property taxpayers of record in the development area not less than 20 days before the hearing. Beginning June 1, 2005, the notice of hearing within the time frame described in this subsection shall be mailed by certified mail to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the development plan or the tax increment financing plan is approved or amended.

(2) Notice of the time and place of hearing on a development plan shall contain the following:

(a) A description of the proposed development area in relation to highways, streets, streams, or otherwise.

(b) A statement that maps, plats, and a description of the development plan, including the method of relocating families and individuals who may be displaced from the area, are available for public inspection at a place designated in the notice, and that all aspects of the development plan will be open for discussion at the public hearing.

(c) Other information that the governing body considers appropriate.

(3) At the time set for hearing, the governing body shall provide an opportunity for interested persons to be heard and shall receive and consider communications in writing with reference thereto. The hearing shall provide the fullest opportunity for expression of opinion, for argument on the merits, and for introduction of documentary evidence pertinent to the development plan. The governing body shall make and preserve a record of the public hearing, including all data presented at that time.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 2005, Act 14, Imd. Eff. May 4, 2005.

Popular name: TIFA

125.1818 Development plan or tax increment plan as public purpose; determination; approval or rejection of plan; notice and public hearing; conclusiveness of procedure, adequacy of notice, and certain findings; validation and conclusiveness of plan; contesting plan.

Sec. 18. (1) The governing body, after a public hearing on the development plan or the tax increment

financing plan, or both, with notice of the hearing given pursuant to section 17, shall determine whether the development plan or tax increment financing plan constitutes a public purpose. If the governing body determines that the development plan or tax increment financing plan constitutes a public purpose, the governing body shall then approve or reject the plan, or approve it with modification, by resolution based on the following considerations:

(a) The findings and recommendations of a development area citizens council, if a development area citizens council was formed.

(b) Whether the development plan meets the requirements set forth in section 16(2) and the tax increment financing plan meets the requirements set forth in section 13(1).

(c) Whether the proposed method of financing the development is feasible and the authority has the ability to arrange the financing.

(d) Whether the development is reasonable and necessary to carry out the purposes of this act.

(e) Whether the amount of captured assessed value estimated to result from adoption of the plan is reasonable.

(f) Whether the land to be acquired within the development area is reasonably necessary to carry out the purposes of the plan and the purposes of this act.

(g) Whether the development plan is in reasonable accord with the approved master plan of the municipality, if an approved master plan exists.

(h) Whether public services, such as fire and police protection and utilities, are or will be adequate to service the development area.

(i) Whether changes in zoning, streets, street levels, intersections, and utilities are reasonably necessary for the project and for the municipality.

(2) Except as provided in this subsection, amendments to an approved development plan or tax increment plan must be submitted by the authority to the governing body for approval or rejection following the same notice and public hearing provisions that are necessary for approval or rejection of the original plan. Notice and hearing shall not be necessary for revisions in the estimates of captured assessed value and tax increment revenues.

(3) The procedure, adequacy of notice, and findings with respect to purpose and captured assessed value shall be conclusive unless contested in a court of competent jurisdiction within 60 days after adoption of the resolution adopting the plan. A plan adopted before July 18, 1983 is validated and shall be conclusive unless contested in a court of competent jurisdiction within 60 days after July 18, 1983. A plan in effect before July 18, 1983 shall not be contested to the extent that tax increment revenues are necessary for the payment of principal and interest on outstanding bonds issued pursuant to the plan and payable from the tax increment revenues or to the extent the authority or municipality has incurred other obligations or made commitments dependent upon tax increment revenues.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981;—Am. 1983, Act 148, Imd. Eff. July 18, 1983;—Am. 1993, Act 322, Eff. Mar. 15, 1994.

Popular name: TIFA

125.1819 Notice to vacate.

Sec. 19. A person to be relocated under this act shall be given not less than 90 days' written notice to vacate unless modified by court order for good cause.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1820 Development area citizens council; establishment; advisory body; appointment and qualifications of members.

Sec. 20. (1) A development area citizens council shall be established if the proposed development area has 100 or more persons residing within it and a change in zoning or a taking of property by eminent domain is necessary to accomplish the proposed development program. The council shall act as an advisory body to the authority and the governing body in the adoption of the development plan or tax increment financing plan.

(2) If a development area citizens council is required, the council shall be appointed by the governing body, and shall consist of not less than 9 members. Each member shall be at least 18 years of age and reside in the development area. The council shall be established at least 60 days before the public hearing on the development plan or the tax increment financing plan, or both.

(3) If a development area citizens council is required pursuant to subsection (1) and if the authority was established pursuant to section 4(1)(a), (b), (c), or (d), a council established in conjunction with any of those boards or commissions, may serve in an advisory capacity to the authority, if the authority determines it is

representative of the development area.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1821 Consultation representative of authority and council.

Sec. 21. Periodically a representative of the authority responsible for preparation of a development or tax increment financing plan within the development area shall consult with and advise the development area citizens council regarding the aspects of a development plan, including the development of new housing for relocation purposes located either inside or outside of the development area. The consultation shall begin before any final decisions by the authority and the governing body regarding a development or tax increment financing plan. The consultation shall continue throughout the preparation and implementation of the development or tax increment financing plan.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1822 Meetings of council; open to public; notice; hearing persons present at meeting; record; information and technical assistance; failures not precluding adoption of development plan.

Sec. 22. (1) Meetings of the council shall be open to the public. Notice of the time and place of the meetings shall be posted in at least 10 conspicuous places in the development area accessible to the public not less than 5 days before the dates set for meetings of the council. A person present at those meetings shall have reasonable opportunity to be heard.

(2) A record of the meetings of a council, including information and data presented, shall be maintained by the council.

(3) A council may request of and receive from the authority information and technical assistance relevant to the preparation of the development plan for the development area.

(4) Failure of a council to organize or to consult with and be advised by the authority, or failure to advise the governing body, as provided in this act, shall not preclude the adoption of a development plan by a municipality if the municipality complies with the other provisions of this act.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1823 Development plan; notice of findings and recommendations.

Sec. 23. Within 20 days after the public hearing on a development or tax increment financing plan, the council, if established, shall notify the governing body, in writing, of its findings and recommendations concerning a proposed development plan.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1824 Development area citizens council; dissolution.

Sec. 24. A development area citizens council may not be required and, if formed, may be dissolved in any of the following situations:

(a) On petition of not less than 20% of the adult resident population of the development area by the last federal decennial or municipal census, a governing body, after public hearing with notice given in accordance with section 17 and by a 2/3 vote, may adopt a resolution eliminating the necessity of a council for the development area.

(b) If there are less than 18 residents located in the development area eligible to serve on the council.

(c) Upon termination of the authority by resolution of the governing body.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1825 Budget; cost of handling and auditing funds.

Sec. 25. (1) The director of the authority shall prepare and submit for the approval of the board a budget for the operation of the authority for the ensuing fiscal year. The budget shall be prepared in the manner and contain the information required of municipal departments. Before the budget may be adopted by the board, it shall be approved by the governing body. Funds of the municipality shall not be included in the budget of the authority except those funds authorized in this act or by the governing body.

(2) The governing body may assess a reasonable pro rata share of the funds for the cost of handling and

auditing the funds against the funds of the authority, other than those committed for designated purposes, which cost shall be paid annually by the board pursuant to an appropriate item in its budget.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1826 Preservation of public facility, building, or structure having significant historical interest; review of proposed changes to exterior of historic site.

Sec. 26. (1) A public facility, building, or structure which is determined by the municipality to have significant historical interests shall be preserved in a manner as considered necessary by the municipality in accordance with laws relative to the preservation of historical sites.

(2) An authority shall refer all proposed changes to the exterior of sites listed on the state register of historic sites and the national register of historic places to the applicable historic district commission created under Act No. 169 of the Public Acts of 1970, as amended, being sections 399.201 to 399.212 of the Michigan Compiled Laws, or the secretary of state for review.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: TIFA

125.1827 Dissolution of authority; resolution; disposition of property and assets.

Sec. 27. An authority which has completed the purposes for which it was organized shall be dissolved by resolution of the governing body. The property and assets of the authority remaining after the satisfaction of the obligations of the authority shall belong to the municipality.

History: 1980, Act 450, Imd. Eff. Jan. 15, 1981.

Popular name: TIFA

125.1828 Authority district part of area annexed to or consolidated with another municipality; authority of annexing or consolidated municipality; status of obligations, agreements, and bonds.

Sec. 28. Notwithstanding the limitation provided by section 2(1) on having more than 1 authority, if an authority district is part of an area annexed to or consolidated with another municipality, the authority managing that authority district shall become an authority of the annexing or consolidated municipality. All obligations of that authority incurred pursuant to development plans or tax increment plans, all agreements related to the plans, and bonds issued pursuant to this act shall remain in effect following the annexation or consolidation.

History: Add. 1983, Act 148, Imd. Eff. July 18, 1983.

Popular name: TIFA

125.1829 New authority or authority district and boundaries of authority district; prohibitions; validity of tax increment finance authority, authority district, development area, development plan, or tax increment financing plan established before December 30, 1986; development area created or expanded after December 29, 1986.

Sec. 29. (1) Beginning January 1, 1987, a new authority or authority district shall not be created and the boundaries of an authority district shall not be expanded to include additional land.

(2) A tax increment finance authority, authority district, development area, development plan, or tax increment financing plan established under this act before December 30, 1986 shall not be invalidated pursuant to a claim that based on the standards set forth in section 3(1), a governing body improperly determined that the necessary conditions existed for the establishment of a tax increment financing authority under this act, if, at the time the governing body established the authority, the governing body could have determined that establishment of an authority under this act would serve to create jobs or promote economic development growth.

(3) A development area created or expanded after December 29, 1986 shall be subject to the requirements of section 3(1).

History: Add. 1986, Act 280, Imd. Eff. Dec. 22, 1986.

Popular name: TIFA

125.1830 Proceedings to compel enforcement of act; rules.

Sec. 30. (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 pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: Add. 1988, Act 420, Imd. Eff. Dec. 27, 1988.

Compiler's note: Section 2 of Act 420 of 1988 provides: "This amendatory act is effective beginning with taxes levied in 1989."

Popular name: TIFA

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STATE OF MICHIGAN
FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6335

January 16, 1986

TAX INCREMENT FINANCE AUTHORITY:

Establishment in area of municipality containing significant number of parcels of property declining in value

WORDS AND PHRASES:

'Decline'

A municipality is without authority to establish a tax increment finance authority in an area of the municipality where property values are not declining.

A municipality may establish a tax increment finance authority in an area of the municipality containing a significant number of parcels of property experiencing a decline in value.

Honorable Wilbur V. Brotherton

State Representative

The Capitol

Lansing, Michigan 48909

You have requested my opinion regarding a provision of the Tax Increment Finance Authority Act (TIFA), MCL 125.1801 et seq; MSA 3.540(201) et seq. As background to your question, you state as follows:

'[T]he TIFA Act provides a mechanism by which a municipality can establish an authority within its geographical boundaries, commonly known as a Tax Increment Finance Authority. The authority is vested with the power to create and implement a development plan for the improvement of the property within the authority. Contemporaneously, the authority may create a financing plan for the purpose of funding the development plan. Among other types of financing plans, the Act permits the authority to divert ad valorem tax

collections from local units of government to pay for the implementation of a development plan. The collections which may be diverted are based upon the incremental increases in the value of the property; i.e., increases which theoretically result from the implementation of the development plan.

'In question is Section 3 [MCL 125.1803(1); MSA 3.540(203)(1)] of the Act wherein the basis for creating a TIFA is set forth. It provides as follows:

'If the governing body of a municipality determines that it is in the best interests of the public to halt a decline in property values, increase property tax valuation, eliminate the causes of the decline in property values, and to promote growth in an area in the municipality, the governing body of that municipality may declare by resolution its intention to create and provide for the operation of an authority.'

...

'If ad valorem taxes based on increases in the value of property that would otherwise be declining--and are thus attributable to the planned development--are diverted from local units of government, those local units are certainly not deprived of tax collections that they would have received, but for the TIFA. However, if taxes on property which is increasing in value are diverted away from those same local units of government, there is the potential for a significant erosion of the tax base upon which local units of government rely in dealing with inflation in their own expenses of operation.'

Your first question is:

'Whether the language of Section 3 [MCL 125.1803(1); MSA 3.540(203)(1)] permits a municipality to create a TIFA [Tax Increment Finance Authority] in a geographical area where property values are not declining.'

MCL 8.3; MSA 2.212, provides:

'In the construction of the statutes of this state, the rules stated in sections 3a to 3w shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature.'

MCL 8.3(a); MSA 2.212(1), provides, in pertinent part:

'All words and phrases shall be construed and understood according to the common and approved usage of the language; . . .'

In MCL 125.1803(1); MSA 3.540(203)(1), the Legislature has authorized the governing body of a municipality to declare its intention to create a tax increment finance authority if it determines that it is in the public interest (1) to halt the decline in property values, (2) to increase property tax valuation, (3) to eliminate the causes of the decline in property values, and (4) to promote growth, in an area of the municipality. A plain reading of the statute makes it clear that the governing body is to make each of these four conditions precedent determinations prior to proceeding with the formation of a tax increment finance authority.

While the term 'and' appearing in a statute may be read in the disjunctive as 'or' where necessary to accomplish the obvious purpose of a statute, Elliott Grocer Co v Field's Pure Food Market, Inc.,

286 Mich 112; 281 NW 557 (1938), it is not appropriate to do so in the present situation. Moreover, if the term 'and' in MCL 125.1803(1); MSA 3.540(203)(1), were to be read as 'or,' a tax increment finance authority could be established in a municipality for the sole purpose of 'increasing property tax valuation.' Because this single purpose is wholly outside the title to the Tax Increment Finance Authority Act, it is unlikely that the Legislature intended such result. In addition, under such interpretation, the entire municipality could be placed within an 'authority,' thereby frustrating the state's system for local assessment and taxation provided under the state's property tax laws. See, e.g., Smith v Auditor General, 20 Mich 398, 406 (1870). Furthermore, MCL 125.1803(1); MSA 3.540(203)(1), does not manifest a clear intent that an authority may be formed if less than all four of these public interest criteria are met in the determination of the governing body. Thus, the term 'and' may not be read as 'or' with respect to these portions of the statute.

It is my opinion in answer to your first question that pursuant to MCL 125.1803(1); MSA 3.540(203)(1), a municipality is without authority to create a tax increment finance authority in a geographical area where property values are not declining.

Your second question is:

'Assuming that declining property values are requisite to the creation of a TIFA, . . . is it sufficient for purposes of Section 3 [MCL 125.1803; MSA 3.540(203)] if only one or two parcels of property within the TIFA boundaries are declining in value while the balance of the property in the TIFA area, consisting of several hundred other parcels of property, is either static in value or increasing? Conversely, must decline be measured for purposes of Section 3 in an aggregate sense; i.e., considering all of the parcels within the proposed authority in the aggregate?'

In Exum v Laub, 87 F2d 73, 74 (CA 5, 1937), the term 'decline' was defined as meaning 'a falling off or downward tendency.' Since the Legislature has required a determination that a 'decline in property values,' in the plural, be halted, it follows that the decline in value of a single parcel of property would be insufficient as a basis for establishment of a tax increment finance authority. Moreover, the Legislature has conferred broad powers upon a tax increment finance authority board, *inter alia*, to prepare analyses of economic changes relating to urban deterioration in the development area, to develop long-range plans to halt the decline of property values and to promote the growth of the development area, and to demolish existing structures and construct, rehabilitate, and restore buildings within the development area. The authority is empowered to acquire and construct public facilities and to fix fees, rents, and charges for the use of buildings and property under its control with revenue therefrom to be used to pay for revenue bonds issued by the authority. MCL 125.1807; MSA 3.540(207). To finance its activities, the authority board is authorized to borrow money and issue revenue bonds and to expend tax revenues received. MCL 125.1812; MSA 3.540(212).

The activities of the authority shall also be financed by tax increments received pursuant to a tax increment financing plan from taxes levied upon the captured assessed value of all the property with the development district. The captured assessed value is the difference between the initial assessed valuation of the property in the development district at the time of establishment of the tax increment financing plan and the amount in any one year by which the current assessed valuation of the development area exceeds the initial assessed valuation resulting from implementation of the tax increment financing plan. It is noted that the plan must state reasons that will result in the development of captured assessed value which could not be expected and must

also contain an estimate of the impact of tax increment financing on the revenues of all taxing jurisdictions in which the development area is located. MCL 125.1813(1)(a)-(i); MSA 3.540(213)(1)(a)-(i).

In view of these broad powers to deal with urban deterioration and to promote the growth of an area of a municipality, the legislative intent is manifest that a significant number of parcels of property in the area of the municipality must be found to be falling off in value in order to warrant the establishment of an authority possessed of wide powers to accomplish the beneficial purposes intended. One or two parcels of property suffering declining property values would not suffice to set in motion the establishment of a tax increment finance authority in a municipality.

It is noted that the decision of a municipality to establish a tax increment finance authority after notice and public hearing is subject to judicial review within 60 days as set forth in MCL 125.1803(5); MSA 3.540(203)(5). By expressly providing for a 60-day period during which such a determination may be challenged in a court of competent jurisdiction, the Legislature intended that decision of the municipality be reasonable and informed based upon a factual record before the governing body.

In answer to your second question, it is my opinion that a municipality may establish a tax increment finance authority upon a factual finding of a decline in value of a significant number of parcels in an area of the municipality. It is my further opinion that a municipality is not authorized to establish a tax increment finance authority based upon the decline in value of one or two parcels of property in an area of the municipality.

Frank J. Kelley

Attorney General

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<http://opinion/datafiles/1980s/op06335.htm>
State of Michigan, Department of Attorney General
Last Updated 11/10/2008 15:49:34

184 Mich.App. 745
Court of Appeals of Michigan.

WHEATFIELD TOWNSHIP, Plaintiff-Appellant,
v.
CITY OF WILLIAMSTON, Defendant-Appellee.

Docket No. 113802.

|
Submitted March 14, 1990.

|
Decided May 29, 1990.

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Released for Publication Aug. 23, 1990.

Township brought action challenging city's annexation of adjoining property. The Circuit Court, Ingham County, Peter D. Houk, J., granted summary disposition in favor of city, and township appealed. The Court of Appeals held that: (1) property annexed by city was "owned" by city and was "vacant" within meaning of Home Rule Cities Act; (2) city's economic development corporation did not violate Economic Development Corporations Act or Tax Increment Finance Authority Act when it purchased property outside of development area; and (3) claim that city violated Farmland and Open Space Preservation Act was premature.

Affirmed as modified.

West Headnotes (3)

[1] **Municipal Corporations**

⚡ Power to Annex Territory in General

Property annexed by city was "owned" by city and was "vacant" within meaning of Home Rule Cities Act, where city entered into land contract with property's owner and property was set aside as "agricultural." M.C.L.A. § 117.9(8).

1 Cases that cite this headnote

[2] **Municipal Corporations**

⚡ Capacity to Acquire and Hold Property in General

City's economic development corporation did not violate Economic Development Corporations Act or Tax Increment Finance Authority Act when it purchased property outside of development area pursuant to city's annexation of property. M.C.L.A. §§ 125.1608, 125.1804.

Cases that cite this headnote

[3] **Municipal Corporations**

⚡ Grounds for and Objections to Annexation

Claim that city violated Farmland and Open Space Preservation Act when it annexed adjoining property was premature, where property was undeveloped pending city's application to remove property from protection of statute. M.C.L.A. §§ 554.705, 554.711.

1 Cases that cite this headnote

Attorneys and Law Firms

****670 *746** Foster, Swift, Collins & Smith, P.C., Lansing, by William K. Fahey and Elizabeth Roberts Vertley, for plaintiff-appellant.

Joseph K. Cox, Webberville, for defendant-appellee.

Schluskel, Lifton, Simon, Rands, Galvin & Jackier (by William B. Beach and Jerold D.E. Lax), Detroit, for amicus curiae Michigan Mun. League.

Before HOOD, P.J., and MAHER and CYNAR, JJ.

Opinion

PER CURIAM.

Plaintiff Wheatfield Township appeals as of right from the November 29, 1988, order of the Ingham Circuit Court granting summary disposition in favor of defendant City of Williamston, pursuant to MCR 2.116(C)(8) and (10), on plaintiff's verified complaint which sought to prevent defendant's annexation of a 150-acre parcel of land located between the township and the ****671** city

(the Hitchcock property). We modify in part the court's order and affirm.

[1] Plaintiff argues first that the defendant's annexation did not meet the essential requirements of the home rule cities act because the city did not "own" the property and the property was not "vacant" within the meaning of M.C.L. § 117.9(8); M.S.A. § 5.2088(8). However, we find that defendant did follow the correct annexation procedure as provided by the act. Defendant's land contract with the Hitchcocks did grant the city sufficient ownership to satisfy the statute, and since the property was set aside as "agricultural," and plaintiff has failed to demonstrate otherwise, the property was vacant.

[2] Plaintiff argues next that the conduct of defendant's Economic Development Corporation (also *747 designated as defendant's Tax Increment Financing Authority) was contrary to the Economic Development Corporations Act (EDCA), specifically, M.C.L. § 125.1608; M.S.A. § 5.3520(8), and the Tax Increment Finance Authority Act (TIFA), specifically, M.C.L. §§ 125.1804 and 1807; M.S.A. §§ 3.540(204) and (207). We disagree.

In the present case, the trial court properly found that plaintiff failed to state a claim under either the EDCA or the TIFA. The trial court found that while other portions of the TIFA limit the power of the authority to areas within a development district, the authority's power to purchase property contains no such limitations. The court concluded the purchase of lands outside the development area is sometimes necessary if the board is to carry out its purpose. While home rule cities may not perform those functions not granted by the Legislature,

the act imposes no such restrictions upon an authority established pursuant to the TIFA. In fact, the clear and unambiguous statutory language grants defendant's Economic Development Corporation broad powers to purchase property and develop it. When the language of the statute is clear, any judicial construction is foreclosed. *Joy Management Co. v. Detroit*, 176 Mich.App. 722, 730, 440 N.W.2d 654 (1989), lv. den. 433 Mich. 860 (1989).

[3] Lastly, plaintiff contends that the annexation violated the Farmland and Open Space Preservation Act, specifically, M.C.L. §§ 554.705 and 711; M.S.A. §§ 26.1287(5) and (11). However, we find that the trial court properly dismissed this claim. Plaintiff has simply failed to state a claim or establish that defendant has violated the act. A review of plaintiff's verified complaint indicates that it contains only conclusions, unsupported by facts. Plaintiff claims that defendant's plans to develop the property *748 violate the act. Presently, the property is undeveloped, pending defendant's application to remove the property from the protection of the statute. Up to now, defendant has taken no action which is inconsistent with the farmland development rights agreement. Until defendant does, plaintiff's claim is premature and was properly dismissed. However, because this claim was only premature, we find its dismissal to be without prejudice and modify the trial court's order accordingly. MCR 7.216(A); *Netherlands Ins. Co. v. Bringman*, 153 Mich.App. 234, 240, 395 N.W.2d 49 (1986).

Affirmed as modified.

All Citations

184 Mich.App. 745, 458 N.W.2d 670

ROBERT CHARLES DAVIS
City of Marine City Attorney

TO: City Manager, Elaine Leven
FROM: Robert Charles Davis
RE: 2016-10(B)(2), Opinion of Counsel
TIFA Status
DATE: December 15, 2016

I. PURPOSE

This is the second in a series of three (3) memorandums addressing the Tax Increment Finance Authority Act ("TIFA"). This memorandum sets forth, based on the information received to date, the current status and history of the City's TIFA program. No exhibits are attached to this memorandum. However, I will bring a binder to the meeting which will have each of the relevant exhibits in the order that they are referenced in this memorandum.

II. HISTORY AND STATUS

A. February 7, 1985 Resolution of Intent to Form TIFA

On February 7, 1985, the City Commission passed a resolution of intent ("Resolution of Intent") to form a TIFA authority. This Resolution of Intent stated that a public hearing would be held on March 7, 1985 for the purpose of establishing an authority and for the purpose of designating the boundaries of the district. The Resolution of Intent further described the boundaries of the district as including two separate areas which ostensibly later became known as District No. 1 and No. 2.

B. March 7, 1985 Resolution Forming TIFA

On March 7, 1985, the City Commission passed a resolution forming the TIFA authority and designating the boundaries of the district ("TIFA Resolution"). This TIFA Resolution described the boundaries of the district as including two separate areas which ostensibly later became known as District No. 1 and No. 2.

C. September 5, 1985 Resolution Seeking To Establish TIFA District No. 3.

On September 5, 1985, the City Commission passed a resolution seeking to establish a TIFA District No. 3. This resolution stated that a public hearing would be held on October 3, 1985 for the purpose of establishing a TIFA District No. 3.

D. October 3, 1985 Resolution Establishing TIFA District No. 3.

On October 3, 1985, the City Commission held a public hearing designating boundaries for a third TIFA district. According to the minutes, the funds captured from this district would be used to for improvements within the district. The City Commission then passed a resolution which amended the TIFA authorities area to ostensibly include the area now referred to as District No. 3.

E. 1986 Development Plans and Financing Plans

1. Development Plan and Tax Increment Financing Plan Riverside Road (M-29)

On December 19, 1985, the City Commission ostensibly adopted a resolution which established a Development Plan and a Tax Increment Financing Plan for the development area known as Riverside Road (M-29). This development area is generally described as the area west of Riverside road between the south City limits and the north Fractional Section line of Section 12. It is referred to as Area No. 2.

The Development Plan for Area No. 2 states that the plan was to commence in January of 1986 and last 30 years (January 2016). The Development Plan for Area No.2 sets forth a series of proposed improvements, the cost estimates, the method of financing and the construction dates. The resolution establishing the Development Plan, at Section 9, states that -- within 90 days after the end of each fiscal year -- the Tax Increment Finance Authority shall submit to the City Commission a report on the status of the project fund. The report shall include the amount and source or revenue in the account, the initial assessed value of Area No. 2, the tax increments received and the amount of any surplus from the prior year, and any additional information requested by the City Commission. According to the resolution, any non-committed surplus money in the project fund at the end of each year, shall be paid by the Authority to the City or County Treasurer, as the case may be, and be rebated by them to the appropriate taxing jurisdiction.

2. Development Plan and Tax Increment Financing Plan Parker Road (M-29)

On December 19, 1985, the City Commission also ostensibly adopted a resolution which established a Development Plan and a Tax Increment Financing Plan for the development area known as Parker Road (M-29). This development area can be generally described as the area adjoining Parker Road between Third Street and the railroad right of way, bounded by St. Clair on the north and Bowery Street on the south. This development area will be referred to as Area No. 3. The Development Plan for Area No. 3 states that the plan was to commence in January of

1986 and expire in January 2016. The Development Plan for Area No. 3 sets forth a series of proposed improvements, the cost estimates, the method of financing and the construction dates. The resolution establishing the Development Plan, at Section 9, states that -- within 90 days after the end of each fiscal year -- the Tax Increment Finance Authority shall submit to the City Commission a report on the status of the project fund. The report shall include the amount and source or revenue in the account, the initial assessed value of Area No. 3, the tax increments received and the amount of any surplus from the prior year, and any additional information requested by the City Commission. According to the resolution, any non-committed surplus money in the project fund at the end of each year, shall be paid by the Authority to the City or County Treasurer, as the case may be, and be rebated by them to the appropriate taxing jurisdiction.

F. 1988 Development Plan and Financing Plan

On December 15, 1988, the City Commission ostensibly adopted a resolution which established a Development Plan and a Tax Increment Financing Plan for the development area generally known as the DDA District. This development area will be referred to as Area No. 1. The Development Plan for Area No. 1 states that it was adopted on December 15, 1988 and expires on December 15, 2018. The Development Plan for Area No.1 set forth proposed improvements including: repaving/replacing the sidewalks on water street; tree guards, pedestrian lighting, acquiring property for parking, seawall improvements and Riverwalk. In addition, the Development Plan sets forth the cost estimate, method of finance and construction dates for the improvements.

G. 2004

On December 21, 2004, TIFA passed Resolution No. 2004-04. This resolution amended the Development Plan for Area No. 3 to provide for certain changes to the project list. These changes, in summary format, are as follows:

<u>Project</u>	<u>Cost</u>	<u>Fiscal Years</u>
• Trees and Landscaping	\$25,000	2005-2016
• Sidewalk Construction	\$73,600	2005-2016
• Streetscape improvements	\$1,500,000	2005-2016
• Land Acquisition and Redevelopment	\$400,000	7/1/04- 6/30/06
• Land Acquisition and Redevelopment	TBD	Annually until end of plan
• Land Acquisition and Redevelopment	\$3,000,000	2005-2016

H. 2006

On December 6, 2006, the City Commission passed Resolution No. 067-06. This resolution amended the Development Plan for Area No. 1 to provide for streetscape to Broadway including brick pavers, lighting, trees, planters, fountain, and bike racks. The amount noted in this amendment is \$500,000. The fiscal years which are noted are 2005-2018.

<u>Project</u>	<u>Cost</u>	<u>Fiscal Years</u>
• Broadway Streetscape (Main to St. Clair River) includes replacement Sidewalks w/decorative pavers accents, Historic lighting, street trees, planters And/or raised planting beds, fountain/water Feature, bike racks, trash containers, Landscaping features	\$500,000	2005-2018

I. 2007

1. October 18, 2007 Amendment to the Development Plan For Area No. 3

On October 18, 2007, the City Commission passed Resolution No. 075-07. This resolution amended the Development Plan for Area No. 3 to provide for yearly decorative plantings at various locations at a not to exceed price of \$8,600 per year. The fiscal years which are noted are as follows: 2007-2008; 2008-2009; and 2009-2010.

2. October 18, 2007 Amendment to the Development Plan For Area No. 2

On October 18, 2007, the City Commission passed Resolution No. 074-07. This resolution amended the Development Plan for Area No. 2 to provide for yearly decorative plantings at various locations at a not to exceed price of \$8,600 per year. The fiscal years which are noted are as follows: 2007-2008; 2008-2009; and 2009-2010.

3. October 18, 2007 Amendment to the Development Plan For Area No. 1

On October 18, 2007, the City Commission passed Resolution No. 073-07. This resolution amended the Development Plan for Area No. 1 to provide for yearly decorative plantings at

various locations at a not to exceed price of \$8,600 per year. The fiscal years which are noted are as follows: 2007-2008; 2008-2009; and 2009-2010.

J. 2008

1. November 20, 2008 Amendment to the Development Plan For Area No. 3

On November 20, 2008, the City Commission passed Resolution No. 061-08. This resolution amended the Development Plan for Area No. 3 to provide for the leasing of real property commonly known as 300 Broadway. The amendment provides for a figure of \$500,000 and notes years spanning from 2008-2013.

2. November 20, 2008 Amendment to the Development Plan For Area No. 2

On November 20, 2008, the City Commission passed Resolution No. 060-08. This resolution amended the Development Plan for Area No. 2 to provide for the leasing of real property commonly known as 300 Broadway. The amendment provides for a figure of \$250,000 and notes years spanning from 2008-2013.

K. 2015

1. Development Plan and Financing Plan for Area No. 3 is Extended To December 15, 2018

On December 29, 2015, the City Commission passed an amendment of the Development Plan and Tax Increment Financing Plan for Area No. 3. This Amendment extends the duration of the plans until December 15, 2018.

2. Development Plan and Financing Plan for Area No. 2 is Extended To December 15, 2018

On December 29, 2015, the City Commission passed an amendment of the Development Plan and Tax Increment Financing Plan for Area No. 2. This Amendment extends the duration of the plans until December 15, 2018.

3. Development Plan For Area No. 1 is Expires on December 15, 2018

As previously noted the Development Plan for Area No.1 expires on December 15, 2018.

The Development Plans and Financing Plans for Area No. 1, Area No. 2, and Area No. 3 all expire on December 15, 2018.
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III. REMAINING QUESTIONS

Included in the documents provided to me are charts which show the projects for each of the Development Areas and the status of the completion of some of those projects. These charts note that they were last amended on October 28, 2007. However, the chart for Area No. 2 and Area No. 3 seem to indicate that they were amended on November 20, 2008.

By way of example, the chart for Area No. 1 provides information regarding the type of improvement, the cost estimate, the financing and the dates. I have provided a shortened version of that chart below.

DEVELOPMENT AREA NO. 1 -- IMPROVEMENTS (Last Amended 10-28-2007)

No	Improvement	Cost Estimate	Finance	Dates
1	Tree Guards	\$15,000	Tax Increment Revenues	Completed
2	Pavers	\$5,000	Tax Increment Revenues	Completed
3	Waterfront Trees, benches,	\$25,000	Tax Increment Revenues	Completed
4	Lighting	\$25,000	Tax Increment Revenues	Completed
5	Seasonal Banners	\$3,000	Tax Increment Revenues	Completed
6	Seawall Improvement	\$100,000	Tax Increment Revenues	Phase 1 Completed
7	Seawall Improvement	\$930,000	Tax Increment Revenues	Phase 1 Completed
8	Non-Uniform Tree Replacement	\$4,000	Tax Increment Revenues	Completed
9	Annual Tree Maintenance	\$4,000	Tax Increment Revenues	Annually Until End of Plan
10	Street Paving	\$40,000	Tax Increment Revenues	Completed
11	Broadway Streetscape, pavers, lighting, trees, planters, fountain, bike racks	\$500,000	Tax Increment Revenues and Grant funding	2005-2018
12	Street Resurfacing Broadway	\$30,000	Tax Increment Revenues	In conjunction with streetscape
13	Land Acquisition	\$400,000	Tax Increment Revenues	2005-2018

14	Streetscape Broadway to Bridge	\$311,500	Tax Increment Revenues and Grants	2005-2018
15	Plantings	\$8,600 annually	Tax Increment Revenues	2007-2010
16	Park Landscape	\$10,000 annually	Tax Increment Revenues	2007-2018
17	Façade Improvements	\$50,000	Tax Increment Revenues and Grants	2007-2018

This chart raises the following questions regarding the current status of certain projects listed in Area No. 1

- What is the status of Item No. 11 -- Broadway Streetscape project?
- What is the status of Item No. 12 -- Street Resurfacing?
- What is the status of Item No. 13 -- Land Acquisition?
- What is the status of Item No. 14 -- Streetscape Broadway to Bridge?
- What is the status of Item No. 15 -- Plantings?
- What is the status of Item No. 16 -- Park Landscape?
- What is the status of Item No. 17 -- Façade Improvements?

DEVELOPMENT AREA NO. 2 -- IMPROVEMENTS
LAST AMENDED OCTOBER 18, 2007 MAYBE NOVEMBER 20, 2008

The chart for Area No. 2 similarly provides information regarding the type of improvement, the cost estimate, the financing and the dates. I have provided a shortened version of that chart below.

No	Improvement	Cost Estimate	Finance	Dates
1	IDC (Now EDA) fee	\$6,500	Tax Increment Rev.	Annually
2	W.W.T.P. Debt Service	\$35,000	Tax Increment Rev.	Annually
3	Seasonal Banners	\$13,000	Tax Increment Rev.	Completed
4	Bridge to Bay Bike Trail	\$80,000	Tax Increment Rev.	Year Not Assigned
5	Sidewalk M-29 East Side Alger to Bowery St.	\$10,000	Tax Increment Rev.	Completed
6	Pedestrian Lighting	\$45,000	Tax Increment Rev.	1998/2002
7	Trees	\$15,000	Tax Increment Rev.	Completed

8	King Road Extension & Short Cut Road Improvements	\$1,250,000	Tax Increment Rev.	Year not assigned
9	Sidewalk M-29 West Side	\$80,000	Tax Increment Rev.	Completed
10	M-29 Water Main Improvement Chartier to South City Limit	\$20,000	Tax Increment Rev.	Completed
11	Decorative Plantings at Various Locations in District	Not to Exceed \$8,600 annually	Tax Increment Rev.	2007-2010
	300 Broadway	\$250,000		2008-2013

This chart raises the following questions regarding the current status of certain projects listed in Area No. 2.

- What is the status of Item No. 1 -- IDC Fee?
- What is the status of Item No. 2 -- WWTP Debt Service?
- What is the status of Item No. 4 -- Bridge to Bay Bike Trail?
- What is the status of Item No. 6 -- Pedestrian Lighting?
- What is the status of Item No. 8 -- King Road Extension and Short Cut Road Improvements?
- What is the status of Item No. 11 -- Façade Improvements?

DEVELOPMENT AREA NO. 3 -- IMPROVEMENTS
LAST AMENDED OCTOBER 18, 2007 MAYBE NOVEMBER 20, 2008

The chart for Area No.3 similarly provides information regarding the type of improvement, the cost estimate, the financing and the dates. I have provided a shortened version of that chart below.

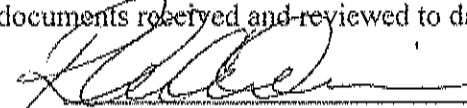
No	Improvement	Cost Estimate	Finance	Dates
1	WWTP Improvements	\$85,000	Tax Increment Revenues	Annually
2	IDC	\$6,500	Tax Increment Revenues	Annually
3	Seasonal Banners	\$13,000	Tax Increment Revenues	Completed
4	Sidewalk	\$30,000	Tax Increment Revenues	Completed
5	Bridge to Bay Trail	\$25,000	Tax Increment Revenues MDOT and DNR	Completed
6	Trees	\$25,000	Tax Increment Revenues	2005-2016
7	Sidewalk	\$73,600	Tax Increment Revenues	2005-2016
8	Streetscape	\$1,500,000	Tax Increment Revenues MDOT Grants	2005-2016
9	Land Acquisition	\$400,000	Tax Increment Revenues	7/1/04 – 6/30/06
10	Land Acquisition	TBD	Tax Increment Revenues	Annually until end of plan
11	Street Sidewalk	\$1,000,000	Tax Increment Revenues	1998-2010
12	Decorative Plantings	\$8,600 annually	Tax Increment Revenues	2007-2010
13	Land Acquisition	\$3,000,000	Bonds/Grants	2005-2016
	300 Broadway	\$500,000		2008-2013

This chart raises the following questions regarding the current status of certain projects listed in Area No. 3.

- What is the status of Item No. 1 -- WWTP Improvement?
- What is the status of Item No. 2 -- IDC?
- What is the status of Item No. 6 -- Trees?
- What is the status of Item No. 7 -- Sidewalk?

- What is the status of Item No. 8 -- Streetscape?
- What is the status of Item No. 9 -- Land Acquisition?
- What is the status of Item No. 10 -- Land Acquisition?
- What is the status of Item No. 11 -- Street Sidewalk?
- What is the status of Item No. 12 -- Decorative Plantings?
- What is the status of Item No. 13 -- Land Acquisition?

The third memorandum will set forth my opinions on what actions the City Commission should take based on my review of the statute and the documents received and reviewed to date.


Robert Charles Davis

ROBERT CHARLES DAVIS
City of Marine City Attorney

TO: City Manager, Elaine Leven
FROM: Robert Charles Davis
RE: 2016-10(C), Opinion of Counsel
TIFA Going Forward
DATE: January 12, 2017

I. PURPOSE

The purpose of this third (3rd) memorandum is to set forth a recommendation concerning TIFA.

II. SHORT ANSWER

The current Authority should terminate at its current expiration date of December 15, 2018. This termination should be managed in accordance with Section III. To the extent necessary, the Treasurer and the City Accountants may be necessary to complete some of the actions recommended.

III. ACTIONS LEADING TO TIFA EXPIRATION

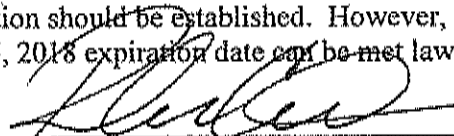
The following actions should be conducted/implemented to facilitate an end date of December 15, 2018. Each action should be on an agenda for a regular meeting going forward as directed by the City Commission. The City Commission should notify the Authority accordingly. The notification from the City Commission to the Authority should be in writing and should clearly and fully outline the request. The Authority may have to draw upon the knowledge and records of both the City Treasurer and the City Accounting experts.

1. Meeting 1 - March 2017. The Authority shall analyze and make a presentation to the City Commission about the status of each current development plan for Areas 1, 2 and 3. Each current development plan should be identified and supported. The status of each project should be detailed.
2. Meeting 2 - April 2017. The Authority shall analyze and make a presentation to the City Commission which details the current account balances. The presentation should be supported by records. This may require assistance from the City Treasurer and/or the City Accounting experts.

3. Meeting 3 - May 2017. The Authority shall analyze and make a presentation to the City Commission which details all of the Authority's financial obligations, including bonds, etc. Again, this should be supported by records. This may require assistance from the City Treasurer, the City Manager, the City Clerk and/or the City Accounting experts.
4. Meeting 4 - June 2017. The Authority shall analyze and make a presentation to the City Commission which details all monies owed to the Authority as the result of loans, etc. Again, this should be supported by records. This may require assistance from the City Treasurer, the City Manager, the City Clerk and/or the City Accounting experts.
5. Meeting 5 - August 2017. Based on an analysis of 1-4 above, if the City Commission determines that the current fund balances (plus receivables) exceed the total financial obligations, the City Commission shall take action to terminate the approved taxing plan which will cease revenue going forward to the Authority. The termination of the taxing plan shall be conducted in accordance with the law.
6. Meeting 6 - December 2017. The Authority shall analyze and make a presentation to the City Commission which details all payments to be made by the Authority, including a schedule, to ensure that all of the financial obligations of TIFA are satisfied in full by December 15, 2018.
7. Meeting 7 - February 2018. The City Commission shall evaluate the expected fund balances and prepare a strategy for the appropriate return of the funds in accordance with the legal requirements. The City Commission shall develop a final strategy which allows TIFA to expire on December 15, 2018. The City Commission shall obtain a legal opinion and an accounting opinion supporting the expiration process.

IV. CONCLUSIONS

These seven (7) proposed actions are designed to facilitate action by the City Commission to allow the Authority to expire effective December 15, 2018 in accordance with the law and with all information having been developed and presented to the City Commission in advance of the expiration date. These seven (7) actions shall be directed by the City Commission to the Authority and cooperative timelines for completion should be established. However, this process should start now to ensure that the December 15, 2018 expiration date can be met lawfully.



Robert Charles Davis