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CREATE “NEIGHBORHOOD IMPROVEMENT ZONE ACT”

House Bill 5608

Sponsor: Rep. Derrick Hale

Committee: Local Government and
Urban Policy

Complete to 2-15-01

A SUMMARY OF HOUSE BILL 5608 AS INTRODUCED 2-12-01

House Bill 5608 would create the “Neighborhood Improvement Zone Act,” allowing property owners to petition to establish one or more “neighborhood improvement zones” within a city or village for a period of seven years. A zone (i.e., neighborhood improvement zone) would be a public body corporate established for the purpose of enhancing the prosperity, enjoyment, appearance, image, and safety of the designated “zone area.” The majority of all parcels included in a zone area, both by area and by taxable value, would have to be assessable property, and a zone area would have to be contiguous, with the exception of public streets, alleys, parks, and other public rights-of-way. The governing body of the municipality in which the zone area was located would have to approve or reject the plan, and an approved plan would be submitted to property owners in an election conducted by mail. In this election, each property owner’s vote would be weighted in proportion to the amount of property that the person owned within the zone area, up to a 25 percent maximum. The bill also contains provisions for amending a proposed or adopted zone plan, extending an existing zone for additional seven-year periods, and dissolving a zone. More specifically, the bill would do the following:

Zone services, projects, and authority. A neighborhood enterprise zone could do any of the following:

- acquire, construct, improve, maintain, operate, or reconstruct park areas, planting areas, and related facilities;
- acquire, construct, clean improve, maintain, reconstruct, or relocate sidewalks, street curbing, street medians, fountains, and lighting;
- develop and propose lighting standards;
- acquire, plant, and maintain trees, shrubs, flowers, or other vegetation;
- provide or contract for security services with other public or private entities and purchase security equipment or technology;
- promote and sponsor cultural or recreational activities;
- engage in economic development activities including promoting business, retail, and industrial development; developer and business recruitment; business marketing and retention; public relations; and market research; and

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- engage in other activity with the purpose of enhancing the prosperity, enjoyment, appearance, image, and safety of the zone area.

The services provided by and projects of a neighborhood improvement zone would be the zone's own services and projects, which would be supplemental to the services, functions, and projects of the municipality in which the zone was located. The zone would not have any authority other than the authority described in the act.

Financial powers and responsibilities. A neighborhood enterprise zone could acquire, by purchase or gift, maintain, or operate real or personal property necessary to implement the act, and it could solicit and accept gifts or grants to further the (required) "zone plan." A zone could also sue or be sued.

A zone could contract with a nonprofit corporation or other public or private entity and could pay reasonable fees for services provided. A zone could also borrow money in anticipation of the receipt of assessments if the following conditions were satisfied: the loan would not be requested or authorized, or would not mature, within 90 days of the zone's seven-year operating period; the amount of the loan could not exceed 50 percent of the annual average assessment revenue of the zone during the previous year or, if the zone had been in existence for less than a year, the loan could not exceed 25 percent of the projected annual assessment revenue; the loan repayment period could not extend beyond the seven-year period; and the loan would be subject to the Revised Municipal Finance Act.

Petition to establish zone. A person (i.e., an individual, partnership, corporation, limited liability company, association, or other legal entity) could initiate the establishment of a neighborhood enterprise zone by delivering a petition to the clerk of the city or village containing the proposed zone area. The petition would have to include the boundaries of the zone area and the signatures of property owners of parcels representing not less than 30 percent of the property owners within the zone area. (The actual number of signatures required would depend upon the percentage of property owned by individual property owners. The weighting process is described below.) The petition would also have to include a listing, by tax parcel identification number, of all parcels within the zone area; the listing would have to separately identify assessable property.

Meeting and zone plan. After a petition was filed, the clerk would have to notify all property owners within the zone area of a public meeting of the owners regarding the establishment of the zone. The meeting would have to be held from 45 to 60 days from the date that the petition was filed. A notice, containing the meeting's location and scheduled date and time, would have to be sent to the property owners by first-class mail not less than 14 days prior to the meeting. At the meeting, the property owners could adopt a zone plan for submission to and approval by the governing body of the municipality in which the zone would be located. The zone plan would have to include a description of the boundaries of the zone area sufficient to identify each assessable property included; the proposed initial board of directors, except for a director who could be appointed by the city or village; the method for removal, appointment, and replacement of the board; a description of projects planned during the seven-year period including their scope, nature, and duration; an estimate of the total amount of expenditures for planned projects; a listing (as described above) of all parcels within the zone area; and a plan of

dissolution for the zone. If the proposed financing included assessments, the zone plan would also have to include the projected amount or rate of the assessments for each year and the basis upon which the assessments were to be imposed on assessable property. If a “weighted” majority of the property owners voting at the meeting approved the plan, the plan would be considered adopted by the property owners. Votes of property owners would be weighted in proportion to the amount that the taxable value of their real property for the preceding calendar year bears to the taxable value of all assessable property in the zone area. In no case, however, would the total number of votes assigned to any one property owner be equal to more than 25 percent of the total number of votes eligible to be cast in the election. An adopted zone plan would have to be presented to the clerk of the city or village.

Public hearing. If a zone plan was adopted and presented to the clerk, the governing body of the city or village would have to schedule a public hearing within 45 days to review the zone plan and proposed assessment and to receive public comment. The clerk would have to notify all owners of parcels within the zone area of the public hearing by first-class mail. At the public hearing, or at the next regularly scheduled meeting of the municipality’s governing body, the governing body would have to approve or reject the establishment of the zone and the zone plan as adopted by the property owners.

Rejection and submission of amended zone plan. If the governing body rejected the establishment of the zone and the zone plan, the clerk would have to notify all property owners within the zone of a reconvened meeting of the property owners. The reconvened meeting would have to be held between 10 and 21 days after the date of the governing body’s decision. The notice would have to be sent by first-class mail to the property owners at least seven days prior to the scheduled date of the meeting and would have to include the specific location, date, and time of the meeting, as determined by the original petitioner. At the reconvened meeting, the property owners could amend the zone plan if approved by a (weighted) majority of the property owners. The property owners could resubmit an amended zone plan to the municipality’s clerk (without a new petition) for approval or rejection at a meeting of the municipality’s governing body to be held within 60 days after the amended zone plan was resubmitted to the clerk. If the amended zone plan was not rejected within 60 days of the date that the plan was resubmitted, the plan would be considered approved by the municipality’s governing body. If the amended zone plan was rejected by the governing body, the plan could not be resubmitted without submitting a new petition.

Approval. Approval of a zone and zone plan would serve as a determination by the municipality that any assessment set forth in the plan, including the basis for allocating the assessment, was appropriate, subject only to the approval of the zone and zone plan by the property owners.

Election. If the governing body of the city or village approved—either expressly or tacitly—the zone and zone plan, the clerk would have to set an election not more than 60 days following the approval. The clerk would send to the property owners notice by first-class mail of the election not less than 30 days before the election and publish the notice at least twice in a newspaper of general circulation in the city or village where the zone was located. The first publication could not be less than 10 days or more than 30 days prior to the scheduled election

date. The second publication could not be published less than one week after the first publication. The original petitioner, the proposed board members, and the property owners could, at the clerk's option, assist the clerk of the city or village in conducting the election to keep the election expenses at a minimum. The election *would not* be subject to the Michigan Election Law.

All property owners as of the date of the delivery of the petition would be eligible to participate in the election. The election would be conducted by mail, and the question to be voted on would be the adoption of the zone plan and the establishment of the neighborhood improvement zone, including the identity of the initial board. A zone plan and proposal for the establishment of a zone, including the identity of the board, would be considered adopted upon the approval of more than 60 percent of the property owners voting in the election, with votes weighted as described. Adoption of a zone and zone plan would authorize the creation of the zone and the implementation of the plan for the seven-year period.

Zone's relation to city or village. Upon acceptance or rejection of a zone and zone plan by the owners, the city or village could require the resulting zone or the petitioner to reimburse the city or village for all or some of the reasonable expenses incurred to comply with the act. The governing body of the city or village could also forgive and choose not to collect such expenses. Moreover, the adoption of a zone and zone plan and the creation of a zone would not relieve the zone from following, and would not waive any of the municipality's rights to enforce, any applicable laws, statutes, or ordinances. A zone would have to comply with all applicable state and federal laws. To the extent that the city or village was not protected by the immunity conferred by Public Act 170 of 1964, a city or village that approves a zone within its boundaries would be immune from civil or administrative liability arising from any actions of the zone.

Board. A board of directors would have to manage the day-to-day activities of the zone and the implementation of the zone plan. The board would consist of an odd number of directors, from five to fifteen, and could include one director nominated by the chief executive of the city or village and approved by its governing body. The zone plan would have to prescribe the board's duties and responsibilities, which would have to include all of the following: developing administrative procedures for implementing the zone plan; recommending amendments to the plan; scheduling and conducting an annual meeting of the property owners; and developing a plan for the next seven-year period. Members of the board could not be compensated, but they could be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

Assessments. A zone could be funded in whole or in part by one or more assessments on assessable property, as provided in the zone plan. Such an assessment would be in addition to any taxes or special assessments otherwise imposed on assessable property. (An assessment by the zone would not constitute a special assessment collected under the General Property Tax Act.) An assessment could be imposed against assessable property only on the basis of the benefits to assessable property afforded by the zone plan. There would be a rebuttable presumption that a zone plan and any project specially benefits all assessable property in a zone area. If a zone plan provided for an assessment, the treasurer of the city or village (acting as the agent of the zone) would have to collect the assessment imposed by the board under the zone

plan on all assessable property within the area in the amount authorized by the plan. Assessments that are not delinquent would be collected by the treasurer from each property owners and remitted promptly to the zone, but assessment revenue would be the property of the zone and not the city or village. At the treasurer's option and direction of the treasurer, the zone could provide assistance in collecting the assessment to lower collection expenses. The zone could institute a civil action to collect any delinquent assessment and interest. An assessment would be delinquent if it was not paid within 90 days after it was due, as provided under the zone plan. The zone—not the treasurer—would collect delinquent assessments, which would accrue interest at a rate of one and one-half percent per month until paid. If any portion of the assessment was not paid within 90 days after it was due, that portion of the unpaid assessment would constitute a lien on the property. The lien amount would be for the unpaid portion of the assessment and would not include any interest.

Expenses. Expenses incurred in implementing any project or service of a zone would have to be financed in accordance with the zone plan. Assessment revenues for assessments imposed by the zone would be the zone's funds, and not funds of the state or of the city or village in which the zone was located. All money collected by the zone would have to be deposited in a financial institution in the name of the zone. ("Financial institution" would be defined as a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits were insured by an agency of the federal government and that maintained a principal office or branch office located in Michigan under state or federal laws.) Assessment revenues could be deposited in an interest generating account, and the zone could only use the funds to implement the zone plan. All expenditures by a zone would have to be audited annually by a certified public accountant. The audit would have to be completed within nine months of the close of the zone's fiscal year. Within 30 days after completing an audit, the accountant would have to transmit a copy of the audit to the board and would have to make copies of the audit available to the property owners and the public. If a required annual audit contained material exceptions that were not substantially corrected within 90 days after the delivery of the audit, the zone would be dissolved in accordance with the zone plan; the governing body of the city or village would have to approve the dissolution.

Annual activity and financial report. The board would have to publish an annual activity and financial report, which would have to be available to the public. Each year, every property owner would have to be notified of the availability of the report.

Amendments to zone plan. In general, amendments to a zone plan would be effective if approved by a (weighted) majority of the property owners voting on the amendment at the annual meeting of the property owners or at a special meeting called for that purpose. However, an amendment changing an assessment would not take effect unless it was also approved by the governing body of the city or village in which the zone was located.

Continuation of zone. Before a seven-year zone period expired, the board would have to notify property owners of a special meeting to approve a new zone plan for the next seven-year period. The notice, stating the specific location, scheduled date, and time of the meeting, would have to be sent by first-class mail at least 14 days prior to the scheduled meeting date. The zone would be reauthorized for an additional seven-year period if it was approved by 60 percent of the property owners—weighted, as described above—of assessable property voting at the special

meeting. If the new zone plan reflected any new assessment or extended an assessment beyond the period previously approved by the city or village, the governing body of the city or village would have to approve the new or extended assessment.

Dissolution of zone. If at least 20 percent of the property owners of assessable property within a zone area signed a petition to dissolve a zone, the board would place the issue on the agenda of the next annual meeting, if the next annual meeting was scheduled for not later than 60 days after receipt of the petition, or on the agenda of a special meeting to be held not later than 60 days after receipt of the petition. Notice of the meeting, including the location, date, and time, would have to be sent to all property owners by first-class mail at least 14 days prior to the meeting date. The zone would be dissolved if approved by more than 50 percent of the property owners of assessable property voting at the meeting. (The bill *does not specify* that the calculation of either the required 20 percent of property owners required for the dissolution petition or the more than 50 percent of property owners voting at the meeting required to approve a dissolution would be weighted.) A dissolution would not take effect until all contractual liabilities of the zone had been paid and discharged.

Upon dissolution of a zone, the board would have to dispose of the zone's remaining physical assets. The proceeds of these assets and all money collected through assessments that was not required to defray the zone's expenses would be refunded on a pro rata basis to persons from whom assessments were collected. If the board found that the refundable amount was so small as to make impracticable the computation and refunding of the money, it could transfer the money to the treasurer of the city or village for deposit in the city or village treasury's general fund. Upon dissolution of a zone, any other remaining assets of the zone would have to be transferred to the treasurer of the city or village for deposit in the city or village treasury's general fund.

Open Meetings Act and meeting location. The board would have to conduct its business at a public meeting held in compliance with the Open Meetings Act. A meeting of property owners to consider the (initial) establishment of a zone would also have to be a public meeting held in compliance with the Open Meetings Act. Public notice of the time, date, and place of the meeting would also have to be given, as required in that act. All meetings of the board or property owners would have to be conducted within the city or village in which the zone is, or is proposed to be, located.

Freedom of Information Act. Any writing prepared, owned, used, in the possession of, or retained by a zone in the performance of its duties would be a public record under the Freedom of Information Act.

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