

HOUSE BILL No. 5461

September 23, 2009, Introduced by Reps. Schuitmaker and Byrnes and referred to the Committee on Transportation.

A bill to provide for the establishment of a private source of funding for public infrastructure; to prescribe the powers and duties of certain public entities; to finance public infrastructure through public and private sources; to authorize the acquisition and disposal of interests in real and personal property; to authorize certain public and private entity partnerships; to authorize the creation and implementation of certain plans and negotiated benefit areas; to promote economic development; to authorize the use of tax increment financing; to prescribe powers and duties of certain state and local officials; to provide for rule promulgation; and to provide for enforcement of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the

1 "private investment infrastructure funding act".

2 Sec. 2. As used in this act:

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

9 (b) "Captured assessed value" means the amount in any 1 year
10 by which the current assessed value of the negotiated benefit area,
11 including the assessed value of property for which specific local
12 taxes are paid in lieu of property taxes as determined in section
13 3(c), exceeds the initial assessed value. The state tax commission
14 shall prescribe the method for calculating captured assessed value.

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

18 (d) "Department" means the state transportation department.

19 (e) "Fiscal year" means the fiscal year of the administering
20 agency.

21 (f) "Governing body" or "governing body of a municipality"
22 means the elected body of a municipality having legislative powers.

23 (g) "Initial assessed value" means the assessed value of all
24 the taxable property within the boundaries of the negotiated
25 benefit area at the time the tax increment financing plan is
26 approved, as shown by the most recent assessment roll of the
27 municipality at the time the resolution is adopted. Property exempt

1 from taxation at the time of the determination of the initial
2 assessed value shall be included as zero. For the purpose of
3 determining initial assessed value, property for which a specific
4 local tax is paid in lieu of a property tax shall not be considered
5 to be property that is exempt from taxation. The initial assessed
6 value of property for which a specific local tax was paid in lieu
7 of a property tax shall be determined as provided in section 3(c).

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

12 (i) "Municipality" means a city, village, or township.

13 (j) "Negotiated benefit area" means the area of tax capture
14 whose boundaries are described by the negotiating partnership.

15 (k) "Negotiating partnership" means a collaborative effort
16 between public entities governing the development and financing of
17 public facilities. The negotiating partnership shall execute a
18 written agreement which shall provide who the lead fiduciary agency
19 and the administering agency are. Members of the negotiating
20 partnership are as follows:

21 (i) The municipality or municipalities in which the public
22 facility is to be located.

23 (ii) One of the following:

24 (A) If the public facility is under the jurisdiction of the
25 department, the county road commission, or the drain commissioner,
26 then the department, the county road commission, or the drain
27 commissioner, as applicable, and the county in which the public

1 facility is located.

2 (B) If the public facility is under the jurisdiction of the
3 city, village, or township, then the county in which the public
4 facility is located.

5 Sec. 3. As used in this act:

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

8 (b) "Public facility" means a street, road, or highway, and
9 any improvements to a street, road, or highway, including street
10 furniture and beautification, park, parking facility, recreational
11 facility, right-of-way, structure, waterway, bridge, lake, pond,
12 canal, utility line or pipe, or building, including access routes
13 designed and dedicated to use by the public generally, or used by a
14 public agency. Public facility also includes public-transportation-
15 related infrastructure.

16 (c) "Specific local tax" means a tax levied under 1974 PA 198,
17 MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA
18 255, MCL 207.651 to 207.668, the technology park development act,
19 1984 PA 385, MCL 207.701 to 207.718, or 1953 PA 189, MCL 211.181 to
20 211.182. The initial assessed value or current assessed value of
21 property subject to a specific local tax shall be the quotient of
22 the specific local tax paid divided by the ad valorem millage rate.
23 The state tax commission shall prescribe the method for calculating
24 the initial assessed value and current assessed value of property
25 for which a specific local tax was paid in lieu of a property tax.

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

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

7 (i) Taxes under the state education tax act, 1993 PA 331, MCL
8 211.901 to 211.906, except that portion of the taxes under the
9 state education tax act, 1993 PA 331, MCL 211.901 to 211.906, not
10 to exceed 50% of those taxes as determined by the state treasurer
11 for a period not to exceed 15 years, as determined by the state
12 treasurer, if the state treasurer determines that the capture under
13 this subparagraph is necessary to reduce unemployment, promote
14 economic growth, and increase capital investment in the
15 municipality.

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

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

1 assessed value or specific local taxes attributable to the ad
2 valorem property taxes.

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

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

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

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

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

26 (2) If the governing body of the municipality intends to
27 proceed with entering into 1 or more negotiating partnerships, it

1 shall adopt, by majority vote of its members, a resolution to that
2 effect. The adoption of the resolution is subject to any applicable
3 statutory or charter provisions in respect to the approval or
4 disapproval by the chief executive or other officer of the
5 municipality and the adoption of a resolution over his or her veto.
6 A copy of the resolution shall be filed with the secretary of state
7 promptly after its adoption and shall be published at least once in
8 a newspaper of general circulation in the municipality.

9 (3) A municipality that has entered into a negotiating
10 partnership may enter into an agreement with an adjoining
11 municipality that has entered into a negotiating partnership to
12 jointly operate and administer those negotiating partnerships under
13 an interlocal agreement under the urban cooperation act of 1967,
14 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

15 Sec. 6. (1) Meetings and proceedings concerning a negotiating
16 partnership are subject to the open meetings act, 1976 PA 267, MCL
17 15.261 to 15.275.

18 (2) A writing prepared, owned, used, in the possession of, or
19 retained by the municipality concerning a negotiating partnership
20 is subject to the freedom of information act, 1976 PA 442, MCL
21 15.231 to 15.246.

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

24 (a) Study and analyze the need for public facilities within
25 the negotiated benefit area.

26 (b) That the administering agency shall plan and propose the
27 construction, renovation, repair, remodeling, rehabilitation,

1 restoration, preservation, or reconstruction of a public facility
2 in a negotiated benefit area. The administering agency is
3 encouraged to develop a plan that reasonably conserves the natural
4 features of the site and reduces impervious surfaces.

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

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

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

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

1 (g) That the administering agency shall fix, charge, and
2 collect fees, rents, and charges for the use of any facility,
3 building, or property under its control or any part of the
4 facility, building, or property, and pledge the fees, rents, and
5 charges for the payment of any debts incurred pursuant to the
6 negotiating partnership.

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

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

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

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

17 Sec. 8. (1) The development of the public facility may be
18 financed from 1 or more of the following sources:

19 (a) Funds from parties to the agreement with the negotiating
20 partnership, under the terms of the agreement.

21 (b) Funds of the members of the negotiating partnership, as
22 permitted by applicable law.

23 (c) Fees charged to users of the infrastructure project.

24 (d) Proceeds from the capture of taxes in a negotiated benefit
25 area under this act or other acts.

26 (e) Proceeds from a special assessment district.

27 (f) Federal loans, grants, aid, or appropriations, as

1 permitted by federal law.

2 (g) Donations, contributions, and gifts.

3 (h) Any other source as may be accepted by the negotiating
4 partners.

5 (2) Money received by the administering agency and not covered
6 under subsection (1) shall immediately be deposited to the credit
7 of the administering agency, subject to disbursement under this
8 act. Except as provided in this act, a municipality or public
9 entity that is part of a negotiating partnership shall not obligate
10 itself, and shall not be obligated, to pay any sums from public
11 funds, other than money received by the municipality or public
12 entity that is part of a negotiating partnership under this
13 section, for or on account of the activities of the administering
14 agency.

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

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

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

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

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

3 (3) The administering agency on behalf of the negotiating
4 partnership may pledge all or a portion of the tax increment
5 revenues as provided in the negotiating partnership to pay for the
6 public facility. The administering agency shall not pledge or
7 commit any other funds of a municipality to pay for the financing
8 or development of a public facility without the approval of the
9 municipality.

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

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

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

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

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

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

1 (f) The boundaries of the negotiated benefit area.

2 Sec. 10. (1) If an administering agency determines that it is
3 necessary for the achievement of the purposes of this act, the
4 administering agency shall prepare and submit a tax increment
5 financing plan to the governing body of the municipality. The tax
6 increment financing plan shall include a detailed plan of the
7 development of the public facility, the designation of boundaries
8 of the negotiated benefit area, a detailed explanation of the tax
9 increment procedure, the maximum amount of indebtedness to be
10 incurred, and the duration of the program, and shall be in
11 compliance with section 11. The tax increment financing plan shall
12 contain a statement of the estimated impact of tax increment
13 financing on the assessed values of all taxing jurisdictions in
14 which the negotiated benefit area is located. The tax increment
15 financing plan may provide for the use of part or all of the
16 captured assessed value, but the portion intended to be used by the
17 administrative agency shall be clearly stated in the tax increment
18 financing plan. The administering agency or municipality may
19 exclude from captured assessed value growth in property value
20 resulting solely from inflation.

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

23 (3) Before the governing body of the municipality approves the
24 tax increment financing plan, the governing body shall provide a
25 reasonable opportunity to the taxing jurisdictions levying taxes
26 subject to capture to meet with the governing body. The
27 administrative agency shall fully inform the taxing jurisdictions

1 of the fiscal and economic implications of the proposed negotiated
2 benefit area. The taxing jurisdictions may present their
3 recommendations at the public hearing on the tax increment
4 financing plan. The administrative agency may enter into agreements
5 with the taxing jurisdictions and the governing body of the
6 municipality in which the negotiated benefit area is located to
7 share a portion of the captured assessed value of the negotiated
8 benefit area.

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

11 (5) Except as otherwise provided in this subsection, not more
12 than 60 days after the approval of the tax increment financing
13 plan, the governing body in a taxing jurisdiction levying ad
14 valorem property taxes that would otherwise be subject to capture
15 may exempt its taxes from capture by adopting a resolution to that
16 effect and filing a copy with the clerk of the municipality in
17 which it is located and with the administrative agency. A taxing
18 jurisdiction levying ad valorem property taxes that would be
19 subject to capture may waive the 60-day period described in this
20 subsection by resolution. In the event that the governing body
21 levies a separate millage for public library purposes, at the
22 request of the public library board, that separate millage shall be
23 exempt from the capture. The resolution shall take effect when
24 filed with the clerk and remains effective until a copy of a
25 resolution rescinding that resolution is filed with that clerk.

26 Sec. 11. (1) The municipal and county treasurers shall
27 transmit tax increment revenues to the lead fiduciary agency

1 designated in the negotiating partnership.

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

14 (3) Annually, the lead fiduciary agency shall submit to the
15 governing body of each municipality that is part of the negotiating
16 partnership and the state tax commission a report on the status of
17 the tax increment financing account. The report shall include the
18 following:

19 (a) The amount and source of revenue in the account.

20 (b) The amount in any reserve account.

21 (c) The amount and purpose of expenditures from the account.

22 (d) The amount of principal and interest on any outstanding
23 debt.

24 (e) The initial assessed value of the negotiated benefit area.

25 (f) The captured assessed value retained by the administrative
26 agency.

27 (g) The tax increment revenues received.

1 (h) The number of public facilities developed.

2 (i) Any additional information the governing body considers
3 necessary.

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

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

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