

# Economic Development Tools—Waterfront TIF

## Introduction

A Water Resource Improvement Tax Increment Financing Authority (Waterfront TIF) allows the use of tax increment financing to control invasive species in inland lakes as well as to make necessary improvements to infrastructure on waterfronts.

## Authorizing Legislation

PA 57 of 2018, MCL 125.4101 et seq., authorizes a city, village, or township to create a Water Resource Improvement Authority.

## What Is the Purpose of the Act?

Some local governments have been struggling to fund efforts to control invasive species in inland lakes, as well as to make necessary improvements to infrastructure on land that is within one mile from the lake and that contains two or more public access points. This Act provides a tool for cities, villages, and townships to finance such improvements.

## How Can this Act Be Used?

Specifically, this Act allows TIF funds to be used to eliminate the causes and proliferation of aquatic nuisance species, but does not allow chemical treatment of the water in order to control these species. It also provides that these funds can be used to replace failing infrastructure, including on-site disposal systems for sanitary sewers and for stormwater sewer improvements.

Several municipalities may establish an authority cooperatively, e.g. several local units on the same lake. In addition, a municipality may establish multiple authorities, but a parcel of property may not be included in more than one authority.

## How Is this Act Different?

This Act is designed to deal with the limited and specific problems many municipalities are facing with inland lakes. An opt-out opportunity for other taxing units occurs during the plan adoption process instead of during the Authority creation process.

## What Are the Financing Options?

- Tax increment revenues
- Sale of bonds
- Donations
- Revenues from property or facilities owned or leased by the Authority
- Special assessments

## Establishing a Water Resource Improvement Authority

**Note:** The following steps are offered as a general guideline only. A municipality should consult with an attorney prior to initiating the process of creating a Water Resource Improvement Authority.

1. Adopt a resolution declaring intent.

2. Publish notice of a public hearing 20-40 days before the hearing, post the notice 20 days before the hearing in 20 places and mail the notice to the governing body of each taxing jurisdiction 20 days before the hearing.
3. Hold public hearing on the establishment of the authority and on the boundaries of the development area.
4. Adopt an ordinance not less than 60 days following the public hearing establishing the authority and designating the boundaries of the proposed development area.
5. File and publish the ordinance.
6. Appoint the board.

## Reporting Requirements

See p 4-6 (attached to this Fact Sheet) for 2019 reporting and public informational meeting requirements.

## Provisions of the Waterfront TIF Act

- Authorizes a city, village or township to create one or more Waterfront Resource Improvement Tax Increment Financing Authorities by ordinance after providing notice and holding a public hearing. The local unit shall also designate the development area boundaries by the ordinance.
- Provides for the supervision and control of an authority by a board that includes the city, village or township chief executive officer or his or her designee and five to nine additional members. At least one member of the board shall be a resident of the district or of an area within one mile of the district and a majority of the board shall have an ownership or business interest in the development area.
- Allows a board to hire a director to serve as chief executive officer of the authority, subject to the approval of the city, village or township governing body and other personnel as the board feels necessary.
- Allows an authority to prepare and submit to the city, village or township governing body a tax increment financing plan, which must include a development plan for the authority's development area. TIF plans and development plans are subject to public hearings and affected local taxing jurisdictions must be notified. The governing body of another taxing jurisdiction may, by resolution, exempt its taxes from capture during the plan adoption process. Further, taxes levied for public library purposes which are approved by voters after December 31, 2016 are exempt from capture unless a library board allows all or a portion of its taxes to be included as tax increment revenues under the terms of a written agreement with an authority.
- Provides for the financing of authority activities, including borrowing money and issuing bonds. The authority can issue negotiable revenue bonds under the Revenue Bond Act and can, with local unit approval, issue revenue bonds or notes to finance all or part of the costs of acquiring or constructing property. The local unit is not liable on such debt.
- Allows an authority to authorize, issue, and sell tax increment bonds to finance a TIF plan's development program. A city, village, or township may make a limited tax pledge to support the authority's TIF bonds or notes with governing body approval but needs voter approval to pledge its unlimited full faith and credit for authority bonds or notes.
- Requires a city, village, or township to dissolve an authority after it has completed its purpose, and provides that the authority's property and assets remaining after the satisfaction of its obligations would belong to the local unit.
- Allows the governing body, at the request of the Waterfront TIF Authority board, from time to time, to amend either the development or TIF plans. It may also amend the boundaries of the development area. However, caution should be taken amending either the plan or the boundaries as the other taxing units (county, schools, etc.) may opt out.

## Waterfront Improvement Authority Board Powers

- Preparing an analysis of water resource improvements and access to inland lakes issues taking place in the development area.
- Studying and analyzing the need for water resource improvements and access to inland lakes upon the development area.
- Planning and proposing the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility that may be necessary for a plan that the board believes will aid in water resource improvement to access to inland lakes in the development area. The board is encouraged to develop a plan that conserves the natural features, reduces impervious surfaces, and uses landscaping and natural features to reflect the predevelopment site.

- Planning, proposing, and implementing an improvement to a public facility within the development area to comply with the barrier free design requirements of the state construction code
- Developing long-range plans for water resource improvement and access to inland lakes within the district.
- Implementing in the development area any plan to achieve the purposes of the Act.
- Making and entering into contracts to exercise its powers and the performance of its duties.
- Acquiring, owning, conveying, or otherwise disposing of, or leasing land and other real or personal property necessary to achieve the purposes of the Act, and granting or acquiring licenses, easements, and options.
- The ability to improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, clear, improve, maintain, and repair, any public facility, building and any necessary or desirable appurtenances and to operate a water resource improvement necessary to achieve the purposes of the Act.
- The ability to fix, charge, and collect fees, rents, and charges for the use of any facility, building, or property it controls and pledge the collections for the payment of revenue bonds issued by the authority.
- Lease, in whole or in part, any facility, building, or property under its control.
- Accepting from public and private sources, grants and donations of property, labor, or other things of value.
- Acquiring and constructing public facilities.
- Preparing a water resource management plan in consultation with DEQ, DNR or any other entity with expertise in water quality management and invasive species management.

## Definitions

**Water resource improvement:** Enhancement of water quality and water-dependent natural resources, including the following:

- The elimination of the causes and proliferation of aquatic nuisance species, but not chemical treatment of water for aquatic nuisance control;
- Sewer systems that replace failing, on-site disposal systems;
- Stormwater systems; and
- Dredging, removal of spoils, or other enhancements or improvements that enhance navigability of a waterway.

**Water resource improvement district** (1) An inland body of water and land up to one mile from the shoreline of the inland lake that also contains at least one public access point; (2) an inland body of water contiguous to the shoreline of an inland lake that does not contain a public access point; or (3) the shoreline of a harbor on a Great Lake and one or more of the following: (A) Land up to one mile from the shoreline of the harbor; (B) A tributary to that Great Lake harbor up to five miles upstream from the shoreline of the Great Lake harbor; (C) Land up to one mile from each bank of the tributary described in (B).

**Inland Lake:** A natural or artificial lake, pond or impoundment. The term does not include the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area smaller than five acres.

This publication was written by the law firm of Miller Canfield.

## **New DDA/TIF Reporting and Public Informational Meeting Requirements Pursuant to the Recodified Tax Increment Financing Act 2018 PA 57 (Effective January 1, 2019)**

*Introduction:* The Recodified Tax Increment Financing Act, 2018 PA 57 (the “Act”), was signed into law on March 15, 2018 and took effect on January 1, 2019. The Act consolidates the legislative authority to create and operate tax increment authorities (other than brownfield redevelopment authorities) into a single statute.

The Act imposes new, uniform reporting requirements on most authorities<sup>1</sup> and their related municipalities, new public informational meeting requirements, authorizes the Department of Treasury to enforce the Act, and prohibits authorities in breach of these reporting requirements from capturing tax increment revenues in excess of the amounts necessary to pay bonded indebtedness and other obligations of the authority for the period of noncompliance.

The new reporting and public informational meeting requirements are set forth below:

*What:* **Send a Copy of Current TIF Plan to Treasury**  
*When:* No later than April 1, 2019  
*Why:* MCL 125.4912  
*How:* Authority must send a copy or an electronic mail link of its currently adopted development plan or its currently adopted tax increment finance plan, if separate from the development plan, to the Department of Treasury.

*What:* **Hold Two Informational Meetings Annually**  
*When:* Biannually beginning January 1, 2019  
*Why:* MCL 125.4910(4)  
*How:* The board of an authority shall hold at least 2 informational meetings (which may be held in conjunction with other public meetings of the authority or municipality). Notice must be published on the municipality's or authority's website not less than 14 days before the date of the informational meeting. Notice must also be mailed not less than 14 days before the informational meeting by the authority to the governing body of each taxing jurisdiction levying taxes that are subject to capture. As an alternative to mailing notice, the authority may notify the clerk of the governing body of each taxing jurisdiction by electronic mail.

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<sup>1</sup> These requirements apply to Downtown Development Authorities, Tax Increment Finance Authorities, Local Development Finance Authorities, Corridor Improvement Authorities, Water Resource Improvement Authorities, Neighborhood Improvement Authorities, and municipalities incorporating any one of these authorities.

- What:** **Post TIF Information on Municipal Website**
- When:** 180 days after end of authority's current Fiscal year as of Jan. 1, 2019
- Why:** MCL 125.4910(1)
- How:** The municipality must create a website or utilize the municipality's existing website with access to authority records and documents, including all of the following:
- (a) Minutes of all board meetings.
  - (b) Annual budget, including encumbered and unencumbered fund balances.
  - (c) Annual audits.
  - (d) Currently adopted development plan, if not included in a tax increment financing plan.
  - (e) Currently adopted tax increment finance plan, if currently capturing tax increment revenues.
  - (f) Current authority staff contact information.
  - (g) A listing of current contracts with a description of those contracts and other documents related to management of the authority and services provided to the authority.
  - (h) An updated annual synopsis of activities of the authority. An updated synopsis of the activities of the authority includes all of the following, if any:
    - (i) For any tax increment revenues described in the annual audit that are not expended within 5 years of their receipt, a description that provides the following:
      - (A) The reasons for accumulating those funds and the uses for which those funds will be expended.
      - (B) A time frame when the fund will be expended.
      - (C) If any funds have not been expended within 10 years of their receipt, both of the following:
        - (I) The amount of those funds.
        - (II) A written explanation of why those funds have not been expended.
    - (ii) List of authority accomplishments, including progress made on development plan and tax increment finance plan goals and objectives for the immediately preceding fiscal year.
    - (iii) List of authority projects and investments, including active and completed projects for the immediately preceding fiscal year.
    - (iv) List of authority events and promotional campaigns for the immediately preceding fiscal year.

- What:** **Send Annual Report to Treasury, Municipality and Taxing Units**
- When:** 180 days after the end of an authority's fiscal year
- Why:** MCL 125.4911(1)
- How:** An authority that is capturing tax increment revenues must submit a report, on a form to be provided by Department of Treasury, to the municipality, the governing body of each taxing unit levying taxes which are subject to capture by the authority, and the Department of Treasury. The report shall include all of the following:

- (a) The name of the authority.
- (b) The date the authority was formed, the date the tax increment financing plan is set to expire or terminate, and whether the tax increment financing plan expired during the immediately preceding fiscal year.
- (c) The date the authority began capturing tax increment revenues.
- (d) The current base year taxable value of the tax increment financing district.
- (e) The unencumbered fund balance for the immediately preceding fiscal year.
- (f) The encumbered fund balance for the immediately preceding fiscal year.
- (g) The amount and source of revenue in the account, including the amount of revenue from each taxing jurisdiction.
- (h) The amount in any bond reserve account.
- (i) The amount and purpose of expenditures from the account.
- (j) The amount of principal and interest on any outstanding bonded indebtedness.
- (k) The initial assessed value of the development area or authority district by property tax classification.
- (l) The captured assessed value retained by the authority by property tax classification.
- (m) The tax increment revenues received for the immediately preceding fiscal year.
- (n) Whether the authority amended its development plan or its tax increment financing plan within the immediately preceding fiscal year and if the authority amended either plan, a link to the current development plan or tax increment financing plan that was amended.
- (o) Any additional information the governing body of the municipality or the Department of Treasury considers necessary.