

# Economic Development Tools—Downtown Development Authority

## Introduction

A Downtown Development Authority (DDA) is designed to be a catalyst in the development of a community's downtown district. The DDA provides for a variety of funding options, including millage and tax increment financing, for public improvements in the downtown district.

## Authorizing Legislation

PA 57 of 2018, MCL 125.4101 et seq., allows the governing body of a city, village or township to create a Downtown Development Authority (with one or more separate and distinct geographic areas in a downtown district).

## What Is the Purpose of the Act?

The Act provides municipalities with a tool to halt property value deterioration, to increase property tax valuation, to eliminate the causes of the deterioration, and to promote economic growth in their business district.

## How Can this Act Be Used?

Specifically, this Act allows Tax Increment Financing (TIF) and millage revenues to be used for any public facility. The power and authority of the Act cannot be used for the personal benefit of a private person or corporation.

## How Is this Act Different?

One of the first economic development tools to be enacted by the legislature, a DDA can only be used by a municipality in an area principally zoned and used for business. Only one DDA may be established in each municipality, although more than one geographic area may be defined within the downtown district boundaries.

## What Are the Financing Options?

- Tax Increment Revenues
- Millage (up to 2 mills for municipalities with population of less than 1 million; up to 1 mill for municipalities with population over 1 million)
- Special assessments
- Revenue bonds
- Revenues from property owned or leased by the DDA
- Grants and/or donations

## Establishment of a DDA

**Note:** The following steps are offered as general guidelines only. A municipality should consult with an attorney prior to initiating the process of creating a DDA.

1. The governing body finds that:
  - there is a business district area within the municipality which it desires to designate as a “downtown district,”

- within such area the general property values are (and have been) deteriorating,
- property tax valuation must be increased in such area,
- the community must eliminate the causes of deterioration, and
- economic growth must be promoted in such area.

2. A resolution of intent shall set a date for a public hearing on the adoption of a proposed ordinance creating the authority.

3. Notice must be given of the public hearing by publication and posting within the district. It must also be mailed to taxpayers within the proposed district and to the governing body of each taxing jurisdiction levying taxes that would be subject to capture for tax increment revenues.

4. Governing body takes comments at the public hearing.

5. Within 60 days of the hearing, the other taxing jurisdictions may exempt its taxes from capture. Further, taxes levied for public library purposes which are approved by voters after December 31, 2016 are exempt from capture unless a library board or commission 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.

6. Not less than 60 days following the hearing, the governing body may adopt a proposed ordinance creating the DDA and designating the boundaries of the DDA district.

7. The ordinance must be published at least once in a local newspaper and filed with the Secretary of State.

8. The governing board of the DDA, consisting of eight to twelve members and including the chief executive officer of the municipality, shall be appointed or may, for municipalities of less than 5,000, be the same as the planning commission.

## Reporting Requirements

See p 5-7 (attached to this Fact Sheet) for 2019 reporting and public informational meeting requirements.

## Provisions of the Downtown Development Authority Act

- Authorizes a city, village, or township to create a Downtown Development Authority by ordinance after providing notice and holding a public hearing. The local unit shall also designate the DDA district area boundaries by ordinance.
- Provides for the supervision and control of an authority by a board that includes the municipality's chief executive officer and eight to twelve members appointed by the governing body. (The local governing body would decide the size of the authority board.) A majority of the board must be individuals with an ownership or business interest in property in the district and one member must reside in the district if there are more than 100 residents in the district.
- Allows the board to hire a director to serve as chief executive officer of the authority, subject to the approval of the municipality's governing body. Other personnel may be hired as deemed necessary by the board.
- 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 development area(s). TIF plans and development plans would be subject to public hearings. Affected local taxing jurisdictions must be notified.
- Allows an authority, with the approval of the governing body, to levy up to two mills on real and personal property in the district for municipalities with less than one million in population or up to one mill for municipalities with more than one million population.
- 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 and constructing property.
- Allows an authority to authorize, issue and sell bonds to finance a TIF plan's development program. The municipality can issue limited tax bonds payable from the authority's tax increment revenues or notes with governing body approval but is required to obtain voter approval to pledge its unlimited tax full faith and credit for bonds or notes.
- Allows 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 belong to the local unit.

- Allows the governing body, at the request of the DDA board, to amend either the development or TIF plans. It may also amend the boundaries of the DDA district. However, caution should be taken in amending the DDA district boundaries as the other taxing units (county, schools, etc.) may opt out of the TIF capture.

### **Downtown Development Authority Board Powers:**

- Prepare an analysis of economic changes taking place in the downtown district.
- Study and analyze the impact of metropolitan growth upon the downtown district.
- 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 economic growth of the downtown district.
- 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.
- Develop long-range plans, in cooperation with the agency which is chiefly responsible for planning in the municipality, designed to halt the deterioration of property values in the downtown district and to promote the economic growth of the downtown district, and take such steps as may be necessary to persuade property owners to implement the plans to the fullest extent possible.
- Implement any plan of development in the downtown district necessary to achieve the purposes of this act, in accordance with the powers of the authority as granted by this Act.
- Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.
- Acquire by purchase or otherwise, on terms and conditions and in a manner the authority considers proper or own, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests in property, 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 to that property.
- Improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, improve, maintain, repair, and operate any building, including multiple-family dwellings, and any necessary or desirable appurtenances to that property, within the downtown district for the use, in whole or in part, of any public or private person or corporation, or a combination of them.
- Fix, charge, and collect fees, rents, and charges for the use of any building, property, or facility under its control and pledge the fees, rents, and charges for the payment of revenue bonds issued by the authority.
- Lease any building or property under its control, or any part of a building or property.
- Accept grants and donations of property, labor, or other things of value from a public or private source.
- Acquire and construct public facilities.
- Create, operate, and fund marketing initiatives that benefit only retail and general marketing of the downtown district.
- Contract for broadband service and wireless technology service in the downtown district.
- Create, fund and operate retail business incubators with preference given to tenants who would provide goods and/or services unavailable or underserved in the DDA area.
- Create, fund and operate a loan program to pay for improvements for existing buildings located in the DDA district in order to make them marketable for sale or lease. Loans could be at or below market rate.

### **Definitions**

**Business District:** an area in the downtown of a municipality zoned and used principally for business.

**Downtown District:** part of an area in a business district that is specifically designated by ordinance of the governing body of the municipality pursuant to this act. A downtown district may include one or more separate and distinct geographic areas in a business district as determined by the municipality if the municipality enters into an agreement with a qualified township under section 3(7) or if the municipality is a city that surrounds another city and that other city lies between the two separate and distinct geographic areas. If the downtown district contains more than one separate and distinct

geographic area in the downtown district, the separate and distinct geographic areas shall be considered one downtown district.

**Public Facility:** a street, plaza, pedestrian mall, and any improvements to a street, plaza, or pedestrian mall including street furniture and beautification, park, parking facility, recreational facility, right-of-way, structure, waterway, bridge, lake, pond, canal, utility line or pipe, building, and access routes to any of the foregoing, designed and dedicated to use by the public generally, or used by a public agency. Public facility includes an improvement to a facility used by the public or a public facility, as defined by 1966 PA 1, which improvement is made to comply with the barrier free design requirements of the state construction code promulgated (PA 230 of 1972, MCL 125.1501).

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.