

Economic Development Tools—Local Development Financing Authority

Introduction

A Local Development Financing Authority (LDFA) allows the use of tax increment financing to fund public infrastructure improvements. It was created to replace the TIFA and to be more focused.

Authorizing Legislation

PA 57 of 2018, MCL 125.4101 et seq., allows the governing body of a city, village, or township to create a LDFA.

What Is the Purpose of the Act?

A LDFA is designed to promote economic growth and job creation, to provide a means for local units of government to eliminate the conditions of unemployment, underemployment, and joblessness and to promote economic growth.

How Can this Act be Used?

Communities across Michigan have utilized this tool to extend sewer and water lines and construct roads to service manufacturing, agricultural processing, and high technology operations.

How Is this Act Different?

A project must be a public facility for the benefit of “eligible property” which means land improvements, buildings, structures and machinery, equipment, furniture, and fixtures comprising an integrated whole located within a LDFA district of which the primary purpose is (i) manufacturing or processing of goods or materials, (ii) agricultural processing, (iii) high technology activity for research, product development engineering, laboratory testing, or development of industrial technology, (iv) production of energy, (v) a business incubator, or (vi) is an eligible next Michigan business. (MCL 125.2152)

Additionally, PA 242 of 2010, added transit-oriented development and transit-oriented facilities as eligible property in Local Development Financing Authorities and other economic development tools. “Transit-oriented development” means infrastructure improvements that are located within one-half mile of a transit station or transit-oriented facility that promotes transit ridership or passenger rail use. “Transit-oriented facility” means a facility that houses a transit station in a manner that promotes transit ridership or passenger rail use.

What Are the Financing Options?

- Tax increment revenues
- Contributions
- Revenues from property of an authority
- Proceeds of bonds
- Loans from the Michigan Strategic Fund or Michigan Economic Development Corporation

Establishing a Local Development Financing Authority

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 LDFA.

1. The municipality initiates the establishment of a LDFA by the adoption of a resolution of intent.
2. The resolution shall set a date for a public hearing on the adoption of a proposed ordinance creating the authority and designating the boundaries of the LDFA.
3. Notice must then be given of a public hearing by publication and mail to taxpayers within a proposed district and to the governing body of each taxing jurisdiction levying taxes that would be subject to capture for tax increment revenues.
4. At the public hearing, taxpayers must be heard regarding the creation and boundaries of the LDFA.
5. Within 60 days of the hearing, the governing body of another taxing jurisdiction may, by resolution, exempt its taxes from capture, and file the resolution with the clerk of the municipality. 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 revenue, under the terms of a written agreement with an authority.
6. Not less than 60 days after hearing, the municipality adopts resolution establishing LDFA and designating the boundaries of one or more districts.
7. Resolution shall be filed with the Secretary of State promptly and published once in a local newspaper.
8. Land may be added to or deleted from a district pursuant to the same requirements prescribed for adopting the resolution creating the LDFA.
9. The municipality appoints the members to the LDFA board.

Reporting Requirements

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

Provisions of the Local Development Finance Authority Act

- Authorizes a city, village, or urban township to create a LDFA by resolution after providing notice and holding a public hearing. The local unit shall also designate the development area boundaries by the resolution.
- Provides for the supervision and control of an authority by a board appointed by the chief executive officer and approved by the governing body of the local unit. Also, provides for representation by the county, junior or community college district and for any other local unit levied more that 20 percent of the total property tax levied in the district the year prior to its formation.
- Allows a board to hire a director to serve as chief executive officer of the authority, subject to the approval of the governing body of the city, village, or urban township, and other personnel as it feels necessary.
- Allows an authority to prepare and submit to the governing body a tax increment financing plan, which shall 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.
- 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.
- A city, village, or urban 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 tax full faith and credit for authority bonds or notes.
- Allows the governing body, at the request of the LDFA board, from time to time to amend either the development or TIF plans. It may also amend the district boundaries of the LDFA district. However, caution should be taken in amending the boundaries as the other taxing units (county, schools, etc.) may opt out.

Local Development Financing Authority Board Powers

- Study and analyze unemployment, underemployment, and joblessness and the impact of growth upon the authority district or districts.
- Plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility.
- Develop long-range plans, in cooperation with the agency which is chiefly responsible for planning in the municipality, to promote the growth of the authority district or districts, and take the steps that are necessary to implement the plans to the fullest extent possible to create jobs, and promote economic growth.
- Implement any plan of development 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 the board's powers and the performance of its duties.
- Acquire by purchase or otherwise on terms and conditions and in a manner the authority considers proper, own or lease as lessor or lessee, convey, demolish, relocate, rehabilitate, or otherwise dispose of real or personal property, or rights or interests in that 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 the property.
- Improve land, prepare sites for buildings, including the demolition of existing structures, and construct, reconstruct, rehabilitate, restore and preserve, equip, improve, maintain, repair, or operate a building, and any necessary or desirable appurtenances to a building, for the use, in whole or in part, of a public or private person or corporation, or a combination thereof.
- Fix, charge, and collect fees, rents, and charges for the use of a building or property or a part of a building or property under the board's 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.
- Lease a building or property or part of a building or property under the board's control.
- Accept grants and donations of property, labor, or other things of value from a public or private source.
- Acquire and construct public facilities.
- Incur costs in connection with the performance of the board's authorized functions including, but not limited to, administrative costs, and architects, engineers, legal, and accounting fees.
- Plan, propose, and implement an improvement to a public facility on eligible property to comply with the barrier free design requirements of the state construction code promulgated under the state construction code (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 authorities¹ 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.

¹ 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.