Bill Analysis

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Sub. H.B. 397*

123rd General Assembly
(As Reported by H. Local Government & Townships
to H. Rules & Reference)

Rep. Schuler

BILL SUMMARY

- Permits a municipal corporation to create a municipal development commission (MDC) to act as an urban renewal and redevelopment agency for the municipal corporation.

- Permits a MDC to raise funds by issuing notes and various types of securities, and through tax increment financing.

- Permits the municipal corporation creating a MDC to issue general obligation bonds to provide funds for the MDC, and to contract with the MDC to "complete other plans and implement related projects" that the municipal corporation delegates to it.

- Permits MDCs, in accordance with an approved redevelopment plan, to acquire property by purchase, eminent domain, or other specified manners and to construct, rehabilitate, conserve, manage, improve, sell, lease, and engage in other specified activities in relation to property in redevelopment areas.

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* *This analysis was prepared before the report of the House Local Government and Townships Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

CONTENT AND OPERATION

Background law

Current municipal urban renewal, redevelopment, and revitalization powers

Under current statutory law, municipal corporations are given authority to engage in various urban renewal, redevelopment, and revitalization activities. Of course, under their constitutional municipal home rule powers, municipal corporations can engage in a variety of development activities; however, those powers are limited by state statutes that restrict a municipal corporation's power to levy taxes and incur debt.[1] Thus, state statutes granting municipal corporations powers for urban renewal, redevelopment, or revitalization generally concentrate on these fiscal aspects that statutory law can regulate, rather than on organizational or police powers that municipal corporations can exercise under municipal home rule authority.

Under current statutory law, the following fiscal provisions have been enacted to facilitate municipal corporations engaging in urban renewal, redevelopment, or revitalization activities:

(1) Tax increment financing for improvements benefiting a parcel of property subject to the financing arrangement or, if a parcel is municipally owned and then leased or conveyed, for any municipally authorized purpose, provided that, if a parcel of property is used for residential purposes, it must be located in a blighted area of an impacted city;[2]

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[1] Sections 3, 7, and 13 of Article XVIII of the Ohio Constitution. See also Section 6 of Article XIII of the Ohio Constitution.

[2] Secs. 1728.01, 5709.40, 5709.41, and 5709.43.

(2) Issuance of bonds, including revenue bonds that pledge payments made under a tax increment financing arrangement, for acquiring and disposing of property and for other purposes related to urban renewal projects;[3]

(3) Issuance of revenue bonds to purchase or construct industrial, distribution, commercial, or research facilities and sell or lease them without competitive bidding to a community improvement corporation (a nonprofit corporation that a municipal corporation may designate as its agent in implementing plans for the general welfare of its inhabitants);[4]

(4) Creation of *community reinvestment areas* (areas where housing or historical structures are located and new housing or repair of existing housing is discouraged), where new structures and remodeling of structures may qualify for property tax exemption. The Ohio Department of Development is involved, along with the municipal corporation, in determining these areas.[5]

Political subdivisions and nonprofit corporations created for urban renewal, redevelopment, or revitalization purposes

While current statutory law regulates a municipal corporation's fiscal powers in relation to urban renewal, redevelopment, and revitalization activities, it also provides for the creation of other political subdivisions or nonprofit corporations that can engage in those activities. Some of these political subdivisions or nonprofit corporations can be created in whole or in part by a municipal corporation or can be designated as an agent of a municipal corporation. Examples of these political subdivisions and nonprofit corporations are *port authorities and community improvement corporations*.[6]

Another example is a *community urban redevelopment corporation*. These nonprofit corporations are created within a municipal corporation to undertake projects related to housing and urban rehabilitation. A corporation develops a rehabilitation plan that must be approved by the city council. The corporation then has authority to enter into a tax increment financing arrangement with the municipal corporation to carry out its projects.[7]

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[3] *Chapter 725.*

[4] *Chapters 761. and 1724.*

[5] *Secs. 3735.65 through 3735.70.*

[6] *Chapters 1724. and 4582.*

[7] *Chapter 1728.*

Changes proposed by the bill

Creation of municipal development commissions

The bill permits a municipal corporation to create by ordinance a municipal development commission (MDC), which is a *political subdivision* separate from the municipal corporation that creates it, but whose function is to act as an urban renewal and redevelopment *agency* for and within the boundaries of that municipal corporation.[8] In general, the MDC designates in "redevelopment plans" redevelopment areas within the municipal corporation and develops projects for those areas. The municipal corporation must approve the redevelopment plans and the projects for each redevelopment area described in them (as well as the financial plan for each project) before the MDC can carry out the projects. (Secs. 767.01(A) and (D) and 767.03(D).)

Organization and major duties of a MDC

A MDC consists of seven members appointed by the chief executive officer of the municipal corporation.[9] No more than 51% of the MDC's members can be members of the same political party; all MDC members must have expertise in municipal finance, business, development, construction, or another field of expertise required by the chief executive officer. Appointees (other than initial appointees) generally will serve four-year staggered terms; however, they also serve at the pleasure of the appointing chief executive officer. Thus, a MDC member may be replaced whenever that officer considers it appropriate. (Sec. 767.01(B).) The MDC's members must annually appoint a chairperson (sec. 767.01(E)). Compensation, if any, for the MDC members must be established in the ordinance creating the MDC (sec. 767.01(C)).

All MDC members are subject to all laws pertaining to public officials and public bodies. Examples of these laws specified in the bill are the following (sec. 767.01(D)):

- The Open Meetings Law (sec. 121.22--not in the bill).
- The Public Records Law (sec. 149.43--not in the bill).

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[8] The bill exempts retail sales to a MDC (as a "political subdivision" of the state) from the Sales Tax Law (sec. 5739.02(B)(1)).

[9] If the municipal corporation has a charter that provides for more than one chief executive officer, the legislative authority of the municipal corporation must determine which chief executive officer will make the appointments.

- The "Theft in Office" statute (sec. 2921.41--not in the bill).

- The "Having an Unlawful Interest in a Public Contract" statute (sec. 2921.42--not in the bill).

The MDC's primary responsibility is to adopt and implement one or more redevelopment plans, as explained below. The municipal corporation that creates the MDC also may contract with it to implement other projects within or outside of redevelopment areas, and may delegate to it the performance of housing or community development functions. Finally, the MDC has authority under the bill to promote business and housing within redevelopment areas, to conduct research regarding the prevention and elimination of urban blight, and to exercise other listed powers. (Sec. 767.02(E), (F), (H), (I), and (K).)

Redevelopment plans

The plan. Once created, or anytime requested to do so by the municipal corporation that creates it, or whenever it considers it appropriate, a MDC must prepare a redevelopment plan (or plans) that (1) sets out an area or areas that are "qualified" for redevelopment, (2) provides for redevelopment projects for each area, and (3) provides a financial plan to complete each of those projects (secs. 767.02(E) and 767.03(B)(1) and (C)). To *qualify as a redevelopment area*, an area must be detrimental to the safety, health, or welfare of the community by reason of deterioration, faulty planning, inadequate or improper facilities, deleterious land use, the existence of unsafe structures, or any combination of these situations (sec. 767.03(A)). Examples of property that meets these redevelopment area standards include the following (sec. 767.03(A)(1) through (5)):

(1) Property that has been subdivided into lots of such irregular shape and inadequate size as to affect the property being usefully developed;

(2) Property that has been developed without regard to the physical characteristics of the land, resulting in drainage and other problems related to topography;

(3) Property that has inadequate open space, utility services, and street access;

(4) Property subject to flooding;

(5) Property that currently is used in a manner that the MDC determines results in stagnation and unproductive land use, and the MDC further determines

that the property could be put to a more productive use that would contribute to the public health, safety, and welfare.

Each redevelopment plan must include a legal description and map for each of its redevelopment areas. For *each project* for each of those areas, the plan must at least describe the improvements to be made (listing the construction, reconstruction, demolition, and other actions involved), the land acquisitions to be made and their intended use (including sale, lease, or MDC use), and projected completion dates for each portion of the project. Specified financial details also are required for each project ("a financial plan"), and community benefits from each project also must be listed in the plan. If residents or businesses are to be relocated because of a project, the plan additionally must describe these proposed changes and any financial assistance to be provided and other costs involved in the relocations (whether permanent or temporary). (Sec. 767.03(C).)

Advisory committee. The bill requires the MDC to appoint an advisory committee consisting of as many members as it determines appropriate so that *public participation* in the development of any redevelopment plan is both encouraged and provided. The committee will serve without compensation and must submit to the MDC a suggested redevelopment plan that specifically provides *policies* to be accomplished by the MDC's redevelopment plan. The MDC must reflect these policies in the plan it prepares and must provide in that plan the financial methods needed to support these policies.[10] (Sec. 767.03(B)(2).)

Approval of the plan. Before submitting its redevelopment plan to the legislative authority for approval, the MDC must hold a meeting at which it invites *public comment*. Notice of this meeting is required to be provided both in a newspaper of general circulation in the municipal corporation and by regular mail to all owners of real property within each proposed redevelopment area and to all residents within that area. (Sec. 767.03(D)(2).)

Next, the redevelopment plan must be submitted to the legislative authority of the municipal corporation for approval. No plan can be implemented without this approval. In approving a redevelopment plan, the legislative authority must hold a hearing (at a specified time and after giving specified publication notice) on the plan and submit it for comments to the municipal planning commission or other body responsible for planning in the municipal corporation and to each

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[10] Similar to the MDC itself, meetings of the advisory committee are subject to the Open Meetings Law. The advisory committee may be divided into special subcommittees to address specific subjects, such as land use, housing, job creation, recreation, environmental issues, transportation, financial planning, and commercial development (sec. 767.03(B)(2)).

taxing district located in a proposed redevelopment area. After holding the hearing, the legislative authority can approve the plan or return it to the MDC with comments for improvement. The MDC may submit a "new plan," or resubmit a "revised plan," following such a return. (Secs. 767.03(D)(1) and 767.04.)

Once approved, the MDC may implement a redevelopment plan by, among other things, *appropriating property*, constructing or repairing buildings, demolishing and removing structures, and relocating residents and businesses.[11] As part of implementing the plan, the MDC also may lease or manage buildings within a redevelopment area. Whenever the MDC finds that its projected or actual cost of a project differs or is estimated to differ from the estimated cost set forth in the "financial plan" contained in its redevelopment plan by 15% or more, the MDC must resubmit the financial plan for approval to the legislative authority of the municipal corporation in the same manner as the original redevelopment plan was approved.[12] (Sec. 767.05.)

Funding sources

Tax increment financing. MDCs may raise funds through a tax increment financing method and issue securities in anticipation of those funds. The tax increment financing method *generally* permits *not more than 75% of the assessed valuation* of the increase in the assessed value of real property in a redevelopment area (an "improvement") to be exempted from all real property taxation for a period of up to 30 years (the "exemption period"). Instead of paying those exempted property taxes, a property owner will make annual payments in the same manner as and in an amount equal to the property taxes that would have been charged and payable against the improvement if it were not exempt from taxation; the owner of the improvement does not have to apply for the exemption. All of these payments in lieu of taxes are to be distributed by the county treasurer to the MDC. The MDC then must create a *municipal redevelopment debt retirement fund* for each redevelopment area, and the tax increment financing payments must be deposited into that fund. (Sec. 767.07(A), (B)(1), (C), and (D).)

With the approval of the relevant *board of education*, the increase in assessed valuation exempt from taxation can be greater than 75%--up to or equal to 100%. As part of this approval process, the board of education may (among other options) condition its approval on the MDC negotiating an agreement that

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[11] *If property is owned by a public entity, the MDC first must obtain a resolution approving the property's appropriation, from the legislative authority that approved the redevelopment plan.*

[12] *This 15% can be "greater or lesser than the approved" estimated cost of a project.*

provides for compensation to the school district equal in value to a percentage of the taxes that would be payable on the portion of the assessed valuation of the improvements in excess of 75% were that portion subject to taxation. The board of education also could waive its right to approve these additional exemptions. (Secs. 767.04(A) and 767.07(B)(2).)

As part of this tax increment financing method, the MDC may issue *redevelopment securities* that pledge and are payable solely from all or a portion of the payments in lieu of taxes, that must mature not later than 30 years following their issuance, that can be secured by a specified type of trust agreement, that are negotiable instruments, and that are subject to numerous other provisions of the bill. The proceeds of each issuance must be used for redevelopment projects, or any parts of those projects, designated in the redevelopment plan and for specified expenses of issuing the securities. Issued securities must explicitly state that they are not a general obligation of the MDC or the municipal corporation that created the MDC, but are payable solely from the receipts pledged for their payment. (Sec. 767.08.) [13]

***Additional debt issuance*.** A MDC may request the legislative authority of the *municipal corporation* that created it to *issue general obligation bonds* on behalf of the MDC to acquire real property or construct buildings, structures, or other improvements ("redevelopment facilities") as provided in a redevelopment plan *and* to pay the current expenses of the MDC. The legislative authority may issue those bonds in its discretion under the Uniform Public Securities Law. The *MDC* itself may *issue* under the Uniform Public Securities Law *self-supporting securities* generally for the same purposes (current expenses of the MDC are not included), where only the revenue derived from improvements provided for in the redevelopment plan may be pledged to support the securities. The securities must mature within 40 years after their issuance; their transfer and income is exempt from Ohio taxation; and they are subject to numerous other provisions of the bill. (Sec. 767.06.)

Other sources. A MDC may receive governmental or private grants as well as gifts, bequests, and devises. Funds also may come from the leasing or selling of acquired property and the leasing or management of buildings. (Secs. 767.02(B) and 767.05(A)(1) and (2) and (B).)

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[13] *The bill relatedly amends a section of the Uniform Public Securities Law and a section of the Tax Levy Law to generally include a MDC within the provisions of those laws relating to "fiscal officers," "subdivisions," "taxing authorities," and "taxing units" (secs. 133.01(L)(16), (MM)(16), and (NN)(10) and 5705.01(A), (C), and (H)). The bill, however, excludes a MDC from a section of the Tax Levy Law relating to an election on a question to levy a tax in excess of the ten-mill limitation (sec. 5705.19).*

Commission loans

A MDC may make loans for the acquisition or construction of facilities within a redevelopment area, and it has the power to adopt its own rules under the Administrative Procedure Act for the implementation of this loan authority as well as to carry out its other duties under the bill (sec. 767.02(M) and (O)).

Reports, budgets, and audits

Within 90 days after the end of its fiscal year, a MDC must file an *annual report* of its progress with the legislative authority of the municipal corporation that created it. The report must indicate the purposes and amounts for which funds were expended during the preceding fiscal year, compare its budget estimates with actual expenditures, and specify the total funds received during the preceding fiscal year from tax increment financing payments and from securities the MDC issued. (Sec. 767.09(A).)

In addition to the annual report, the commission must file an *annual budget* with the legislative authority by August 1 of each year. That budget must be for the current fiscal year and project the budget for the next five fiscal years. It also must include an analysis of the impact, if any, of the implementation of redevelopment plans on taxing districts within the redevelopment areas. (Sec. 767.09(B).)

Finally, a MDC must submit to a *general audit* by a qualified independent certified professional accounting firm selected by the MDC with the approval of the legislative authority. The cost of this audit must be paid for by the MDC. The bill does not indicate when or how often this audit is to be performed. (Sec. 767.10.)

Dissolution

The municipal corporation that creates a MDC, by adopting an ordinance, may dissolve it when all of the following have happened (sec. 767.11(A)):

(1) All indebtedness of the MDC has been fully paid, or the municipal corporation establishes a debt retirement plan for any of the MDC's unpaid indebtedness.

(2) The municipal corporation assumes the contractual rights and responsibilities of the MDC.

(3) The assets of the MDC are transferred to the municipal corporation.

The municipal corporation does not have to hire or provide employment for any employee of the dissolved MDC. (Sec. 767.11(B).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-23-99	p. 920
Reported by H. Local Gov't & Townships to H. Rules & Reference	- - -	- - -

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