



House
Legislative
Analysis
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PRINCIPAL SHOPPING DISTRICTS

Senate Bill 582 (Substitute S-2) with
House committee amendment
First Analysis (6-9-92)

Sponsor: Senator Michael Bouchard
Senate Committee: Corporations and
Economic Development
House Committee: Towns and Counties

THE APPARENT PROBLEM:

The shopping areas redevelopment act allows a city that has a master plan that includes the redevelopment of a principal shopping area to conduct projects such as the construction of malls and pedestrian walkways, the improvement of public streets, and the operation of off-street parking lots. ("Principal shopping area" means a portion of a city as defined in a redevelopment plan, which must be predominantly commercial and contain at least 10 commercial businesses.) Qualifying cities may finance and maintain the projects by issuing bonds or by levying special assessments against properties based on the extent to which they benefit from the entire project. One municipality that would like to revitalize its downtown shopping areas has expressed concern with the current provisions of the act. For example, the municipality maintains that the act doesn't specifically include development projects as being eligible for special assessment financing, leaving at least some officials with the impression that the act is to be used only in blighted or dilapidated areas. Further, the municipality feels that the act is not clear on whether the special assessments may be used to promote the shopping areas--an activity they say is vital if the downtown areas are to attract shoppers who otherwise frequent the suburban shopping malls. In addition, some believe that the act is somewhat vague on the issue of which businesses are eligible to be members of the management board of a shopping district project, and indeed does not have any provision that guarantees that the larger businesses in a project--which could be expected to pay more of a special assessment than the smaller businesses--would be represented on the board at all. Further, the act requires that the special assessments be levied according to applicable statutory or charter provisions, and some apparently are uncertain as to what constitutes an "applicable" provision. Finally, some businesses feel that the lack of a limit on the

amount of special assessments that may be imposed exposes them to the possibility of unreasonably high or otherwise unfair assessments. If some of these issues were addressed, however, supporters of downtown shopping areas believe that cities and businesses would be more encouraged to use the act to revitalize their shopping areas.

THE CONTENT OF THE BILL:

Public Act 120 of 1961, the shopping areas redevelopment act, currently permits a city with a master plan for its own physical development that includes plans for the redevelopment of a principal shopping area, to undertake various activities relative to a project, and to pay for these activities using various financing methods. The bill would clarify that a principal shopping district project would be considered a "public improvement" under the act, and that revenue raised by levying special assessments could be used for development and redevelopment projects. The bill would also amend the act to do the following:

- Expand the act's provisions to include development projects in principal shopping districts.
- Specifically allow a city to use special assessments levied for shopping area projects to promote economic activity in a principal shopping district.
- Specify the conditions under which a business could appoint a member to the management board of a district.
- Limit special assessments to finance a project to a maximum of \$10,000 per business, adjusted annually, and require the governing body of a city

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with a principal shopping district project to review the special assessments.

Master Plan. In order to conduct projects in conjunction with the principal shopping district, a city's master plan would have to include an urban design plan that either designated a principal shopping "district" (instead of an "area"), or included the development or redevelopment of a principal shopping district.

Additional Activities. The bill would expand the types of projects currently authorized by the act to include the maintenance of highways, walkways, parking lots, and parking structures, regulation of vehicular traffic, acquisition of real or personal property, and promotion of economic activity in the principal shopping district. Promotional activities could include, but would not be limited to, conducting market research and public relations campaigns, developing, coordinating and conducting retail and institutional promotions, and sponsoring special events and related activities. The bill would allow a business to prohibit the use of its name or logo in a public relations campaign, promotion, or special event or related activity for the district.

Management Board Composition. The act provides for the ongoing maintenance, supervision, and operation of a principal shopping area by a special board composed mainly of persons who own or operate businesses located in the designated area. Under the bill, the city would still appoint the board, but a majority of the members of the board of a principal shopping district would have to be nominees of individual businesses located within the principal shopping district. Further, a business could appoint a member of the board, who would be counted toward the majority required to be nominees of businesses located within the district, if all of the following requirements were met:

--The business was located within the principal shopping district and within a special assessment district.

--The principal shipping district was designated by the governing body of a city after the effective date of the bill.

--The special assessment district was divided into special assessment rate zones reflecting varying levels of special benefits, and the business was

located in the zone with the highest special assessment rates.

--The square footage of the business was greater than 5% of the total square footage of all businesses in that special assessment rate zone.

The bill specifies that if the boundaries of a principal shopping district were the same as those of a downtown district designated under the downtown development authority act, the governing body could provide that the members of the board of the downtown development authority, which managed the downtown district, would compose the board of the principal shopping district, in which case the act's provisions concerning membership on the management board for a project would not apply.

Residential Property. The act provides that property used for residential purposes would not be considered as having benefitted by a project for which special assessments are levied by a city. The bill specifies that a special assessment would have to be levied against a parcel on the basis of the special benefits to that parcel from the total project, and that to the extent a parcel was used for residential purposes, it would not be considered as having benefitted by a project for which special assessments were levied. Further, the bill would add a rebuttable presumption that a principal shopping district project specially benefitted all nonresidential properties located within the principal shopping district.

Special Assessments. In regard to a principal shopping district designated by the governing body of a city after the effective date of the bill, the special assessments levied annually on a parcel could not exceed the product of \$10,000 and the number of businesses on that parcel. A business located on a single parcel would not be responsible for a special assessment in excess of \$10,000 annually. Upon the creation of the special assessment district, a lessor of a parcel subject to a special assessment could unilaterally revise an existing lease to a business located on that parcel to recover from that business all or part of the special assessment, as was proportionate considering the portion of the parcel occupied by the business. The \$10,000 maximum would have to be adjusted annually, beginning January 1, 1994, according to the annual average percentage increase or decrease in the Detroit Consumer Price Index for all items as reported by the United States Department of Labor.

The bill also provides that, if a project in a principal shopping district designated by the city's governing board after the effective date of the bill were financed by special assessments, then the governing body would have to review the special assessments every five years, unless there were special assessment bonds outstanding.

Bonds. Currently, the act provides that if a city elected to levy special assessments to defray all or part of the cost of a project, the special assessments would have to be levied according to applicable statutory or charter provisions. The bill would add that if there were no applicable statutory or charter provisions, the assessments would have to be levied according to the statutory or charter provisions applicable to city street improvements. Further, if a city charter did not authorize special assessments for purposes of the act, the charter provisions authorizing special assessments for street improvements would be made applicable to the purposes of the act, without amendment to the charter. The act specifies that special assessment bonds may be issued according to statutory or charter authority for the issuance by the city of special assessment bonds for street improvements. The bill would allow the bonds to be issued under such authority only if there were no statutory or charter provisions applicable to the issuance of special assessment bonds for the project.

Parking Lots or Structures. Currently, under the act, a city may include as part of the cost of essential off-street parking lots in a redevelopment project the amount necessary to retire all or part of outstanding revenue bonds, providing that the city has already acquired one or more of such lots by issuing revenue bonds and the remaining parking lots are to be financed by special assessments and special assessment bonds. The bill would extend this provision to include parking structures, and would redefine a redevelopment project as a principal shopping district project.

Under the bill, the powers granted by the act would be in addition to and not in derogation of any other powers granted by law or charter.

MCL 125.981 et al.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have no fiscal impact on state government

and an indeterminate fiscal impact on certain cities. Cities that established or reorganized their principal shopping districts after the effective date of the bill could incur administrative expenses. For example, if a principal shopping district were established after the effective date of the bill and were financed by special assessments, the city would be required to review the special assessments every five years, unless special assessment bonds were outstanding. (6-4-92)

ARGUMENTS:

For:

Many older cities are experiencing a steady exodus of retail businesses to suburban shopping malls due partly to the types of service such as promotional activities and special events that mall management can provide. By specifically allowing cities to use special assessments levied under the shopping areas redevelopment act to promote principal shopping districts, the bill would help the cities to compete with the suburban malls in attracting shoppers and retail businesses and revitalizing their downtown areas. Moreover, by including development projects in the types of shopping area projects that could be financed with special assessments, the bill would make it clear that the shopping areas need not be dilapidated or deteriorating to qualify for help and that cities could take advantage of the act before it was too late to save their shopping areas.

Some of the other changes that the bill would make--such as specifying a maximum amount for a special assessment, providing for a review of special assessments by the governing body of the city involved, and specifying in greater detail the types of businesses that would be eligible to be members of a shopping district project's management board--would help protect the interests of the businesses involved in a shopping district project and, perhaps, thus encourage more cities to use the act to attract retail businesses to their downtown areas.

Response:

It is not clear that many of the provisions in the bill are actually needed. For example, although the act does not specifically state that a city may levy a special assessment to finance the promotion of economic activities in a shopping area, it does state that "The cost of the whole or any part of a redevelopment project as authorized in this act may be financed by one or more of the following methods.....[B]y the levying of special assessments against land or interests in land, or both, for

redevelopment and to defray the cost of maintenance, security, promotion, and continued operation of the redevelopment project." Further, since the act does not specifically define "redevelopment" other than to say that a redevelopment project is deemed to be a public improvement, the term could be construed to include development projects as well -- thus, it is not necessary to amend the act specifically to include development projects. Moreover, since a redevelopment project is considered to be a public improvement, any special assessment provisions applicable to public improvements -- such as provisions concerning city street improvements -- would be applicable to shopping area redevelopment projects; it is not necessary to amend the act to state this.

Against:

The \$10,000 cap on the special assessment that could be levied annually on any one business in a shopping district project is too high, especially if the assessment were to be used to finance promotional or other services of little benefit to the business.

Response:

If anything, there should be no maximum set at all on the special assessment a city may levy to finance a shopping district project. For some cities, the shopping areas redevelopment act may provide the only mechanism for raising revenue to revitalize their downtown shopping districts and a cap that is too low could make it difficult if not impossible for the cities to raise the revenue necessary to undertake any significant development or redevelopment projects. Further, there are sufficient provisions currently available, or that would be available under the bill, to ensure that businesses were treated fairly in the apportionment of special benefits and were accorded the right to protest the levying of a special assessment and to appeal the amount of the assessment. For example, the bill would guarantee that the larger businesses in a shopping district project, which presumably would pay a larger percentage of the assessment, would have a seat on the board that would manage the use of special assessment revenues for the project and could, therefore, oppose the use of the money for promotional and other activities with which they disagreed. Also, Public Act 162 of 1962 prescribes the method for giving notice of special assessment hearings to property owners and interested parties and requires the notice to inform the owner or party that he or she may appeal an assessment if he or she appeared and protested the

assessment at the hearing, and describes the manner in which the appearance and protest must be made. In addition, in Dixon Road Group v City of Novi (426 Mich 390), the Michigan Supreme Court specifies the conditions under which property is specially benefitted within the meaning of the law governing special assessments and says that there must be some proportionality between the amount of the special assessment and the benefits derived from it.

POSITIONS:

The Department of Commerce supports the bill. (6-4-92)

The Lansing Regional Chamber of Commerce supports the bill. (6-5-92)

The City of Petoskey supports the bill. (6-5-92)

The Grand Haven Chamber of Commerce supports the bill. (6-5-92)

The Michigan Merchants Council supports the bill. (6-5-92)

The Michigan Retailers Association supports the bill. (6-4-92)

The Battle Creek Central Business District Development Authority (CBDDA) supports the bill. (6-5-92)

The Michigan Municipal League supports the concept of the bill. (6-4-92)

The Michigan State Chamber of Commerce has no position on the bill. (6-5-92)