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Senate Bill 257 (as enacted)  
Sponsor: Senator Mike Kowall  
Senate Committee: Economic Development  
House Committee: Commerce

**PUBLIC ACT 126 of 2013**

Date Completed: 8-20-14

**CONTENT**

The bill amended Chapter 2 (Business Improvement Zone) of Public Act 120 of 1961, which provides for the creation, operation, and dissolution of principal shopping districts and business improvement zones, to do the following:

- Expand the activities that a business improvement zone (BIZ) may conduct.
- Require the majority of all parcels included in a zone area, by both area and assessed value, to be assessable property if the zone plan for the area provides for allocation of assessments based upon assessed value.
- Revise requirements for a petition to establish a BIZ and zone plan.
- Revise deadlines and notice publication requirements in the BIZ and zone plan approval process.
- Require the governing body of a city or village to consider the establishment of a BIZ and a zone plan if the plan meets certain conditions.
- Specify that a BIZ board member nominated by the chief executive of the city or village will be considered confirmed by the local unit's governing body if it does not disapprove the nomination within 60 days.
- Delete a provision under which a BIZ assessment was not a special assessment collected under the General Property Tax Act.
- Allow the lien on property subject to an unpaid BIZ assessment to include interest.
- Allow an unpaid BIZ assessment to be returned as delinquent by the local treasurer and be collected in the same manner as a delinquent tax special assessment, instead of constituting a lien.
- Provide that property is not subject to forfeiture, foreclosure, and sale for nonpayment of an assessment under Chapter 2, unless it also is subject to those actions for nonpayment of property taxes.
- Require the board of a BIZ to adopt a plan within 90 days to remedy material exceptions contained in an audit.
- Require 30%, rather 20%, of the owners of assessable property within a BIZ to sign a petition for its dissolution.
- Allow the merger of two or more business improvement zones within the same city or village.
- Delete a provision that restricted a city's or village's establishment of a BIZ if the city or village had established a business improvement district under Chapter 1 of the Act on the date Chapter 2 took effect.

The bill also repealed Section 10d of the Act, which had allowed the property owners within a proposed zone area to adopt a zone plan for submission to and approval by the governing body of the city or village in which the BIZ was proposed to be located.

The bill took effect on October 9, 2013.

## BIZ Activities

Chapter 2 of the Act authorizes a city or village to establish one or more business improvement zones. A BIZ is a public body corporate and may engage in specific activities for the benefit of property owners located in the zone. Under the bill, in addition to those listed activities, a BIZ may do all other acts and things necessary or convenient to exercise its powers, duties, and jurisdictions under the Act or other laws that relate to the purposes, powers, duties, and jurisdictions of the BIZ.

Chapter 2 allows a BIZ to contract with a nonprofit corporation or any other public or private entity and pay a reasonable fee to the corporation or entity for services provided. The bill specifies that two or more business improvement zones may contract with the same nonprofit corporation or public or private entity.

The bill provides that a BIZ has no authority other than the authority described in the Act or other Michigan laws. Previously, a BIZ had no authority other than that described in the Act.

## Zone Area Property

Previously, the majority of all parcels included in a zone area, both by area and by *taxable* value, had to be assessable property. Under the bill, that applies if the zone plan for the area provides a basis for allocating assessments other than assessed value. If the zone plan for the zone area provides for allocation of assessments based upon assessed value, the majority of all parcels included in a zone area, both by area and by *assessed* value, must be assessable property.

## BIZ & Zone Plan Petition

Chapter 2 allows a person to initiate the establishment of a BIZ by delivering a petition to the clerk of the city or village in which a proposed BIZ area is located. The petition must contain specified information. Under the bill, this includes an attached map and description of the geographic boundaries of the zone area sufficient to identify each assessable property included. Previously, the petition had to include the boundaries of the zone area.

The bill also requires a petition to contain an attached zone plan, which must include all of the following:

- The proposed initial board of directors for the zone, except for a member who may be appointed by the city or village.
- The method for removal, appointment, and replacement of the board.
- A description of projects planned during the "10-year period", including the scope, nature, and duration of the projects.
- An estimate of the total amount of expenditures for projects planned during the 10-year period.
- The proposed source or sources of financing for the projects.
- If the proposed financing includes assessments, the projected amount or rate of the assessments for each year and the basis upon which they are to be imposed on assessable property.
- A plan of dissolution for the BIZ.

In addition, the bill requires a petition to include a basis for allocating assessments in the zone area, including assessments based upon taxable value or assessments based upon assessed value.

(The "10-year period" is the period in which a BIZ is authorized to operate, beginning on the date that it is created or renewed and ending 10 calendar years after that date. Previously, Chapter 2 provided for a "7-year period" ending seven calendar years after the date a BIZ was created or renewed.)

Previously, after a petition was filed, the clerk had to notify all property owners within the zone area of a public meeting of the property owners regarding the establishment of the BIZ, to be held between 45 days and 60 days after the petition was filed. The bill deleted this requirement.

### BIZ & Zone Plan Approval Process

Under the bill, if a zone petition is delivered to the clerk of the city or village, its governing body must schedule a public hearing within 28 days to review the plan and any proposed assessment and to receive public comment. Previously, a public hearing had to be scheduled within 45 days if a zone plan was adopted and presented to the clerk.

At the public hearing or its next regularly scheduled meeting, the governing body must approve or reject the establishment of the BIZ and the zone plan. The bill requires the governing body to consider the establishment of a BIZ and a zone plan if all of the following apply:

- The zone plan complies with the requirements of Section 10c (which governs the establishment of a BIZ).
- The zone plan for the business improvement zone provides that the services to be provided by the BIZ and the projects under the zone plan would be supplemental to the services, projects, and functions of the city or village.
- The zone plan provides a basis for allocating assessments that complies with Chapter 2.

If the governing body rejects the BIZ and plan, the clerk must notify all property owners within the proposed zone of a meeting of the property owners. At that meeting, the property owners may amend the zone plan. The meeting must be held between seven days and 21 days after the date of the rejection. Previously, a "reconvened" meeting had to be held between 10 and 21 days after the rejection.

An amended zone plan may be resubmitted to the clerk for approval or rejection at a meeting of the governing body within 28 days after the amended plan is resubmitted to the clerk. If the amended plan is not rejected within 56 days of the date it is resubmitted, it is considered approved by the governing body. Previously, the meeting on an amended plan had to be held within 60 days after the plan was submitted, and the governing body had 60 days to reject it.

If an amended zone plan is approved or considered approved, the clerk must set an election within 49 days following approval. The clerk must send to the property owners notice by first-class mail of the election, at least 28 days before the election, and publish the notice at least once in a newspaper of general circulation in the city or village not less than seven days or more than 21 days before the election. Previously, the clerk had to set an election within 60 days after an amended plan's approval, send notice to property owners at least 30 days before the election, and publish the notice twice; and the first publication had to be at least 10 but not more than 30 days before the election.

All property owners as of the date of the petition's delivery are eligible to participate in the election, which must be conducted by mail. Previously, votes of property owners were weighted in proportion to the amount that the taxable value of their respective real property for the preceding calendar year bore to the taxable value of all assessable property in the zone area. Under the bill, votes are weighted in that manner if the zone plan provides a basis for allocating assessments based upon taxable value. If the zone plan provides for allocation of assessments based upon assessed value, the votes of property owners must be weighted in proportion to the amount that the assessed value of their respective real property for the preceding calendar year bears to the assessed value of all assessable property in the zone area. If the zone plan provides a basis for allocating assessments other than taxable value or assessed value, the votes of property owners must be weighted in proportion to the amount that the weighted value for their respective real property bears to the total weighted value of all assessable property in the zone area.

## Board of Directors

The day-to-day activities of a BIZ and implementation of the zone plan must be managed by a board of directors. The board must consist of an odd number of directors between five and 15 in number. The board may include one director nominated by the chief executive of the city or village confirmed by its governing body. The Act previously referred to such a member "approved" by the governing body. Under the bill, a nomination not disapproved by the governing body within 60 days stands as confirmed.

## BIZ Assessments

A BIZ may be funded in whole or in part by one or more assessments on assessable property, as provided in the zone plan. An assessment under Chapter 2 is in addition to any taxes or special assessments otherwise imposed on assessable property. Under the bill, the BIZ, with the approval of the board, may enter into agreements with one or more property owners in the city or village for the provision of business zone activities or services to the property owner or owners by the BIZ in exchange for monetary contributions to the BIZ from the property owner or owners. Such an agreement must be in writing and be made available to all owners of assessable property in the zone area.

Chapter 2 previously stated that an assessment under it was not a special assessment collected under the General Property Tax Act. The bill deleted that provision.

Under Chapter 2, if any portion of an assessment has not been paid within 90 days after it was due, that portion of the unpaid assessment constitutes a lien on the property. The lien amount is for the unpaid portion of the assessment and includes any applicable interest. (Previously, the lien could not include any interest.) Alternatively, under the bill, a delinquent and unpaid assessment may, at the request of the BIZ, be returned as delinquent by the treasurer of the city or village and be collected in the same manner as a delinquent tax special assessment along with any associated interest, fees, and costs under the General Property Tax Act. The property is not subject to forfeiture, foreclosure, and sale under that Act for nonpayment of an assessment under Chapter 2, however, unless the property also is subject to those actions for delinquent property taxes. If a parcel of assessable property that has a delinquent and unpaid assessment is sold to a purchaser who is not related or affiliated to the seller, as determined by the board of directors of the BIZ, the board may reduce or eliminate any delinquent and unpaid assessment on the parcel if it is not subject to forfeiture, foreclosure, and sale under the General Property Tax Act. If the delinquent property taxes are paid, the property may not be forfeited, foreclosed, and sold for an unpaid assessment under Chapter 2.

## Audits & Corrections

Under Chapter 2, expenses incurred in implementing any project or service of a BIZ must be financed in accordance with the zone plan. All expenditures by a BIZ must be audited annually by a certified public accountant. Previously, if an annual audit contained material exceptions, and those exceptions were not substantially corrected within 90 days of the delivery of the audit, the BIZ was required to be dissolved in accordance with the zone plan upon approval of the dissolution by the governing body of the city or village in which the BIZ was located. Under the bill, instead, if an annual audit contains material exceptions, the board of the BIZ must adopt a plan within 90 days to remedy the exceptions and forward a copy of that plan to the city or village.

## Reapproval of a BIZ

Under the bill, before the expiration of any "10-year period", the board of a BIZ must notify the property owners of a special meeting, at least 14 days before the meeting, to approve a new zone plan for the next 10-year period. Approval of the new zone plan at the special meeting by 60% of the property owners of assessable property voting at the meeting, with the votes being weighted as required under Chapter 2, constitutes reauthorization of the BIZ for an additional 10-year period. Previously, Chapter 2 contained these provisions but referred to a "7-year period".

### Dissolution of a BIZ

Upon written petition signed by 30% of the owners of assessable property within a zone area and submitted at least two years after the adoption of the BIZ and zone plan, the board must place dissolution of the BIZ on the agenda of the next annual meeting, if that meeting is to be held within 63 days after receipt of the petition, or at a special meeting to be held within 63 days after receipt of the petition. Previously, Chapter 2 required a petition to be signed by 20% of the property owners, and referred to a meeting held within 60 days after the petition was received.

Chapter 2 requires the BIZ to be dissolved upon a vote of more than 50% of the owners of assessable property voting at the meeting. The bill requires the votes to be weighted as specified under Chapter 2.

Under the bill, a dissolution may not take effect until the end of the second calendar year after the vote for dissolution or until all contractual liabilities have been paid and discharged, whichever is later.

### Merger of Zones

The bill allows two or more business improvement zones within the same city or village to merge into a single BIZ, if the board of each zone approves a merger agreement among the merging zones and the merger agreement also is approved by the governing body of the city or village.

A merger agreement must include, without limitation, a manner of selecting the board of directors of the merged BIZ, a zone plan for the merged BIZ, and a plan for establishing and collecting assessments under the merged BIZ.

### Business Improvement District

Previously, if at the time Chapter 2 took effect (March 1, 2002), a business improvement district established under Chapter 1 (Principal Shopping District) was located in a city or village, a BIZ could not be established under Chapter 2 within that city or village unless, within 180 days or during July 2005 or July of every third year after 2005, the governing body of the city or village adopted a resolution authorizing it to consider the establishment of a BIZ under Chapter 2. The bill deleted that provision.

MCL 125.990 et al.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill will have an indeterminate effect on local units that have established business improvement zones. To the extent that the changes allow zones to engage in other activities, consolidate or coordinate activities, and/or will alter the manner in which votes may be counted, if these changes result in a zone taking different actions, the bill may alter both revenue and/or expenditure. The actual impact will depend on the nature of any changes and the specific characteristics of the affected properties.

The bill will have no effect on State revenue or expenditure.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.