SB 238

Department of Legislative Services

Maryland General Assembly
2000 Session

FISCAL NOTE

Senate Bill 238 (Senator Hoffman, *et al.*)
Budget and Taxation

Baltimore City Charter Amendment - General Powers - Tax Increment Financing

This bill allows Baltimore City to more easily participate in tax increment financing by permitting the issuance of appropriation risk bonds. The pledge of tax increment revenues for the payment of these bonds is subject to an annual appropriation by the Mayor and City Council. The bill also stipulates that these bonds may not be backed by the full faith and credit or unlimited taxing authority of the city.

Fiscal Summary

State Effect: Potential significant increase in individual and corporate income and sales taxes revenues as a result of economic development and decrease in State aid to Baltimore City due to an increase in the city's wealth base.

Baltimore City Effect: Potential significant increase in property, income, hotel, and admission and amusement taxes and parking revenues. Potential decrease in State aid. Potential significant increase in annual debt service expenditures.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Chapter 624 of 1994 provided Baltimore City with the authority to participate in tax increment financing projects but prohibited it from pledging its full faith and credit or unlimited taxing power for the payment of such bonds. However, Article XI, Section 7 of the Constitution of Maryland provides that the Mayor and City Council of Baltimore may not create any public debt for Baltimore City without first seeking authorization from the General Assembly, and then submitting a proposed ordinance on the issue to the voters of Baltimore City for their required majority approval.

Background: Tax increment financing is a method of public project financing whereby the increase in the property tax revenue generated by new commercial development in a specific area, the tax increment financing (TIF) district, pays for bonds issued to finance site improvements, infrastructure, and other project costs located on public property.

The TIF district typically consists of a blighted area in need of economic revitalization. Usually, a sponsoring jurisdiction creates a TIF district in order to demonstrate a public commitment to the economic and social viability of an area, thereby encouraging privately financed economic development. In a TIF district, the local government "freezes" the existing property tax base, and uses the property tax revenue from this base as it would normally use such funds. Over time the partnership between the private sector and local government leads to enhanced economic growth which increases the district's taxable real property valuation above its frozen base. The difference between the current tax base and the frozen base in each future year is termed the incremental valuation. The local government apportions the property tax revenue on the incremental valuation to a special account to pay debt service on the bonds and to potentially pay for additional public expenditures in the TIF district. The TIF district ceases to exist upon the retirement of the bonds, and after that time all property tax revenue may be appropriated by normal means.

Legislative History in Maryland

The Tax Increment Financing Act was enacted by Chapter 498 of the Acts of 1980 and authorized counties and municipal corporations to issue bonds to finance the development of industrial, commercial, and residential areas. However, this Act did not apply to Baltimore City. The Act authorized counties and municipal corporations to establish TIF districts and pledge property taxes on the increased assessed values in those districts toward payment of bonds used to finance development in the districts. The legislation was enabling only. Therefore, counties and municipal corporations must implement the provisions of the Tax Increment Financing Act by local ordinance or resolution.

The enabling legislation authorized the governing bodies to pledge assets and revenues or its full faith and credit in lieu of paying the bonds from the special fund to which taxes on the tax increment are pledged by the governing body. However, if full faith and credit is pledged, the implementing ordinance is subject to any applicable referendum provisions.

Baltimore City

As noted previously, the Tax Increment Financing Act enacted in 1980 excluded Baltimore

City from its provisions. Due to various concerns, the city did not support statewide passage of the Act and successfully sought to be excluded. In 1992, the Baltimore Economic Incentives Task Force Report to the Mayor of Baltimore made various recommendations for encouraging greater private sector development in Baltimore City. The report concluded that Baltimore City needed to generate greater local property tax revenues by encouraging more citizens and businesses to relocate to Baltimore City. The use of tax increment financing as an economic development tool in the city was one of the recommendations of the task force's report.

Chapter 624 of 1994 provided TIF authority to Baltimore City. Apparently, by the early 1990s the governing authority of Baltimore City had concluded that the need to encourage greater economic investment in Baltimore City outweighed the factors raised earlier in opposition to statewide application of the Tax Increment Financing Act. Chapter 624 amended the Charter of Baltimore City by adding Section 62 to Article II-General Powers, providing the city with TIF authority similar to the authority provided to the other counties and municipal corporations under the Tax Increment Financing Act. However, Section 62 specifies that the city may not pledge its full faith and credit or unlimited taxing power to the payment of any bonds issued. Providing that the bonds could not be supported by the full faith and credit of the city was apparently designed to exclude TIF bonds from Article XI, Section 7 of the State Constitution in an attempt to avoid the voter approval requirement. However, Article XI, Section 7 of the Constitution of Maryland provides that the Mayor and City Council of Baltimore may not create any public debt for Baltimore City without first seeking authorization from the General Assembly, and then submitting a proposed ordinance on the issue to the voters of Baltimore City for their required majority approval. The voter approval requirement has been viewed as effectively rendering TIF unworkable in Baltimore City. In *Secretary of Transportation v. Mancuso*, 278 Md. 81, 86-87 (1976), the Court of Appeals held that the issuance of bonds that are to be redeemed from tax revenues creates debt even if there is no pledge of the State's full faith and credit or unlimited taxing power. Given this precedent, the Attorney General's office has advised that notwithstanding the fact that the bonds may not be supported by the city's full faith and credit, the issuance of tax increment bonds under the authority of Article II, Section 62 of the Baltimore City Charter would constitute debt within Article XI, Section 7 of the Constitution of Maryland.

Two potential legislative solutions have been suggested to make the potential use of TIF in Baltimore City more practical. One solution would be a constitutional amendment to repeal or alter Article XI, Section 7 of the State Constitution, thereby permitting Baltimore City to issue general obligation bonds or revenue bonds without the necessity of voter approval. Alternatively, it has been suggested that legislation could be enacted to amend Section 62 of the Baltimore City Charter by adding language that would permit Baltimore City to issue appropriation risk bonds. "Appropriation risk bonds" are bonds for which the governing authority would not irrevocably pledge the tax increment revenue toward repayment of the bonds. Rather, the revenues representing the levy on the tax increment are subject to annual appropriation by the governing authority. It has been suggested that this method of modified tax increment financing would conform to the requirements of Chapter XI, Section 7 of the Constitution of Maryland without the necessity of voter approval because the possibility of annual appropriation ensures that Baltimore City cannot create an obligation that must be redeemed at a future date by tax revenues. On February 9, 2000, the Office of the Attorney General provided advice of counsel that concluded that, "in the absence of a legally enforceable obligation to pay debt service, the opinions of the Court of Appeals suggest that appropriation-risk bonds would not be considered debt within the meaning of the clause in the Maryland Constitution regulating creation of debt in Baltimore City."

State Fiscal Effect: Depending upon the number of TIF districts designated by the city and the scope of the projects undertaken, the resulting economic development could increase individual and corporate income taxes and sales tax revenues for the State. For example, if a hotel and various other businesses are established in renovated areas, corporate income and sales tax revenues could potentially increase significantly.

Local Fiscal Effect: With each project undertaken there would potentially be a significant increase in property tax revenues and annual debt service expenditures. Property tax revenues would increase as the districts are renovated and the assessed value of the properties in the area increase, however, the increase in these revenues would be used to offset the related debt service. That is, the city would issue appropriation risk bonds in order to finance development and, consequently, their annual debt service payments would increase; however, the increase in property tax revenues would be used to pay the debt service.

Depending upon the number of TIF districts designated by the city and the scope of the projects undertaken, the resulting economic development could also increase a variety of other revenues for the city including: individual income, hotel and admissions and amusement taxes, and parking fee revenues.

There could be a decrease in State aid provided to the city due to additional property tax assessments included in the city's wealth base used for several aid programs. Baltimore City has stated that they believe the economic benefits in terms of job creation and growth in tax revenues in re-developed areas would more than offset any decrease in State aid.

Small Business Effect: As this bill would allow Baltimore City to more easily participate in Tax Increment Financing, it would likely spawn economic development in the areas designated by the city. This economic development could have a meaningful impact on multiple types of small businesses. It could provide renovation and building projects for existing small construction businesses or could provide incentives for the establishment of new small businesses that could locate in the renovated districts.

Additional Information

Prior Introductions: None.

Cross File: HB 335 (Delegate Marriot, *et al.*) - Ways & Means.

Information Source(s): Department of Assessments and Taxation, Baltimore City, Department of Legislative Services

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