

BUT IN DETROIT? BUSINESS IMPROVEMENT DISTRICTS AND THE BUSINESS OF IMPROVING DETROIT

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*Speramus Meliora; Resurget Cineribus (We Hope For Better
Things; It Shall Rise From The Ashes)*¹

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1. *Why Detroit*, INSIDE DETROIT, <http://www.insidedetroit.org/why-detroit> (last visited Sept. 19, 2013) (stating the motto of the City of Detroit).

I. INTRODUCTION

Cities across the world are in a constant state of metamorphosis and evolution, assiduously building new and prosperous environments until the momentum slows to a period of stability, encountering times of economic and political distress, and eventually requiring reinvention in order to regain their strength and prosperity.² Detroit is no exception to this state of constant change. Emerging as an industrial powerhouse at the turn of the twentieth century, Detroit grew to a population of nearly two million by 1950.³ Thereafter, the population and economic vitality steadily declined, currently leaving the city with fewer than one million inhabitants⁴ and facing significant financial difficulties.⁵ The time for reinvention is now, and Business Improvement Districts (BIDs) offer one innovative method for revitalizing the city.⁶

BIDs are a unique amalgamation of private and public entities.⁷ Although highly controversial,⁸ BIDs have the capacity to effectively and

2. JERRY MITCHELL, *BUSINESS IMPROVEMENT DISTRICTS AND THE SHAPE OF AMERICAN CITIES* 1 (2008).

3. The population of Detroit in 1950 was 1,849,568. Tina Granzo, *Statistically Speaking...*, HISTORY DETROIT, <http://historydetroit.com/statistics/index.php> (last visited Sept. 19, 2013).

4. According to the 2010 census, the population of Detroit was 713,777. *State & County Quick Facts: Detroit (city), Michigan*, U.S. CENSUS BUREAU (Jan. 10, 2013), <http://quickfacts.census.gov/qfd/states/26/2622000.html>.

5. *See Nowhere to Run: The Motor City Flirts with Fiscal Disaster*, ECONOMIST (Dec. 10, 2011), <http://www.economist.com/node/21541432>; Chris Isidore, *Detroit Teeters on the Brink Despite Autos Comeback*, CNN MONEY (Jan. 18, 2012, 5:14 AM), http://money.cnn.com/2012/01/18/news/economy/detroit_bankruptcy/index.htm. After completion of this Note, and prior to publication, the City of Detroit filed for bankruptcy. Matt Helms, et al., *Detroit Files for Bankruptcy, Setting Off Battles with Creditors, Pensions, Unions*, DETROIT FREE PRESS (July 19, 2013, 7:47 AM), <http://www.freep.com/article/20130718/NEWS01/307180107/Detroit-bankruptcy-filing-Kevyn-Orr-emergency-manager>.

6. *See infra* Part III.

7. Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 366 (1999). Most state legislation names such districts "Business Improvement Districts," the name used in this Note, although some states, including Michigan, refer to these districts by other names. *See, e.g.*, MICH. COMP. LAWS ANN. § 125.990-990m (West 2012) (Business Improvement Zones); TEX. LOC. GOV'T CODE ANN. § 372.001 (West 1987) (Public Improvement Districts); 35 ILL. COMP. STAT. ANN. 200/27-5 (West 1994) (Special Service Area).

8. *See, e.g., infra* notes 87-97 and accompanying text; ROBERT M. HAYES, REPORT TO THE BOARD OF DIRECTORS, GRAND CENTRAL PARTNERSHIP, ON THE GRAND CENTRAL PARTNERSHIP SOCIAL SERVICES CORPORATION 14 (1995) (criticizing the alleged removal of homeless persons from the districts); Briffault, *supra* note 7, at 430-46 (analyzing potential one-person, one-vote doctrine violation); Wayne Batchis, *Business Improvement Districts and the Constitution: The Troubling Necessity of Privatized Government for*

efficiently rejuvenate downtrodden urban cores.⁹ Authorized by state statutes, BIDs are able to allay the distress caused by the inadequacies of services provided by the city.¹⁰ BIDs provide a variety of services and programs such as security, sanitation, physical improvements and beautification, social services, and business-oriented programs.¹¹ In an economic climate that is hostile to increased taxes and increased services, BIDs offer business owners an effective and efficient method to improve the conditions in their neighborhoods.¹² These services are funded by incremental tax assessments imposed upon property owners within the defined district, which are reserved for use specifically in accordance with a district plan.¹³ As a quasi-governmental entity, BIDs are able to negotiate labor contracts free from the constraints of civil service rules and are thus free to enter into only the most efficient contracts.¹⁴

Although BIDs offer attractive rejuvenation mechanisms, they are not immune to harsh criticism.¹⁵ One significant challenge is an alleged equal protection violation¹⁶ by virtue of the weighted voting systems authorized by several states' statutes.¹⁷ Whether BIDs fall within the clear exceptions of the "one-person, one-vote" doctrine has yet to be considered by any court aside from the Second Circuit.¹⁸ Other critics

Urban Revitalization, 38 HASTINGS CONST. L.Q. 91, 98 (2010) (discussing the critique that BIDs will lead to the "Disneyfication" of public spaces).

9. See generally Heather Mac Donald, *Why Business Improvement Districts Work*, CIVIC BULL. (The Manhattan Inst. for Policy Research, N.Y.), May 1996, http://www.manhattan-institute.org/html/cb_4.htm; Brian R. Hochleutner, Note, *BIDs Fare Well: The Democratic Accountability of Business Improvement Districts*, 78 N.Y.U. L. REV. 374, 375-76 (2003); Briffault, *supra* note 7.

10. Hochleutner, *supra* note 9, at 375; Briffault, *supra* note 7, at 366.

11. Hochleutner, *supra* note 9, at 375; Briffault, *supra* note 7, at 366.

12. Hochleutner, *supra* note 9, at 375; Briffault, *supra* note 7, at 366.

13. See *infra* notes 30-31 and accompanying text.

14. See Mac Donald, *supra* note 9.

15. See *infra* notes 100-116 and accompanying text.

16. See *infra* notes 102-112 and accompanying text.

17. Certain states require weighting of votes at different stages of the BID process. See, e.g., MICH. COMP. LAWS ANN. § 125.990f(2)-(3) (West 2010) (stating that a proposed BID plan is adopted if 60 percent of the owners approve the plan, with their votes weighted "in proportion to the amount that the taxable value of their respective real property . . . bears to the taxable value of all property in the zone area"); N.Y. GEN. MUN. LAW § 980-m(a) (McKinney 2012) (allowing votes of property owners to "be weighted in proportion to the assessment levied or to be levied against the properties within the district").

18. See *Kessler v. Grand Cent. Dist. Mgmt. Ass'n*, 158 F.3d 92 (2d Cir. 1998).

contend that BIDs engender "wealth-based inequalities in the delivery of public services."¹⁹

This Note argues that the creation of additional BIDs in Detroit would be particularly valuable to the city, especially during its reinvention.²⁰ The single BID currently operating in the city is analyzed as well as the methods by which BIDs may address Detroit's budget quandary and tactics to minimize the costs imposed on business owners.²¹ Additionally, this Note addresses the constitutional challenges to BIDs, evaluating current Supreme Court jurisprudence with regard to the one-person, one-vote doctrine as well as one lower court's application of that doctrine to BIDs.²² Finally, this Note takes the position that in order to encourage and facilitate the creation of BIDs, Michigan should amend the statutory BID dissolution process, offer partial rebates for assessments paid, and establish a government agency to manage the relationship between the city and BIDs.²³

II. BUSINESS IMPROVEMENT DISTRICTS

A. What Are Business Improvement Districts?

BIDs offer one method to help rejuvenate urban areas.²⁴ BIDs are a unique partnership between private and public entities and have received nationwide attention.²⁵ Many proponents aver that BIDs successfully boost morale, clean up streets, and reduce crime.²⁶ Based on their success in many cities across the country, commentators have argued that BIDs are the means by which America's downtowns will be revitalized.²⁷ Commentators typically cite New York City as the best example of what BIDs are capable of accomplishing.²⁸ Although estimates vary widely, there are approximately 1,000 to 2,000 BIDs nationwide.²⁹

19. Briffault, *supra* note 7, at 371, 462-65.

20. *See infra* Part III.A.

21. *See infra* Part III.A.1.

22. *See generally* Kessler, 158 F.3d at 92.

23. *See infra* Part III.C.

24. DAVID L. CALLIES, ROBERT H. FREILICH & THOMAS E. ROBERTS, CASES AND MATERIALS ON LAND USE 637 (5th ed. 2008).

25. Briffault, *supra* note 7, at 366.

26. Jeff Stefan, *Business Improvement Districts and Michigan: An Analysis*, 49 WAYNE L. REV. 791, 792-93 (2003).

27. Hochleutner, *supra* note 9, at 375-76.

28. CALLIES ET AL., *supra* note 24, at 367.

29. *See* Briffault, *supra* note 7, at 366 (stating that the United States has over 1,000 BIDs). *See also* Mac Donald, *supra* note 9 (estimating the number of BIDs in the United States to be between 1,000 and 2,000 and stating that more are created every month).

State governments authorize the creation of such districts within a larger municipality, and property owners within the districts are subject to incremental tax assessments.³⁰ The assessments are collected along with property taxes, but the funds are reserved to provide specific services and improvements within the BID,³¹ supplementing services offered by municipalities.³² BID legislation typically excludes residential property owners, with assessments imposed solely on commercial property owners.³³ In an economic climate in which many cities face critical budget deficits,³⁴ BIDs are capable of offering services that may be otherwise unavailable.³⁵ Statutes define the benefits that BIDs may offer.³⁶ Authorized services usually include policing, sanitation, graffiti removal, and beautification (such as planting trees and flowers).³⁷

The efficiency offered by BIDs, as compared to city governments, is a vital component of their success.³⁸ BIDs are able to avoid the hassles of bureaucratic red tape, have the power to negotiate labor contracts, and are free from governmental restraints on hiring and firing decisions.³⁹ Significantly, BIDs focus on keeping the districts clean and safe during a time when local governments are either unwilling or unable to do so.⁴⁰ Numerous articles tout the positive impact BIDs have on urban morale.⁴¹

30. See CALLIES ET AL., *supra* note 24, at 367; Daniel R. Garodnick, *What's the BID Deal? Can the Grand Central Business Improvement District Serve a Special Limited Purpose?*, 148 U. PA. L. REV. 1733, 1735 (2000).

31. Garodnick, *supra* note 30, at 1735.

32. Briffault, *supra* note 7, at 369.

33. Mark S. Davies, *Business Improvement Districts*, 52 WASH. U. J. URB. & CONTEMP. L. 187, 192-93 (1997).

34. See, e.g., CITY OF L.A., PROPOSED FY 2011-2012 BUDGET (2011) ("The FY2011-12 Proposed Budget solves a projected \$457 million General Fund shortfall[.]"). See also Gus Lubin, *15 Mayors Who Must Shred the Budget to Save Their Bankrupt Cities*, BUS. INSIDER (Apr. 12, 2010, 12:16 PM), <http://www.businessinsider.com/americas-most-bankrupt-cities-2010-4> (discussing the deficits of U.S. cities: through fiscal year 2011, San Diego was facing a \$30 million deficit and Phoenix, Arizona was facing a \$241 million deficit).

35. Davies, *supra* note 33, at 188-89.

36. Davies, *supra* note 33, at 190. See also MICH. COMP. LAWS ANN. § 125.990(a)(1)(a)-(k) (West 2010); N.Y. GEN. MUN. LAW § 980-c (McKinney 2012).

37. Stefan, *supra* note 26, at 793. See also Mac Donald, *supra* note 9, at 1; MICH. COMP. LAWS ANN. § 125.990a(1)(a)-(k).

38. Mac Donald, *supra* note 9.

39. *Id.*

40. *Id.*

41. See, e.g., Mac Donald, *supra* note 9; Stefan, *supra* note 26, at 793.

B. BID Formation

The process of creating and establishing a BID varies from state to state.⁴² The process normally involves both private and city government action.⁴³ In many states, a petition signed by a certain percentage of property owners initiates the process.⁴⁴ The petition defines the boundaries of the district and includes a plan for the proposed benefits to be offered to the district's property owners.⁴⁵

Because many states also require municipalities to enact a local ordinance in order to formally establish a BID,⁴⁶ city hall becomes involved once the initial petition has been filed.⁴⁷ The ordinance monitors the budget and services as well as the BID's boundaries.⁴⁸ While statutes commonly grant affected property owners an opportunity to vote on the ordinance,⁴⁹ initiating the creation of a BID varies by state.⁵⁰

Once a BID has been formally established, all benefited property in the district is subject to the tax assessment.⁵¹ As explained above, the

42. Briffault, *supra* note 7, at 377. Compare MICH. COMP. LAWS ANN. §§ 125.990c, .990f (West 2010) (requiring a petition signed by at least 30% of property owners in the proposed district to initiate the process and a vote by mail, with approval of at least 60% of voting property owners, in order to establish a BID), PA. STAT. ANN. § 5403(1) (West 1996) (authorizing a municipal corporation to establish a business improvement district), and TEX. LOC. GOV'T CODE ANN. § 372.009 (West 2001) (requiring a petition signed by more than 50% of the property owners to initiate the establishment of a BID).

43. Briffault, *supra* note 7, at 378-79.

44. *Id.* at 347. Michigan requires such a petition to be signed by no less than 30% of the property owners within the district. MICH. COMP. LAWS ANN. § 125.990c(1)(b) (West 2010).

45. Briffault, *supra* note 7, at 378. A majority of states weight the property owners' votes "in proportion to the taxable value of their real property." *Id.*

46. *Id.*

47. *Id.* at 379.

48. *Id.*

49. *Id.* In Michigan, the proposed plan is adopted if more than 60% of the property owners vote to approve it. MICH. COMP. LAWS ANN. § 125.990f(3) (West 2010).

50. Some state legislatures authorize local governments to initiate BID formation. See, e.g., KAN. STAT. ANN. § 12-1788 (West 1991 & Supp. 1997). Others allow petitions submitted by property owners within the proposed district to initiate the process but do not allow protests. See, e.g., COLO. REV. STAT. ANN. § 31-25-1207 (West 1998); GA. CODE ANN. § 36-43-5 (West 1993). See also Briffault, *supra* note 7, at 380. Some states authorize establishment by city government action alone, requiring only that the city notify affected property owners. See, e.g., DEL. CODE ANN. tit. 22, § 1503 (West 1997); see also Briffault, *supra* note 7, at 380.

51. Garodnick, *supra* note 30, at 1736. This eliminates the "free rider" problem that would likely arise if an improvement district were purely voluntary, whereby some of the property owners may refuse to contribute but still reap the benefits provided. *Id.*

assessments are collected along with general property taxes,⁵² but the funds are returned to the BID to be used within the district.⁵³ A portion of the revenue from the assessment is used to create a BID management entity—or advisory body⁵⁴—which is responsible for furnishing the services and improvements that were identified in the adopted proposal.⁵⁵ Like the BID formation process, BID management boards vary from state to state.⁵⁶

C. BID Functions

Most BIDs are small areas, consisting of several blocks.⁵⁷ The relatively small size of the district allows services to be tailored to the specific needs of the property owners situated within the BID.⁵⁸ The types of services provided by BIDs are typically regulated by statute, defining which benefits a BID may offer property owners.⁵⁹ As one article explained, “BID activities may be grouped into four broad categories”: municipal services, physical improvements, “social services, and business-oriented programs.”⁶⁰

1. Municipal Services – Security and Sanitation

Supplementing traditional services offered by the city is the main focus of a majority of BIDs.⁶¹ In fact, one study showed BIDs in New York City spent an average of forty-five percent of their total revenue on sanitation and security services.⁶² Many cities are facing declining

52. Mac Donald, *supra* note 9.

53. *Id.*

54. Garodnick, *supra* note 30, at 1737.

55. Davies, *supra* note 33, at 188.

56. Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 517-18 (1997) [hereinafter *Sublocal Structures*]. In some instances, property owners in the district elect the advisory body, while a city itself may create an advisory body in others. *Id.* “Frequently, the city will create some administrative or advisory body, composed of representatives of businesses or landowners within the district.” *Id.*

57. Davies, *supra* note 33, at 193.

58. See Mac Donald, *supra* note 9.

59. See, e.g., MICH. COMP. LAWS ANN. § 125.990(a)(1) (West 2010); N.Y. GEN. MUN. LAW § 980-c (McKinney 1998); DEL. CODE ANN. tit. 22, § 1504 (West 1994).

60. Briffault, *supra* note 7, at 394.

61. *Id.* at 395.

62. *Id.* at 396 (citing COUNCIL OF THE CITY OF NEW YORK, STAFF REPORTS TO THE FIN. COMM., CITIES WITHIN CITIES: BUSINESS IMPROVEMENT DISTRICTS AND THE EMERGENCE OF THE MICROPOLIS 77, 81 (1995)). In 2009, sanitation services were the highest expense across all New York City BIDS, amounting to 23% of total BID expenses. N.Y. SMALL

budgets and may be compelled to reduce vital services.⁶³ BIDs offer property owners an alternative to losing those services by supplementing city services.⁶⁴

Most BID legislation authorizes additional security services,⁶⁵ and BIDs vary in the manner in which security services are provided.⁶⁶ One method is to employ a security force independent of the city police department.⁶⁷ For example, the Grand Central BID in New York City employs a security force that logged over 83,000 hours patrolling the district.⁶⁸ In addition to maintaining radio communication with the New York City Police Department,⁶⁹ this security force makes arrests, assists with crowd control and fire safety, and quickly responds to traffic incidents.⁷⁰ Similarly, the Downtown DC BID provides a team of security officers independent of the local police department in the District of Columbia.⁷¹

Alternatively, BIDs may opt to work in conjunction with the municipality to secure additional police officers for the district.⁷² For example, the West Vernor and Springwells BIDs work with the Detroit Police Department to hire police officers to patrol the district during their

BUS. SERVS., BID ANNUAL REPORT SUMMARY FISCAL YEAR 2009, at 8 (2009), *available at* http://www.nyc.gov/html/sbs/html/neighborhood/pdfs/BID_AnnualReport.pdf.

63. *See supra* note 5 and accompanying text.

64. *See* Hochleutner, *supra* note 9, at 375.

65. *See, e.g.*, N.Y. GEN. MUN. LAW § 980-c(5) (McKinney 1998) (authorizing “services to enhance the security of persons and property within the district”); MICH. COMP. LAWS ANN. § 125.990a(1)(e) (West 2010) (authorizing the BID to “[p]rovide or contract for security services with other public or private entities and purchase equipment or technology related to security services within the zone area”); KAN. STAT. ANN. § 12-1784(b) (West 1991 & Supp. 1997) (authorizing “additional public services [including] the security of persons and property”).

66. Briffault, *supra* note 7, at 398.

67. *Id.*

68. GRAND CENT. P'SHIP, GRAND CENTRAL PARTNERSHIP 2010 ANNUAL REPORT 6 (2011), *available at* http://grandcentralpartnership.org/wp-content/uploads/2011/08/GCP_2010AR_Final2.pdf. The Grand Central BID also installed fifteen security cameras near Grand Central Terminal. *Id.*

69. Garodnick, *supra* note 30, at 1740.

70. *Id.*

71. *Safety/Hospitality and Maintenance*, DOWNTOWN D.C. BUS. IMPROVEMENT DISTRICT (2013), <http://www.downtowndc.org/programs/sam>. The officers wear a distinctive uniform and maintain direct contact with local law enforcement. *Id.* These security officers are also available to escort individuals to “garages or public transportation.” *Id.*

72. Briffault, *supra* note 7, at 397.

off-duty hours.⁷³ Other BIDs have provided financing to local law enforcement agencies to build new substations within the district.⁷⁴

BIDs also provide sanitation services to the district.⁷⁵ Rather than replacing services offered by the local unit of government, BID sanitation services act as a supplement.⁷⁶ Typically, these services include trash collection, graffiti removal, street and sidewalk sweeping, and snow removal.⁷⁷ Many articles applaud the attention paid to cleaning up the district.⁷⁸

2. Physical Improvements in the District

Another benefit that most BIDs provide is physical improvement within the district.⁷⁹ As one author noted, BIDs pay “meticulous attention to cleanliness and customer satisfaction.”⁸⁰ Many BIDs use a portion of the district’s assessment revenue to repair and improve streets and sidewalks, remove graffiti, plant flowers and trees, and provide

73. Interview with Theresa Zajac, Director of the West Vernor & Springwells BID, in Detroit, MI (Nov. 4, 2011).

74. See Briffault, *supra* note 7, at 397.

Philadelphia’s Center City District . . . financed a new police substation for the downtown area. New York’s Downtown-Lower Manhattan BID recently concluded an arrangement with the New York Police Department in which the BID would finance the \$5 million cost of a new substation for the Wall Street area if the [NYPD] would relocate to the new facility some police officers assigned to the precinct that covers Wall Street but stationed in a facility outside the financial district.

Id.

75. *Id.* at 396. See also Garodnick, *supra* note 30, at 1740.

76. Briffault, *supra* note 7, at 400.

77. See *id.* at 396. See also Garodnick, *supra* note 30, at 1740 (reporting that the Grand Central Partnership BID has a thirty-eight person sanitation force to clean streets and sidewalks, wash street signs, paint fire hydrants, and remove graffiti in the District); *Maintenance & Beautification*, DOWNTOWN D.C. BUSINESS IMPROVEMENT DISTRICT (2011), <http://www.downtowndc.org/programs/maintenance-and-beautification> (explaining that the BID employs a team to “collect trash and litter, sweep sidewalks, remove gum and graffiti”).

78. See, e.g., Mac Donald, *supra* note 9, at 3; Briffault, *supra* note 7, at 396-97; Anna Shen, *Westwood Business Improvement District Works to Clean Up the Village*, UCLA DAILY BRUIN (Oct. 27, 2011), http://www.dailybruin.com/index.php/article/2011/10/westwood_business_improvement_district_works_to_clean_up_the_village (quoting the executive director of the Westwood Village Improvement Association, who stated, “[T]he results have been like ‘night and day’”).

79. See Mac Donald, *supra* note 9, at 3.

80. *Id.*

additional lighting.⁸¹ Not only do such improvements make the district more aesthetically pleasing and convenient, they also function as a method to improve safety.⁸²

In an effort to create a distinct and recognizable image, some BIDs implement unique physical improvements, which helps to facilitate marketing the district to the public.⁸³ For example, the Grand Central BID in New York City installed “red granite signature corners”⁸⁴ and the Downtown DC BID in Washington D.C. placed its distinct BID logo on litter baskets in the area.⁸⁵

3. Social Services and Business-Oriented Programs

Focusing on addressing homeless populations within the district is frequently the chief social service function undertaken by BIDs.⁸⁶ These programs may include providing “temporary shelter, food, employment, . . . or referrals to social services agencies.”⁸⁷ In an effort to address homelessness, the Downtown DC BID identified seven essential factors: “[o]utreach services, social services and mental health programs, shelters, street food programs, education, housing and funding.”⁸⁸ The BID employs a team that works in conjunction with a psychologist, social workers, and an addiction counselor and has successfully “moved 114 homeless persons into permanent supportive housing.”⁸⁹

81. Briffault, *supra* note 7, at 394. Some BIDs have even used funds for “parking garages, pedestrian malls, and physical improvements to ease transportation access to older towns.” *Id.*

82. *Id.*

83. *Id.* at 395.

84. *Id.* Other BIDs may implement a unique design “in lighting, benches, banners, and informational kiosks” to accomplish the goal of creating a distinct image. *Id.*

85. *Environmental Improvements*, DOWNTOWN D.C. BUS. IMPROVEMENT DISTRICT (2011), <http://www.downtowndc.org/programs/environmental-improvements>.

86. See Briffault, *supra* note 7, at 401. See also Heather Mac Donald, *BIDs Really Work*, CITY J., http://www.city-journal.org/html/6_2_a3.html (last visited Mar. 24, 2013) [hereinafter *BIDs Really Work*] (stating that the Grand Central BID used revenue in part for “providing services to the homeless”). However, many states authorize alternative social services, such as employee training or childcare. See Briffault, *supra* note 7, at 401 n.217.

87. Briffault, *supra* note 7, at 402.

88. *Downtown Business Improvement District Champions Innovative Homeless Housing Initiatives*, DOWNTOWN D.C. BUS. IMPROVEMENT DISTRICT (Oct. 13, 2008), <http://www.downtowndc.org/news/downtown-business-improvement-district-champions-innovative-homeless-housing-initiatives>. The Downtown DC BID employs “a specially trained team of twelve known as the Homeless Outreach Service Team (HOST).” *Id.*

89. *Id.*

Addressing homelessness also works to alleviate a “sense of ‘social disturbance’ attributable to the presence of the homeless.”⁹⁰ While some critics assert that these social services function to simply remove homeless persons from the area, a 1995 investigation found that the Grand Central BID actually provided shelters that were superior to those operated by the city.⁹¹ Commentators have also noted that the BID’s “record in hiring the formerly homeless is unparalleled among service providers.”⁹²

BIDs’ business-oriented programs are implemented to promote existing businesses, recruit new businesses, attract consumers, and promote the district as a whole.⁹³ In order to market the BID to consumers, some BIDs offer restaurant tours, farmers’ markets, block parties,⁹⁴ and walking tours of the district.⁹⁵ Depending on their size and goals, BIDs may also seek to recruit specific industries to the district.⁹⁶ These efforts may involve providing grants to new businesses,⁹⁷

90. Briffault, *supra* note 7, at 402.

91. ROBERT M. HAYES, REPORT TO THE BOARD OF DIRECTORS, GRAND CENTRAL PARTNERSHIP, ON THE GRAND CENTRAL PARTNERSHIP SOCIAL SERVICES CORPORATION 14 (1995). *But see* Briffault, *supra* note 7, at 402-03 (noting that Hayes also found “that the BID had failed to provide its outreach workers . . . with proper levels of screening, training, and supervision, and he determined that . . . the BIDs homeless outreach program was ‘flawed in its design’”).

92. *BIDs Really Work*, *supra* note 86.

93. *See* Briffault, *supra* note 7, at 404. *See also* MICH. COMP. LAWS ANN. § 125.990a(1)(g) (West 2010) (authorizing BIDs to “[e]ngage in economic activities, including . . . promotion of business, retail, or industrial development, developer recruitment, business recruitment, business marketing, business retention, public relations efforts, and market research”); *Business Recruitment and Development Program*, OAKLAND BUS. IMPROVEMENT DISTRICT, <http://www.onlyinoakland.org/programs.php> (last visited Apr. 4, 2013) (explaining that this Pennsylvania BID’s Business Recruitment Development Program was “developed to increase retail diversity and to reduce storefront vacancies,” and its functions include marketing initiatives and events).

94. *Business Improvement Districts*, CITY OF SAN DIEGO ECON. DEV. DIVISION, <http://www.sandiego.gov/economic-development/about/bids.shtml#Marketing> (last visited Sept. 20, 2013).

95. *Things To Do, The Grand Tour*, GRAND CENT. PARTNERSHIP, <http://www.grandcentralpartnership.org/things-to-do> (last visited Apr. 4, 2013). One BID even created a “Marketplace on the Mall—an outdoor retail program including carts, kiosks and semi-permanent retail merchandising units—[in order to] attract . . . retailers.” Colleen O’Connor, *16th Street Mall Revival Aims to Breathe Life into Downtown Retail*, DENV. POST (Mar. 25, 2013), <http://denverpost.com/ci-22863313/16th-street-mall-revival-aims-breathe-life-into>.

96. *See* Briffault, *supra* note 7, at 405.

97. *See, e.g., Uptown Business Improvement District Announces a New Grant Program*, J. TIMES (July 27, 2011), http://www.journaltimes.com/business/local/uptown-business-improvement-district-announces-a-new-grant-program/article_79077cd4-99c7-11df-afba-001cc4c03286.html (reporting that the Uptown Business Improvement District

providing property owners with guidance in order to better understand local regulations,⁹⁸ and providing leasing assistance.⁹⁹

D. Criticisms of BIDs

In addition to obdurate concerns aimed at programs targeting homelessness, opponents allege that the BIDs violate equal protection, contravening the “one person, one vote doctrine.”¹⁰⁰ Critics also argue that BIDs shift resources toward a specific area, “away from the city as a whole.”¹⁰¹

1. Alleged Violation of the “One Person, One Vote” Doctrine

The basic claim underlying the asserted equal protection violation involves the statutory authorization to weight votes of property owners found in several states’ BID legislation.¹⁰² Critics aver that BID procedures that weight votes of property owners by the taxable value of their property¹⁰³ clearly violate the “one-person, one-vote doctrine” as defined by the Supreme Court in *Reynolds v. Sims*.¹⁰⁴

in Racine, Wisconsin created a grant program that provides up to \$3,000 to “help property owners [within the district] with design services to prepare for façade improvements” by “paying for the services of an architect or design professional”).

98. *FAQs, How Can GCP Help Support or Promote My Business?* GRAND CENT. PARTNERSHIP, http://www.grandcentralpartnership.org/faq#how_can_gcp_help_support_or_promote_my_business? (last visited Mar. 23, 2013).

99. Briffault, *supra* note 7, at 405. Many BIDs also provide more general promotional services, such as flyers and calendars of upcoming events in the district. *Id.* at 404.

100. See David J. Kennedy, Note, *Restraining the Power of Business Improvement Districts: The Case of the Grand Central Partnership*, 15 YALE L. & POL’Y REV. 283, 294-99 (1996) (discussing equal protection challenges to BIDs).

101. Richard Schragger, *Does Governance Matter? The Case of Business Improvement Districts and the Urban Resurgence*, 3 DREXEL L. REV. 49, 53 (2010). See *id.* at 53-54 for further discussion of BID criticisms.

102. Votes are weighted at different stages of the BID process. See, e.g., MICH. COMP. LAWS ANN. § 125.990f (2)-(3) (West 2010) (stating that a proposed BID plan is adopted if 60% of the owners approve the plan, with their votes weighted “in proportion to the amount that the taxable value of their respective real property . . . bears to the taxable value of all property in the zone area”); N.Y. GEN. MUN. LAW § 980-m(a) (McKinney 1998) (allowing votes of property owners to “be weighted in proportion to the assessment levied or to be levied against the properties within the district”).

103. See Kennedy, *supra* note 100, at 295.

104. 377 U.S. 533, 568 (1964). See Kennedy, *supra* note 100, at 295 (citing *Reynolds*, 377 U.S. at 580). In striking down an apportionment plan for the Alabama legislature which diluted the votes of some citizens based on their place of residence, the Court emphasized its concern that “[c]itizens, not history or economic interests, cast votes.” *Id.* The Court held that “an individual’s right to vote for state legislators is unconstitutionally

The one-person, one-vote doctrine extends to local government elections as well.¹⁰⁵ Furthermore, when a local unit of government has delegated its responsibilities and powers to an independent body, such delegation does not render the independent body immune from equal protection challenges.¹⁰⁶ Should the court find that the one-person, one-vote doctrine does, in fact, apply to the aforementioned independent body, any deviation from the doctrine is subject to careful scrutiny.¹⁰⁷

The Supreme Court explicated the exception to the one-person, one-vote doctrine for special assessment districts that have a “special limited purpose” and perform activities that have a “disproportionate effect . . . on landowners as a group.”¹⁰⁸ The Court further elucidated this exception in *Ball v. James*.¹⁰⁹ There, the Court found no violation for a water reclamation district that did not exercise normal governmental powers as identified by *Reynolds* and was created for a “narrow primary purpose.”¹¹⁰

The Second Circuit addressed an alleged equal protection violation against the Grand Central BID in *Kessler v. Grand Central District Management Association, Inc.*¹¹¹ The court held the BID was a special assessment district and thus exempt from the one-person, one-vote doctrine.¹¹²

2. Additional Criticisms

Critics also assert that BIDs inevitably decrease city services in areas outside of the BID.¹¹³ In essence, critics claim that property within the BID receives increased city services because of the increased revenue—thus, an increased ability to fund traditional city services—and also because of the political clout BIDs possess.¹¹⁴ However, in theory, BIDs

impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.” *Reynolds*, 377 U.S. at 568.

105. *Kessler v. Grand Cent. Dist. Mgmt. Ass’n*, 158 F.3d 92, 100 (2d Cir. 1998) (citing *Bd. of Estimate v. Morris*, 489 U.S. 688, 692-93 (1989); *Hadley v. Junior Coll. Dist.*, 397 U.S. 50, 54 (1970); *Avery v. Midland Cnty.*, 390 U.S. 474, 480-81 (1968)).

106. *Id.* (citing *Bd. of Estimate*, 489 U.S. at 693).

107. *Id.* See also *Reynolds*, 377 U.S. at 581 (holding that “careful judicial scrutiny” must be applied when “evaluating state apportionment schemes”).

108. *Salter Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719 (1973).

109. 451 U.S. 355 (1981).

110. *Id.* at 369 (citing *Reynolds*, 377 U.S. at 581).

111. *Kessler*, 158 F.3d at 92.

112. *Id.*

113. See Richard Schragger, *The Limits of Localism*, 100 MICH. L. REV. 371, 448-49 (2001) [hereinafter *The Limits of Localism*].

114. *Id.*

are authorized to supplement city services rather than replace them.¹¹⁵ While other areas of the city continue to receive the same level of city services, revenue generated by BID assessments is used to supplement the services provided by the city.¹¹⁶ Although such criticisms are significant and must be acknowledged, additional BIDs in Detroit may still prove invaluable.

III. ANALYSIS

A. BIDs in Detroit

1. Current Detroit BID

There is currently one established BID in the city of Detroit: the West Vernor and Springwells BID (WVS BID).¹¹⁷ The WVS BID management board works in conjunction with the Southwest Detroit Business Association (SDBA) to provide benefits to business owners within the district.¹¹⁸

Business owners formally established the WVS BID under the Michigan statute in September 2007, and the BID currently provides a variety of benefits to affected business owners.¹¹⁹ Currently, the benefits provided include police patrol, graffiti removal, litter removal, beautification, and communication with the city.¹²⁰ The BID has also identified long-term goals that will be implemented as the BID matures, including marketing the district in order to attract more customers,

115. See Briffault, *supra* note 7, at 372, 400. The author notes, "[A] municipal sanitation department may be able to stretch scarce resources by quietly cutting back on trash pickups or street cleaning in an area if it knows that a BID exists to pick up the slack." *Id.* at 401.

116. *Id.* at 376.

117. Business owners established the WVS BID under the Michigan statute in September 2007. Interview with Theresa Zajac, *supra* note 73.

118. The West Vernor and Springwells BID provides police patrol, graffiti removal, sidewalk and curblin cleaning, landscaping, litter basket improvements, flower pod planting and maintenance, emergency snow removal, and safety alerts to district business owners via email. *Id.* For additional information regarding the benefits provided, see SOUTHWEST DETROIT BUSINESS ASSOCIATION, <http://www.southwestdetroit.com/Community-Planning/Current-Work-30.html> (last visited Mar. 23, 2013).

119. Interview with Theresa Zajac, *supra* note 73.

120. *Id.* The BID employs a graffiti removal team five days a week, which has resulted in the removal of nearly four thousand instances of graffiti within the area. *Id.* The district has also experienced a reduction in gun crime, although this is not based on empirical data. *Id.*

increasing police patrols, and strengthening the partnership with the city.¹²¹

2. How BIDs May Address Detroit's Declining City Budget and Decreased Services

Like many cities, Detroit is currently facing significant budget concerns.¹²² A multitude of factors contributed to the budget crisis, including the city's considerable decline in population.¹²³ Although Mayor Dave Bing announced the city would eliminate debt and create a large surplus within five years, a financial audit of the city shows a sizeable budget shortfall.¹²⁴ Reports in December 2011 and January 2012 stated that the city may be unable to pay for basic services by April 2012.¹²⁵

As Detroit is forced to address its budget difficulties by curbing services, BIDs offer businesses one method to supplement those services.¹²⁶ These districts will have greater control over the types of benefits provided and the costs associated with those benefits.¹²⁷ Under the Michigan statute, BIDs have the authority to offer one or more of the delineated benefits.¹²⁸ Accordingly, a BID may be formed to address a specific deficiency by electing to provide one statutorily authorized benefit to the district.¹²⁹ BIDs formed with this goal will be able to minimize the assessments on the property within the district, thereby imposing a minimal burden on each business involved.¹³⁰

121. *Id.*

122. *See* CITY OF L.A., *supra* note 34, at 13; Steve Neavling, *With Detroit's Budget, Bing Said 1 Thing, But Audit Showed Another*, DETROIT FREE PRESS (Jan. 10, 2012), <http://www.freep.com/article/20120110/NEWS01/201100421/With-Detroit-s-budget-Bing-said-1-thing-but-audit-showed-another>.

123. *State & County Quick Facts: Detroit (city), Michigan*, *supra* note 4. According to the 2010 census, the population of Detroit was 713,777. *Id.*

124. Neavling, *supra* note 122. Bing stated that the city would create an \$89 million surplus within five years. *Id.* The financial audit reports that the "city overestimated revenues by \$429.9 million," that the police and fire department overspent their budget by \$37.8 million, that the Department of Transportation unexpectedly required \$21.7 million from the city's general fund, and that there was a \$13.5 million increase in lawsuits and legal claims in the 2010-2011 budget. *Id.*

125. *Id.*

126. *See supra* Part II.C.

127. *See supra* Part II.C.

128. *See* MICH. COMP. LAWS ANN. § 125.990a(1) (West 2010).

129. *Id.*

130. Briffault, *supra* note 7, at 385-86.

An issue that businesses in Detroit may want addressed is the crime rate and lack of police protection.¹³¹ Michigan's BID legislation authorizes BIDs to provide security services either from private or public entities.¹³² For example, the WVS BID contracts with the city for Detroit police officers to work in the district during their off hours.¹³³ For a relatively low cost, the district thus enhances the safety and security of the area, benefiting the business owners as well as their patrons.¹³⁴

Michigan BIDs are authorized to provide other benefits to enhance the safety, appearance, or image of the district;¹³⁵ the language of this provision is almost without limitation.¹³⁶ This gives BIDs the ability to formulate plans designed to best address the unique issues the district may face.¹³⁷ While it may be expedient for one district to contract with Detroit police officers to provide augmented patrolling, another district may determine that other mechanisms will more effectively, and perhaps more efficiently, address its unique safety concerns.¹³⁸

Additionally, this broad provision empowers BIDs to address other areas that may be of concern as the city cuts back on services.¹³⁹ For example, a district may provide snow removal or trash collection to businesses within its boundaries, services that are not expressly stated in the statute but allowable under this subsection.¹⁴⁰ However, each individual BID must take into consideration the impact that the

131. See Josh Katzenstein, *Detroit Homicides Up in 2011; Serious Crime Declines Overall*, DETROIT NEWS (Jan. 13, 2012, 7:07 PM), <http://www.detroitnews.com/article/20120113/METRO01/201130426/Detroit-homicides-up-2011-serious-crime-declines-overall?odyssey=tab|topnews|text|FRONTPAGE>. Although serious crime rates have declined overall, the homicide rate in Detroit has increased. *Id.*

132. See MICH. COMP. LAWS ANN. § 125.990a(1)(e).

133. Interview with Theresa Zajac, *supra* note 73. The BID contracted with off-duty officers through a "Secondary Employment Program" offered by the city. *Id.* The BID provides officers on foot patrol four hours a day, four days a week. *Id.*

134. Briffault, *supra* note 7, at 369.

135. BIDs may "[e]ngage in other activity with the purpose to enhance the economic prosperity, enjoyment, appearance, image, and safety of the zone area." MICH. COMP. LAWS ANN. § 126.990a(1)(h).

136. *Id.* The only restriction within this subsection is that the purpose of the activity is to enhance the district. *Id.*

137. Although subsection (e) expressly authorizes districts to "[p]rovide or contract for security services with other public or private entities and purchase equipment or technology related to security services within the zone area," subsection (h) broadens the scope by allowing for activities other than security services to enhance the safety of the district. MICH. COMP. LAWS ANN. § 125.990a(1).

138. Briffault, *supra* note 7, at 369-70.

139. MICH. COMP. LAWS ANN. § 125.990a(1).

140. MICH. COMP. LAWS ANN. § 125.990a(1)(h).

incremental tax assessment will have on attracting and retaining businesses in the district.¹⁴¹

3. *How to Keep Costs at a Minimum*

Michigan's current legislation gives BIDs broad authority in determining the benefits provided and source of financing for those benefits.¹⁴² Assessments based upon the taxable value of the affected properties are the most common source of funding,¹⁴³ although other sources of funding are not precluded.¹⁴⁴

It is widely accepted that businesses prefer environments with lower taxes, which several studies demonstrated.¹⁴⁵ Having an established BID in an area may discourage business owners from considering the area when determining the best location for their business. The incremental taxes imposed upon property in the districts may act as a disincentive for businesses concerned with maintaining low operating costs. In order to avoid scaring away businesses from locating within the district, BIDs must keep the assessments imposed to a minimum while maximizing the benefits provided to the property owners.

Michigan law provides BIDs an effective mechanism to attenuate the burden imposed upon property owners.¹⁴⁶ Under the statute, it is permissible for a district to impose an assessment on property based upon the benefits provided.¹⁴⁷ However, the statute does not stipulate a minimum or maximum assessment, nor does it mandate uniform assessments within the district.¹⁴⁸ Thus, for example, a BID may impose an assessment of two percent of the taxable value of all property within

141. Briffault, *supra* note 7, at 454.

142. *Id.*; MICH. COMP. LAWS ANN. § 125.990d(2)(g) (West 2010).

143. Briffault, *supra* note 7, at 389.

144. *Id.*

145. See, e.g., L. Jay Helms, *The Effect of State and Local Taxes on Economic Growth: A Time Series – Cross Section Approach*, 67 REV. OF ECON. & STAT. 574, 578-81 (1985) (explaining the results of a fourteen-year study that indicated that increases in state and local taxes negatively impact economic growth); Timothy J. Bartik, *Business Location Decisions in the United States: Estimate of the Effects of Unionization, Taxes, and Other Characteristics of States*, 3 J. BUS. & CON. STAT. 14, 14-21 (1985) (reporting that state taxes have a modest negative impact on the choice of location for a new manufacturing plant).

146. MICH. COMP. LAWS ANN. § 125.990a(1)(h) (West 2010).

147. *Id.*

148. See generally MICH. COMP. LAWS ANN. § 125.990a.

the district but provide that no business be subjected to an assessment greater than a specific dollar amount.¹⁴⁹

The ability to independently negotiate labor contracts and be free from civil service rules allows BIDs to maximize the benefits conferred to property owners within the district.¹⁵⁰ Possessing the power to make hiring and firing decisions based upon performance empowers BIDs to efficiently budget and preserve the fiscal integrity of the district.¹⁵¹

4. Benefits for Detroit Businesses

The successes realized by the WVS BID and other BIDs across the country set a precedent for providing businesses in Detroit with a number of benefits.¹⁵² Establishing successful BIDs in the city may draw more consumers from the suburbs into the city, attract new residents, and possibly increase property values.¹⁵³ As the president of the Times Square BID stated, "When districts feel clean, they feel orderly. When they feel orderly, they feel safer."¹⁵⁴

BIDs have the effect of promoting a sense of community, as advocated by the concept of New Urbanism.¹⁵⁵ The concepts embodied in the New Urbanism theory appear to be consistent with revitalization efforts.¹⁵⁶ New Urbanism calls for, among other things, mixed-use, diverse, and pedestrian-friendly neighborhoods, compared to the segregated-use zoning plans currently utilized by many cities.¹⁵⁷ Neighborhoods created using concepts of New Urbanism have clear boundaries with sidewalks designed for high pedestrian traffic, tree-lined streets, and buildings situated close together.¹⁵⁸

149. The West Vernor and Springwells BID employs this tactic. Interview with Theresa Zajac, *supra* note 73. Businesses within the district are subject to an assessment of 2% of the taxable value of the property, with a maximum assessment of \$2,000. *Id.* If all businesses were subject to an assessment of 2% of the taxable value of the property, the minimum assessment would be \$200 and the maximum would be \$23,000. *Id.*

150. Mac Donald, *supra* note 9.

151. *Id.*

152. See, e.g., Briffault, *supra* note 7, at 394.

153. *Id.*

154. Douglas Martin, *Districts to Improve Business Proliferate*, N.Y. TIMES (Mar. 25, 1994), <http://www.nytimes.com/1994/03/25/nyregion/districts-to-improve-business-proliferate.html?pagewanted=all&src=pm> (quoting Gretchen Dykstra, President, Times Square Business Improvement District).

155. See Davies, *supra* note 33, at 213-16.

156. Charles C. Bohl, *New Urbanism and the City: Potential Applications and Implications for Distressed Inner-City Neighborhoods*, 11 HOUSING POL'Y DEBATE 761, 761 (2000).

157. *Id.* at 762.

158. *Id.* at 762-63.

Without re-zoning land within the district, BIDs adhere to the principles described above by identifying precise boundaries, encouraging walkable business districts, and focusing on beautification.¹⁵⁹ At least one empirical study has shown that housing values are increased in areas with walkable neighborhoods.¹⁶⁰ In theory, increased walkability and a more aesthetically pleasing environment should also attract more consumers to the area.¹⁶¹

The benefits provided by BIDs may counteract the implications identified by the Broken Windows theory.¹⁶² The Broken Windows theory asserts that an appearance of disorder and blight will encourage additional crime and vandalism.¹⁶³ This theory is heavily criticized as unsubstantiated;¹⁶⁴ however, the argument remains that pedestrians are more likely to visit areas that are graffiti- and litter-free with a visible police or security presence.¹⁶⁵ The central benefits BIDs provide create this image of cleanliness and order, which proponents contend will “invite law-abiding people to use the street more often.”¹⁶⁶

B. Addressing the Alleged Equal Protection Violation Claims

Property owners seeking to attack the validity of a BID under Michigan legislation will likely advance an equal protection challenge, averring a violation of the one-person, one-vote doctrine by virtue of the

159. As advocated by New Urbanists, the WVS BID provides graffiti removal, picks up litter, and plants flower pots along the sidewalk in the district. Interview with Theresa Zajac, *supra* note 73.

160. Yan Song & Gerrit-Jan Knaap, *New Urbanism and Housing Values: A Disaggregate Assessment*, 54 J. URB. ECON. 218, 218-38 (2003).

161. *Id.*

162. James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC MONTHLY, March 1982, available at <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/4465/>.

163. *Id.*

164. See Batchis, *supra* note 8, at 98 n.24.

165. See, e.g., *The Limits of Localism*, *supra* note 113, at 379-80; Batchis, *supra* note 8, at 98; Lorlene M. Hoyt, *Do Business Improvement District Organizations Make a Difference? Crime In and Around Commercial Areas in Philadelphia*, 25 J. PLAN. EDUC. & RES. 185, 198 (2005) (reporting that the rate of property crimes and thefts was reduced in BIDs, as compared to surrounding commercial areas, adding to the credibility of the Broken Windows theory); George L. Kelling, *‘Broken Windows’ Works*, FORBES (July 16, 2009, 3:25 PM), <http://www.forbes.com/2009/07/16/crime-disorder-punishment-opinions-contributors-george-kelling.html> (describing a study performed in the Netherlands in which an envelope containing a small amount of money was placed in a mailbox; when the mailbox was covered with graffiti, 27% of passersby took the envelope, whereas only 13% took the envelope when the mailbox was clean).

166. *The Limits of Localism*, *supra* note 113, at 379.

statute's authorization of weighting votes in proportion to the taxable value of the property.¹⁶⁷ However, the Supreme Court carved out a clear exception to the one-person, one-vote doctrine.¹⁶⁸

It appears that an equal protection challenge against a BID will turn on whether the BID has a "special limited purpose,"¹⁶⁹ has limited authority,¹⁷⁰ disproportionately affects landowners within the district,¹⁷¹ and serves a "narrow primary purpose."¹⁷² Michigan's legislation does authorize BIDs to perform a plethora of functions, which may indicate that the weighted voting does, in fact, violate the one-person, one-vote doctrine.¹⁷³

In *Kessler*,¹⁷⁴ the Second Circuit found the Grand Central BID did not violate the Equal Protection Clause because the BID fell within the exceptions to the one-person, one-vote doctrine.¹⁷⁵ Under New York's BID legislation, each BID is required to establish a "district management association,"¹⁷⁶ which is responsible for executing the services defined in the district plan.¹⁷⁷ Plaintiffs alleged the weighted system by which the BID's Board of Directors was elected ran afoul of the Equal Protection Clause.¹⁷⁸

The management association for the Grand Central BID held annual elections to determine the forty-eight directors who would serve on the board.¹⁷⁹ The BID's bylaws created four voting classes: 1) property owners in the district ("Class A"); 2) tenants who lease commercial space in the district ("Class B"); 3) tenants who lease "dwelling units" in the district ("Class C"); and 4) persons appointed by city officials ("Class D").¹⁸⁰ Under the bylaws, Class A voters elected thirty-one directors,

167. See MICH. COMP. LAWS ANN. § 126.990f(2)-(3) (West 2010).

168. See *supra* notes 102-12 and accompanying text.

169. *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 728 (1973).

170. *Id.*

171. *Ball v. James*, 451 U.S. 355, 370 (1981).

172. *Id.* at 369.

173. See generally MICH. COMP. LAWS ANN. §§ 125.990a-990m (West 2010). See Kennedy, *supra* note 100, at 296-97 (explaining that New York BIDs do not meet the "limited purpose" and "disproportionate effect" test because they "function more as substitute governments for the area rather than as specific service providers"). Because Michigan BIDs are authorized to perform similar functions as New York BIDs, they may face similar criticism. See MICH. COMP. LAWS ANN. §§ 125.990a-125.990m.

174. *Kessler v. Grand Cent. Dist. Mgmt. Ass'n*, 158 F.3d 92 (2d Cir. 1998).

175. *Id.* at 108.

176. N.Y. GEN. MUN. LAW § 980-m(a) (McKinney 1998).

177. *Kessler*, 158 F.3d at 95.

178. *Id.* at 97-99.

179. *Id.* at 97.

180. *Id.*

Class B voters elected sixteen directors, and Class C voters elected one director.¹⁸¹ Because plaintiffs were residents in an apartment building in the district, they were relegated to Class C under the bylaws.¹⁸² Thus, plaintiffs asserted that they were “deprived of any meaningful opportunity to advance their interests concerning [the BID’s] activities.”¹⁸³

In its analysis, the court first held that although the Grand Central BID did perform many complex functions aimed to promote business in the district, it had a limited purpose.¹⁸⁴ Next, the court noted the purpose of the BID was not to “encompass traditional governmental functions” and that the BID lacked “powers normally enjoyed by a governmental body.”¹⁸⁵ Regarding services typically furnished by a local municipality, such as security and sanitation, the court found that these services merely supplemented those provided by the city, and the BID’s responsibility was limited.¹⁸⁶ Finally, the court noted that the city retains the power and authority to make improvements to property within the district.¹⁸⁷ Thus, the court concluded the district manager had “relatively limited authority and [did] not exercise the sort of governmental powers that normally triggers the one-person, one-vote principle.”¹⁸⁸

It is unclear whether other circuits would address the one-person, one-vote challenge in a similar manner.¹⁸⁹ However, in evaluating an equal protection claim against a BID, should the court find the BID meets the exceptions delineated by the Supreme Court, it is unlikely to find a violation.¹⁹⁰

181. *Id.*

182. *Id.* at 98.

183. *Kessler*, 158 F.3d at 98.

184. *Id.* at 104.

185. *Id.*

186. *Id.* at 105. The court found the BID did “not have primary responsibility for providing security, sanitation, or social services within the district.” *Id.* The BID’s security services did not have the level of authority that local law enforcement possessed, the homeless outreach programs would not have the effect of transforming the BID “into a general governmental body,” and the sanitation services were not in furtherance of the public health. *Id.*

187. *Kessler*, 158 F.3d at 106.

188. *Id.*

189. *See* Batchis, *supra* note 8, at 104-05.

190. *See supra* notes 102-12 and accompanying text. *But see* Batchis, *supra* note 8, at 105 (positing that it is unclear whether other BIDs would “similarly pass constitutional muster [or . . . that the Supreme Court would arrive at the same conclusion reached by the Second Circuit]”).

*C. Proposed Amendments to Michigan's BID Legislation**1. Amend the Dissolution Process*

Under the current Michigan statute, business owners may bring the issue of BID dissolution in front of the management board upon a petition signed by twenty percent of the property owners in the district.¹⁹¹ Once that petition is delivered, the board is obligated to address the issue within sixty days.¹⁹² The Michigan legislature should consider placing a moratorium on dissolution petitions for the first two years of the BID's existence, increasing the requisite percentage of signatures from twenty percent to thirty percent, and limiting the number of dissolution petitions to one per year.¹⁹³

In order to establish a BID, property owners within the district must craft and adopt a zone plan that includes a description and the estimated costs of the projects that are planned for the district.¹⁹⁴ Once the plan is adopted and the BID is formally established, the management board necessarily requires a minimum of two years to execute the plan for several reasons.¹⁹⁵ First, funding for the benefits is not immediately available.¹⁹⁶ Second, the management board should secure contracts for the projects represented in the zone plan. Rather than working against a small constituency that disfavors an established BID before any benefits are provided, the management board must be granted the opportunity to focus on the creation and execution of the zone plan.¹⁹⁷

In Michigan, the BID establishment process begins upon delivery of a petition with signatures representing at least thirty percent of the property owners within the district,¹⁹⁸ and a BID is formally established by a vote of at least sixty percent of the property owners voting in the election.¹⁹⁹ Both of these sections of the statute explicitly state that the votes of property owners are weighted in proportion to the taxable value

191. MICH. COMP. LAWS ANN. § 125.990l(1) (West 2010).

192. *Id.*

193. Interview with Theresa Zajac, *supra* note 73.

194. See MICH. COMP. LAWS ANN. § 125.990d(2)(d)-(e).

195. Interview with Theresa Zajac, *supra* note 73.

196. WVS BID voted to establish the BID in September 2007, but assessments were not available until August 2008. *Id.*

197. The WVS BID also recommends this amendment, stating that property owners who are opposed to the BID should not have the ability to frustrate the purpose and intent of the property owners within the district who do favor the BID before the management board is able to implement the zone plan and property owners within the district have an opportunity to see the results. *Id.*

198. See MICH. COMP. LAWS ANN. § 125.990c(1)(b) (West 2010).

199. See MICH. COMP. LAWS ANN. § 125.990f(3) (West 2010).

of their property.²⁰⁰ Contrarily, the statute allows the issue of dissolution to be brought before the board via a petition signed by twenty percent of the property owners²⁰¹ and dissolution of the BID by a majority vote.²⁰² The dissolution section of the statute, unlike the establishment section, is silent on the issue of weighting votes.²⁰³ In order to alleviate confusion and promote consistency, the Michigan legislature should consider an amendment to clarify whether votes in the BID process are either always weighted or only weighted where expressly stated.²⁰⁴ Additionally, the legislature should consider increasing the requisite signatures to thirty percent of the property owners in the district.²⁰⁵

Under the current statute, the management board is obligated to put the issue of dissolution on the agenda for the next annual meeting.²⁰⁶ Although the statute does refer to the “annual” meeting, there is no limit that a petition for dissolution can only be brought once a year.²⁰⁷ An amendment that requires the management board to consider dissolution no more than once per year will allow the board to concentrate its efforts on effectively providing benefits to the district.

Amending the dissolution process to reflect these changes will promote efficiency and help to ensure that the BID has the opportunity to implement the benefits decided upon in the zone plan and evaluate the effectiveness of those benefits.²⁰⁸

2. Offer Business Owners Partial Rebates for Assessments Paid

One mechanism for encouraging BID development is to offer property owners in certain districts a rebate for BID assessments.²⁰⁹ The

200. *See id.* § 125.990f(2).

201. *See* MICH. COMP. LAWS ANN. § 125.990l(1) (West 2010).

202. *See id.* § 125.990l(2).

203. *See id.* § 125.990l(1)-(2).

204. WVS BID recommends having all votes weighted. Interview with Theresa Zajac, *supra* note 73.

205. *Compare* MICH. COMP. LAWS ANN. § 126.990l(1) (requiring a petition signed by 20% of the property owners in the district), *with* N.Y. GEN. MUN. LAW § 980-o (McKinney 1998) (requiring a petition signed by “the owners of at least [51%] or more of the total assessed valuation of all benefited real property included in the boundaries of the district” and “at least [51%] of the owners of benefited real property within the area included in the district” in order to address the issue of dissolution), *and* KAN. STAT. ANN. § 12-1789 (West 1991 & Supp. 1997) (requiring a petition signed by no less than “a majority of the number of businesses located within the district”).

206. *See* MICH. COMP. LAWS ANN. § 125.990l(1).

207. *Id.*

208. Mac Donald, *supra* note 9.

209. Davies, *supra* note 33, at 220-21.

Michigan legislature should consider offering a partial rebate for assessments imposed upon property owners that pay a BID assessment, particularly to owners whose properties are located in Detroit.

The benefits that BIDs provide have positive effects at both the local and state level.²¹⁰ This is especially true for Detroit as well as Michigan as a whole.²¹¹ In a climate that is hostile to the economic revitalization that Detroit so desperately needs, lessening the burden imposed upon businesses in a BID while encouraging the creation of additional BIDs is essential.²¹² Without offering a partial rebate, business owners may be hesitant to impose incremental taxes upon their own businesses, thereby eliminating BIDs as a realistic option.²¹³

Michigan Governor Rick Snyder has encouraged Detroit to expediently address its budget concerns, which will likely involve the reduction of traditional services.²¹⁴ BIDs offer the state a method to both address the concerns that current businesses have regarding the reduction in services and attract new businesses to the area.²¹⁵ A partial rebate from the state for BID assessments will considerably encourage the creation of additional BIDs.²¹⁶

3. Establish an Agency to Manage the Relationship Between the City and BIDs

Either the state or the city should consider establishing an agency—or authorizing an existing agency—to serve as a central contact to facilitate the creation and establishment of BIDs in the city.²¹⁷ In New York City, the Department of Small Business Services (SBS) manages the relationship between the city and its BIDs.²¹⁸ According to its

210. *See id.*

211. *See* Interview with Theresa Zajac, *supra* note 73.

212. *See* Davies, *supra* note 33, at 220-21.

213. *Id.*

214. *See* Mike Brownfield, *Governor Snyder, Detroit Emergency Financial Manager Kevyn Orr Meet with Media*, REINVENTING MICH. (Mar. 15, 2013), <http://www.michigan.gov/snyder/0,4668,7-277--297224--,00.html> (addressing Governor Snyder's effort to address Detroit's budget concerns by appointing an emergency financial manager).

215. Davies, *supra* note 33, at 220-21.

216. *Id.*

217. *See, e.g., Help for Neighborhoods: Business Improvement Districts*, N.Y.C. SMALL BUS. SERVICES, <http://www.nyc.gov/html/sbs/html/neighborhood/bid.shtml> (last visited Sept. 22, 2013) (discussing New York City's approach).

218. *Id.*

website, SBS collects information about programs and services that BIDs provide and coordinates with city agencies.²¹⁹

In addition to annual publications regarding services provided and a directory of contact information for all New York City BIDs, SBS offers several tools to facilitate the creation of BIDs in the city.²²⁰ One such tool is a step-by-step guide to forming a BID, which is available online.²²¹ This guide provides comprehensive information for individuals interested in forming a BID under New York's statute.²²² Also available online is the official form that must be submitted for filing an objection to the creation of a BID.²²³

Unsurprisingly, establishing a BID under a state statute can be a rigorous and confusing process.²²⁴ Furnishing a single agency, staffed with individuals familiar with the BID formation process, and providing streamlined information to interested parties may allow business owners to more easily navigate Michigan's BID legislation, thereby facilitating the creation of BIDs in Detroit.²²⁵ Furthermore, an agency such as this would be instrumental in enabling the inclusion of residential property in Michigan's BIDs.²²⁶

4. Include Residential Property

Michigan's current BID legislation excludes residential property.²²⁷ Other states, however, do include residential property in their BID statutes.²²⁸ Residential property owners in Detroit in particular could

219. *Id.*

220. *Id.*

221. *Step by Step Guide*, N.Y.C. SMALL BUS. SERVICES, http://www.nyc.gov/html/sbs/downloads/pdf/bid_guide_complete.pdf (last visited Sept. 22, 2013).

222. *Id.* The guide explains what information must be gathered in order to draft a district plan and how to submit the plan to SBS. *Id.* at 11-17. It also provides a description of the legislative authorization process. *Id.* at 23.

223. *Objection Form*, N.Y.C. SMALL BUS. SERVICES, http://www.nyc.gov/html/sbs/html/neighborhood/pdfs/BID_ObjectionForm.pdf (last visited Apr. 4, 2013).

224. See, e.g., *Starting a Business Improvement District in Philadelphia*, CITY OF PHILA. (June 2012), <http://www.drexel.edu/~media/Files/publicpolicy/Starting%20a%20BID%20in%20Philadelphia.ashx>.

225. See *Help for Neighborhoods: Business Improvement Districts*, *supra* note 217.

226. *Id.*

227. See MICH. COMP. LAWS ANN. §§ 125.981(a)(i), .990(a) (West 2010).

228. The level of inclusion varies. See, e.g., IND. CODE § 36-7-22-3(7) (West 1988) (authorizing "constructing, rehabilitating, or repairing residential property"); N.Y. GEN. MUN. LAW § 980 (McKinney 1998) (including individuals who lease a dwelling space); N.Y. GEN. MUN. LAW § 980-C (authorizing improvements for leased property within the district).

greatly benefit from the services provided by BIDs.²²⁹ The Michigan legislature should consider amending the BID statute—or enacting a separate “Public Improvement Zone” statute—to include residential property.²³⁰

While the discussion thus far focused entirely on business growth and development in the city, retaining current residents and attracting new residents is imperative. As noted above, residents of Detroit live in a city with a high crime rate and shrinking police protection, surrounded by vacant and abandoned lots.²³¹ As the city is forced to decrease services traditionally provided by local government, the inclusion of residential property in BID legislation would enable residential property owners to regain control of their neighborhoods, providing not only supplemental security services but sanitation and beautification programs as well.²³²

This amendment would likely draw strong criticism. First, those who contend that BIDs create wealth-based inequalities would take issue with the inclusion of residential property.²³³ Second, taking into consideration the decreasing city-provided services, should such an amendment employ weighted voting procedures, an equal protection challenge may be more difficult to defend.²³⁴ Third, since the city currently has relatively high property taxes on residential property,²³⁵ it would be imperative to keep the assessments at a minimum.

229. See *supra* notes 131-32 and accompanying text.

230. See statutes cited *supra* note 228.

231. See *supra* notes 131-32 and accompanying text. It has been reported that one-third of all Detroit lots are vacant or abandoned. *Survey: A Third of All Detroit Lots are Vacant or Abandoned*, MLIVE.COM (Feb. 20, 2010, 7:58 PM), http://www.mlive.com/news/detroit/index.ssf/2010/02/survey_a_third_of_all_detroit.html.

232. See *supra* Part II.C.

233. Since it is probable that any amendment to include residential property will contain a provision defining the voting and petition procedure to establish such a district, only areas with residents that are able to afford an incremental tax assessment will vote in favor of creation.

234. Although the Second Circuit found that the Grand Central BID's weighted voting procedures did not run afoul of the one-person, one-vote doctrine, one of the deciding factors was that the purpose of the BID was not to “encompass traditional governmental functions.” *Kessler v. Grand Cent. Dist. Mgmt. Ass'n*, 158 F.3d 92, 104 (2d Cir. 1998). If challenged, a court may find that an improvement district including residential property owners in Detroit is not limited in purpose and is therefore outside the exception of the one-person, one-vote doctrine. See *supra* notes 102-112 and accompanying text.

235. In 2010, the millage rates in the city were 67.34, compared to 34.82 and 48.52 in nearby suburbs. *Property Tax Estimator*, MICH. DEP'T OF TREASURY (2010), <https://treas-secure.state.mi.us/ptestimator/PTEstimator.asp>.

Encouraging population growth will highly benefit the city as a whole, especially considering the federal funding at stake.²³⁶ Although there are valid concerns regarding the inclusion of residential property, the potential benefits provided may be invaluable.

IV. CONCLUSION

BIDs have the potential to facilitate Detroit's reinvention and rejuvenation efforts. This Note offers a general analysis of BIDs and the particular benefits they may offer Detroit.²³⁷ An evaluation of equal protection challenges against BIDs was addressed, as well as other criticisms BIDs may face.²³⁸

BIDs may be a more attractive option for business owners in the city if several amendments to Michigan's legislation were enacted.²³⁹ Amending the dissolution process will ensure that BIDs have the opportunity to execute the zone plan benefits.²⁴⁰ Offering partial rebates for assessments and creating a government agency to manage the relationship between BIDs and the city will encourage the creation of additional BIDs.²⁴¹ Finally, including residential property in these districts will stimulate population growth.²⁴²

BIDs are one innovative, effective, and efficient method to address Detroit's ongoing concerns. BIDs have been successful in other cities across the country.²⁴³ Detroit's business owners—and perhaps residential property owners—would benefit from the establishment of more BIDs in the city.

236. John Wisely, *Hitting the Magic 750,000*, DETROIT FREE PRESS, April 4, 2011, at 4A, available at http://datadrivendetroit.org/wp-content/uploads/2011/04/Hitting_the_Magic_750K_FREEP040411.pdf. Approximately \$1,000 per person from state and federal funding is at stake. *Id.*

237. See *supra* Part III.

238. See *supra* Part III.C.

239. See *supra* Part III.C.

240. See *supra* Part III.C.1.

241. See *supra* Part III.C.2.

242. See *supra* Part III.C.3.

243. See *supra* notes 24-29 and accompanying text. See also Mac Donald, *supra* note 9; Hochleutner, *supra* note 9, at 375-76; Briffault, *supra* note 7, at 372.