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BILL ANALYSIS

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Senate Bill 120 (as enrolled)  
Sponsor: Senator Norman D. Shinkle  
Senate Committee: Finance  
House Committee: Taxation

**PUBLIC ACT 119 of 1989**

Date Completed: 7-24-89

**RATIONALE**

The plant rehabilitation and industrial development Act was enacted to encourage the restoration of obsolete industrial property and the development of new industrial property, by providing property tax abatements for up to 12 years for projects in plant rehabilitation and industrial development districts established by the legislative bodies of local governmental units. Applications for tax abatements are made through local governments to the State Tax Commission, which may issue abatement certificates after obtaining confirmation from the Department of Commerce that the application meets the eligibility requirements of the Act.

One of the Act's requirements is that an application for a tax abatement be filed with the local unit not more than six months after the restoration or construction of a facility has begun. The six-month requirement, however, has not always been in place. Prior to 1984 an application could be accepted up to two years after construction had begun. Effective January 1, 1984, the time limit was reduced to six months, although Public Act 33 of 1985 allowed a 12-month time limit under certain conditions, in districts created in 1983 and 1984. (See BACKGROUND for more information about the application deadline.)

It has been revealed that the Spectrum Printing Company, in an industrial development district in the City of Tecumseh, had met the requirements of the Act and constructed a 12,000 square foot building based on the assumption that it would receive a property tax abatement. The business owners claim that the city informed them that they

had to apply for the abatement within 12 months after beginning construction. When the business' application was forwarded to the State Tax Commission in August 1987, however, the Commission denied the abatement because the application had been made after the Act's six-month time limit. Some people feel that since the abatement was denied because of the city's error, the Act should be amended to extend the six-month deadline for the Tecumseh firm and thus allow it to qualify for the abatement.

**CONTENT**

The bill would amend the plant rehabilitation and industrial development Act to allow an applicant to reapply for an industrial facilities property tax exemption if the applicant had previously applied for one with a local governmental unit in August of 1987, for a facility located in an industrial development district created in 1986, and had been denied the exemption by the State Tax Commission. The provision would take effect beginning with taxes levied in 1989.

The bill would also require that by September 1, 1989, the State Tax Commission provide to all local assessing units the name, address, and telephone number of the person on the Commission staff responsible for providing procedural information concerning the Act. After October 1, 1989, a local unit would have to notify each prospective applicant of that information in writing.

MCL 207.559

S.B. 120 (7-24-89)

## **BACKGROUND**

Before 1982, the Act had allowed tax exemptions to be granted to facilities for which construction had begun before a district was created, and to facilities for which construction had begun up to two years before an application for the exemption was made. The Act was amended by Public Act 417 of 1982 in response to criticism that, although the Act was designed to encourage industrial rehabilitation and development that would not have occurred without the Act's tax exemption provisions, some firms had circumvented this purpose by applying for abatements for projects they would have undertaken even if the abatements had not been granted. The 1982 amendments specified that applications for abatement certificates filed after December 31, 1983, could not be approved unless the proposed facility were located in a plant rehabilitation or industrial development district that had been established before construction of the facility began and unless the construction, replacement, or restoration had begun no earlier than six months before the filing of the application.

Despite the one-year grace period provided by Public Act 417 (from the Act's effective date of December 28, 1982, to the new application deadline of December 31, 1983), some local units and businesses apparently never found out about the changes in the eligibility requirements for tax abatement applications, and discovered that promised tax abatements were no longer available. Reportedly, for example, one company, at whose request a development district was created in January 1983, found that it was not eligible for the abatement when it applied in February 1984, more than six months after beginning construction on the facility for which the company was applying for an abatement. As a result, the Act was amended to provide for the continued granting of abatements to industries that had not completed the entire application process before the requirements were changed. Public Act 33 of 1985 suspended the Act's six-month deadline for applications made after December 31, 1983, if the following conditions were met: 1) the owner of the industrial property filed a written request for the establishment of a district prior to December 31, 1983, and prior to

construction and 2) a district had been established in 1983 or 1984. If these conditions were met, the applicant for the abatement had 12 months after construction of the facility was begun in which to file an application.

## **FISCAL IMPACT**

Senate Bill 120 would lead to a minor reduction in local property tax revenue and a corresponding increase in State expenditures, if the tax abatement is located in an in-formula school district. Since the bill would only affect very few abatements, the fiscal impact would be small.

## **ARGUMENTS**

### **Supporting Argument**

The bill would rectify an unfortunate error made by the City of Tecumseh and allow a business in the city's industrial facilities district to receive a property tax abatement that it had counted on receiving. According to committee testimony, the firm felt that it had fulfilled all the requirements of the Act and the city, and constructed its building based on the inducement of receiving the tax abatement. The firm followed the city's instructions to apply for the abatement within 12 months after beginning construction, only to be denied the abatement by the State Tax Commission because the firm had not applied within the six-month deadline as required by the Act. If left uncorrected, the error will prove to be costly to the business, even though the business was not at fault, because it will be liable for the full property tax rates of the city. Clearly, fairness dictates that the business be allowed to receive the abatement that induced it to locate in Tecumseh. Furthermore, to guard against similar future mishaps, the bill would require the State Tax Commission to notify local units of the Commission staff person who can provide procedural information about the Act, and would require local units to notify applicants of this information in writing.

### **Opposing Argument**

The six-month deadline, effective since 1984, has certainly been in effect long enough for cities, and businesses that seek property tax abatements in a city's industrial facilities district, to know the deadline exists. How long

must a law be in effect before it can reasonably be assumed that the public has had adequate notice? Indeed, it is a long-established principle that ignorance of a law is no excuse. While it is unfortunate that the City of Tecumseh and the business seeking the abatement were uninformed of the proper deadline, that mistake cannot be blamed on the State, which is being asked to correct the problem. The Act should not be amended just to accommodate a business that failed to complete the application process on time. The State Tax Commission, following the law, denies abatements that are not filed in a timely manner; according to the Commission, about 100 abatement applications have been rejected in the past because of missed deadlines. If this case is allowed special consideration, what is to prevent a succession of requests by others who have been denied abatements?

**Response:** The business in question was not merely uninformed of the proper procedures, it was misinformed. While it is indisputable that the business failed to follow the requirements of the Act, the circumstances surrounding that failure must be considered carefully. This is not a simple matter of ignorance of the law--the business seeking the abatement did all the things asked of it by the city, only to find that because of the city's error the abatement was denied. Further, the bill would not set a precedent, because the Act was amended once before to accommodate several businesses that were caught unaware after the six-month deadline was established. While it is reasonable to attempt to restrict the benefits of tax abatements to those businesses that were encouraged by the abatements to engage in industrial rehabilitation and development, it is unfair to penalize a business that failed to meet the Act's criteria for abatements simply because it was misinformed about the requirements by the local unit.

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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.