House
Legislative
Analysis
Section

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P.A. 198: ELIMINATE APPROVAL OF JOB-LOSING UNIT

House Bill 4844 as enrolled
Public Act 140 of 1999
Second Analysis (10-26-99)

Sponsor: Rep. Jennifer Faunce
House Committee: Tax Policy
Senate Committee: Local, Urban and State Affairs

THE APPARENT PROBLEM:

Under the plant rehabilitation and industrial development act, commonly known as P.A. 198, local units of government can provide new, renovated, or expanded industrial facilities with property tax abatements or exemptions. An application for an exemption certificate approved by a local unit is forwarded to the State Tax Commission, which decides if the application and certificate conform with state law. The act says a local unit cannot approve an application and the state commission cannot grant an exemption certificate when the proposed facility would transfer employment from one or more local units to the local unit in which the facility is to be located unless the negatively affected local unit consents by resolution to the granting of the certificate.

In a recent, well-publicized case, the city of Troy has refused to consent to a P.A. 198 abatement that the city of Warren wants to grant to General Motors, which reportedly has plans to spend $1 billion to greatly expand the GM Tech Center and consolidate operations in Warren. GM's plans would mean that hundreds of employees who now work in Troy would instead work in nearby Warren (and some others would reportedly be transferred to Pontiac). Troy's refusal is apparently holding up (perhaps imperiling) the project. Some people believe this case is a graphic example of why the provision allowing such a veto should be removed from the act.

Another issue related to P.A. 198 concerns the status of electrical generating plants. A recent attorney general's opinion (number 7027, dated 8-5-99) says that a merchant electric generating plant (a plant operated by a company engaging in the production of electricity as its primary business purpose but not a regulated utility) is not "industrial property" eligible for an exemption. There is a proposal by a consortium of CMS Enterprises, Rouge Steel, and Ford, to build a $315 million co-generation power plant on the property of Rouge Steel. The chairman of that company has said that the plant, known as Dearborn Industrial Generation or DIG, "will provide reliable, stable and competitively priced electricity and steam to Rouge Steel and Ford for at least the next fifteen years." He has said that about 88 percent of the annual energy output of the plant will be consumed by those two companies, so the plant serves an industrial and manufacturing purpose. The Dearborn City Council reportedly has granted a P.A. 198 exemption for DIG, although it is not likely to be approved by the State Tax Commission unless the definition of "industrial property" is changed.

THE CONTENT OF THE BILL:

The bill would amend the plant rehabilitation and industrial development act (Public Act 198 of 1974) to eliminate the provision requiring the consent of the local unit of government that is losing employment in cases in which the granting of an exemption would transfer employment from one local unit to another.

The bill would also amend the act in the following ways.

-- An exemption certificate could not be granted to a facility that was relocating from one location in the state to another if the owner was delinquent in certain taxes or "substantially" delinquent in others. This provision is similar to and based on a provision in the Michigan Renaissance Zone Act. [Specifically, the owner could not be delinquent under the Single Business Tax Act; the Income Tax Act; the Plant Rehabilitation and Industrial Development Districts Act; the Commercial Redevelopment Act; the Enterprise Zone Act; the Neighborhood Enterprise Zone Act; the City Utility Users Tax Act; Part 511 (commercial forests) of the Natural Resources and

Environmental Protection Act; or Public Act 189 of 1953, dealing with taxes on for-profit lessees and users of tax exempt property. The owner could not be substantially delinquent under the General Property Tax Act or the City Income Tax Act. The determination of whether someone is substantially delinquent is made by the local unit of government.]

-- The owner or lessee of a facility that moved out of the exemption district before the exemption certificate had expired would be liable to the local unit for the difference between the amount of the specific tax due on the facility for the remainder of the life of the certificate and the regular property taxes that would be due over that period without an exemption in place. A local unit could forgive the liability if it determined that would be in its best interest.

-- The bill would also amend the definition of "industrial property". The term would include an electric generating plant that was not owned by a local unit of government. (This would make such property eligible for a tax exemption.) However, this would only apply to applications approved by a local unit between June 30, 1999 and June 30, 2002. The act currently says that property of a public utility is not to be considered industrial property (and thus is not eligible for an exemption under the act). The bill would modify that by making an exception for an electric generating plant not owned by a local unit of government (subject to the same application deadlines as above). The bill also would include under the definition of "industrial property" convention and trade centers over 250,000 square feet in size.

The bill also would specify that property owned or operated by a casino was not industrial property or otherwise eligible for an abatement or reduction of property taxes. The term "casino" would refer to a casino or parking lot, hotel, motel, convention and trade center, or retail store owned or operated by a casino, an affiliate, or an affiliated company. Finally, the bill would eliminate from the definition of "industrial property" the operation of a theme and recreation park located in an industrial park district.

MCL 207.554 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency has noted that the bill would lower local revenues to the extent that a local legislative body approved applications for property tax exemptions. The impact on state revenues is indeterminate. Because approvals of exemptions rely on future local governmental decisions, the fiscal impact cannot be accurately determined. [The bill, as noted above, would expand the definition of industrial property eligible for an exemption to include electric generating plants not owned by local units of government and convention and trade centers in excess of 250,000 square feet.] (Fiscal Note dated 9-27-99)

ARGUMENTS:

For:

One local unit of government should not be able to hold hostage another municipality and a business enterprise that have agreed to an abatement as part of a major new business investment. This provision was enacted in the 1970's, when the economic landscape was very different. Then the fear was that suburban communities would "raid" the central cities and tempt business away. Today, the competition for business is not simply between communities, but between states and nations for business expansion. (And the so-called anti-raiding veto is being used by a suburb to prevent business growth within the same region.) The veto provision is anti-competitive and an obstacle to economic growth. In the case that has brought the veto into the limelight, one of Michigan's largest employers has made a commitment to expand operations within the state, within metropolitan Detroit, and one local unit of government in the same region is thwarting the plans. Municipalities cannot block a company's plans to move to another state or to another country, but can veto a company's plans to stay in the state! This makes little sense. These vetoes are said to be very rare, so eliminating them will not be depriving communities of a widely used power.

Against:

Some people believe that removing the veto could lead to counterproductive competition between communities. The provision has been known as an anti-raiding or anti-pirating provision aimed at preventing plants and jobs from simply migrating from one community to another without much net gain. If a municipality has granted a company a tax abatement and has invested in roads, water lines, and other infrastructure on behalf of a company, why shouldn't it be able to protect itself when another municipality offers new abatements to lure it away? There may be ways to alter the veto provision to apply to cases such as the Troy-Warren case, and to other worthy cases, without eliminating it altogether. Reportedly, there have only been two dozen cases of one unit refusing to consent to a tax abatement in another unit over the life of the act, so it is not being abused. The bill represents

an assault on a local government's ability to control its own future.

Response:

It should be noted that since 1994, P.A. 198 abatements must be accompanied by a written agreement between the local unit and the business involved. That agreement could spell out that if certain job creation and investment projections are not met, then the certificate could be revoked, or it could specify that if a company relocates before the certificate expires, then abated taxes could be recaptured. This has the potential to protect a municipality nervous about being "raided" by another community. Besides, how can a community be said to have "local control" when its decisions are subject to veto by another community?

Against:

Some critics of P.A. 198 say the entire act should be repealed. Tax abatements are no longer a special incentive to attract business but have become a routine, expected part of a business decision to locate or expand in a community. Local units are defenseless. The act just pits one community against another. Further, there are now other mechanisms (such as those provided by state economic development specialists) to entice business. Moreover, some critics believe the best way to provide incentives for economic growth is through broad-based tax cuts that apply to everyone and not just a favored few.

Response:

P.A. 198 abatements remain a useful tool in attracting and maintaining manufacturing. Michigan's tax system remains burdensome to manufacturers, particularly the personal property tax, and P.A. 198 exemptions help the state to compete.

For:

In an era of utility deregulation, it makes sense to allow electric generating plants to be granted tax abatements as industrial property. The bill will allow regulated public utilities and merchant power producers to be treated equally, allowing exemptions for both. Specifically, the bill would permit a tax abatement to be granted to Dearborn Industrial Generating (DIG) for a co-generation power plant that will supply energy (electricity and steam) to Rouge Steel and Ford, while reportedly reducing air emissions by 70 percent compared to its predecessor, the Rouge Powerhouse. Without the tax abatement, higher property tax rates would mean higher energy costs for the companies involved. Rouge Steel has said its competitors in Indiana and Ohio enjoy lower electric and steam rates and thus a competitive advantage. An abatement for this plant particularly makes sense because the energy is provided primarily to manufacturers and is an essential element of the manufacturing process. (Rouge Steel says 80 percent of the steam it uses is employed to power the turbine fans that supply the air for blast furnaces.) Local officials have approved an abatement application but statutory changes are needed for state approval. In general, allowing electrical generating plants to get abatements could increase competition in power generation, which is an aim of recent efforts to deregulate.

Against:

It doesn't seem appropriate to include convention and trade centers as industrial property for tax exemption purposes. Such centers would seem to be commercial operations, which used to be eligible for abatements until the legislature repealed the statute. If they are to be included, it is not clear why only centers of a certain size should be eligible.

Response:

The inclusion of convention and trade centers is justified by the fact that manufacturers often use such facilities as a way of displaying their products. Such centers are natural adjuncts to manufacturing operations. Michigan is competing with other states for this kind of business and needs to encourage its growth here. It should be noted that the bill does not grant tax abatements; that will be up to local officials.

Analyst: C. Couch

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.