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BILL



ANALYSIS

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Senate Bill 500 (Substitute S-1 as passed by the Senate)
Senate Bill 501 (as passed by the Senate)
Sponsor: Senator Tony Stamas (S.B. 500)
Senator Roger Kahn, M.D. (S.B. 501)
Committee: Economic Development and Regulatory Reform

Date Completed: 1-27-10

RATIONALE

The plant rehabilitation and industrial development Act, commonly called P.A. 198, was enacted in 1974 to provide an incentive for businesses to invest in Michigan, by offering them tax abatements to build new or expand existing plants, renovate aging facilities, or add new machinery or equipment. The Act allows local units of government to establish plant rehabilitation and industrial development districts, exempt certain facilities within those districts from the general property tax, and instead require them to pay a specific tax that amounts to a 50% tax abatement. In recent years, as Michigan has lingered in an economic recession, many industrial buildings have become vacant, but they do not qualify for P.A. 198 abatements because they are in a usable condition and do not require rehabilitation or replacement. It has been suggested that, at least for a limited period, local units should be authorized to grant tax breaks under the Act for existing facilities that have remained vacant for a period of time or have become vacant due to bankruptcy.

CONTENT

Senate Bills 500 (S-1) and 501 would amend the plant rehabilitation and industrial development Act to include an "existing facility" in the facilities that are eligible for a tax abatement under the Act, but prohibit the approval of a tax exemption certificate for an existing facility on or after December 30, 2013.

Senate Bill 500 (S-1) would define "existing facility" as industrial property that is not a replacement facility, a new facility, or a speculative building and has been vacant for at least three years immediately preceding the date of application and/or has become vacant because the most recent occupant was subject to a bankruptcy proceeding.

A detailed description of the bills follows.

Senate Bill 500 (S-1)

The Act allows local units of government to establish plant rehabilitation districts and industrial development districts. The State Tax Commission may grant an industrial facility exemption certificate to a "facility" (i.e, a new facility, speculative building, or replacement facility) located in a plant rehabilitation district or an industrial development district. A certificate essentially grants a property tax abatement for industrial property in a district, which instead is subject to the industrial facility tax. The bill would include an existing facility in the Act's definition of "facility".

Under the Act, a local unit generally may not establish a plant rehabilitation or industrial development district if the request for the district was filed after the commencement of construction, alteration, or installation of a proposed replacement facility or new facility or a related acquisition. Also, a local unit may not approve an application and the Tax Commission may not grant an industrial facilities exemption certificate unless the

applicant complies with certain requirements regarding the location and construction schedule for the facility. These provisions do not apply to a speculative building and, under the bill, they would not apply to an existing facility.

Within 60 days after receiving an approved application or an appeal of a disapproved application that was submitted to the Tax Commission before October 31, the Commission must determine whether the facility in question is a speculative building or designed and acquired primarily for the purpose of restoration or replacement of obsolete industrial property or the construction of new industrial property, and whether the facility otherwise complies with the Act. Under the bill, the Commission also would have to determine whether the facility was an existing facility.

Except as otherwise provided in the Act, the effective date of a certificate for a replacement facility or new facility is the December 31 immediately following the date the certificate is issued. Under the bill, that also would be the effective date of a certificate for an existing facility.

The Act requires the assessor of each city or township in which there is a speculative building, new facility, or replacement facility for which certificates have been issued and are in force to determine annually, as of December 31, the value and taxable value of each facility subject to a certificate. The bill would include an existing facility in that requirement.

Beginning December 30, 2013, a local unit's legislative body could not approve an application and the State Tax Commission could not grant an industrial facilities exemption certificate for an existing facility.

(The Act defines "new facility" as new industrial property other than a replacement facility to be built in a plant rehabilitation district or industrial development district.

"Speculative building" means a new building that meets all of the following criteria and the machinery, equipment, furniture, and fixtures located in the new building:

- The building is owned by, or approved as a speculative building by resolution of, a local unit in which the building is located

or the building is owned by a development organization and located in the development organization's district.

- The building is constructed for the purpose of providing a manufacturing facility before the identification of a specific user of the building.
- The building does not qualify as a replacement facility.

In the case of a replacement or restoration that occurs on the same land as that which is replaced or restored, or on contiguous land, "replacement facility" means industrial property that is or is to be acquired, constructed, altered, or installed for the purpose of replacement or restoration of obsolete industrial property, together with any part of the old altered property that remains for use as industrial property.

In the case of construction on vacant noncontiguous land, "replacement facility" means property that is or will be used as industrial property that is or is to be acquired, constructed, transferred, or installed for the purpose of being substituted for obsolete industrial property if that property is situated in a plant rehabilitation district in the same city, village, or township as the land on which the facility is to be constructed.)

Senate Bill 501

Except as otherwise provided, the Act levies a specific tax known as the industrial facility tax, as well as an administrative fee, upon every owner of a speculative building, a new facility, or a replacement facility to which an industrial facilities exemption certificate is issued. Under the bill, the industrial facility tax and administrative fee also would be levied upon the owner of an existing facility to which an industrial facilities exemption certificate was issued.

A speculative building, a new facility, or a replacement facility located in a renaissance zone is exempt from the industrial facility tax to the extent and for the duration provided under the Michigan Renaissance Zone Act, except for the portion of the tax attributable to a special assessment or a tax described in Section 7ff(2) of the General Property Tax Act. The bill would include an existing facility in this provision. (Section 7ff(2) provides that real and personal property in a renaissance zone is not exempt from collection of a special

assessment levied by the local tax-collecting unit; ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local unit; or certain taxes levied under the Revised School Code.)

The amount of the industrial facility tax in each year for a new facility or a speculative building is determined by multiplying the taxable value of the facility, excluding the land and the inventory personal property, by the sum of one-half of the total mills levied as ad valorem taxes for that year by all taxing units within which the facility is located other than the mills levied under the State Education Tax (SET) Act, plus, subject to Section 14a, the number of mills levied under the SET Act. The bill would extend that tax calculation to an existing facility. (Under Section 14a, within 60 days after an industrial facilities exemption certificate is granted for a new facility, the State Treasurer may exclude half or all of the SET mills from the calculation of the industrial facility tax on the facility, if the Treasurer determines that doing so is necessary to reduce unemployment, promote economic growth, and increase capital investment in the State.)

A local unit's legislative body may request the Tax Commission to revoke an industrial facilities exemption certificate if the purposes for which it was issued are not being fulfilled as a result of the holder's failure to proceed in good faith with the replacement, restoration, or construction and operation of a replacement facility or new facility. The bill would include the operation of an existing facility in that provision.

Unless revoked earlier, an industrial facilities exemption certificate remains in force and effect for a period to be determined by the local unit's legislative body, but not more than 12 years after the completion of the facility. Under the bill, for an existing facility, that period could be not more than 12 years after the issuance of the certificate for the facility.

If an exemption certificate for a replacement facility, a new facility, or a speculative building is effective for a period shorter than

the maximum allowable period, both of the following apply:

- The owner or lessee of the facility or building may apply for another certificate within the final year the certificate is effective, within 12 months after it expires, or, as permitted by the local unit, at any other time in which the certificate is in effect.
- The local unit's legislative body may not approve applications for certificates whose total periods exceed the maximum allowable 12-year period for the user or lessee of a replacement facility, new facility, or speculative building.

The bill would include an existing facility in those provisions.

MCL 207.552 et al. (S.B. 500)

207.561 et al. (S.B. 501)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The plant rehabilitation and industrial development Act has proven to be an effective economic development tool over the last 35 years. By providing an incentive to replace or rehabilitate aging industrial property, or to build new facilities in designated districts, P.A. 198 abatements can help to facilitate new or expanded industrial activity in any municipality in the State. The Act, however, does not authorize the use of tax abatements for the reuse of existing facilities that do not need replacement or significant expansion or rehabilitation.

During the recent economic slide, industrial facilities across the State increasingly have become and remain vacant. While other industrial operations could use those facilities, they often go unoccupied for long periods. To encourage the reuse of existing facilities, P.A. 198 tax abatements should be made available for them, including those that might not need rehabilitation or redevelopment. This would result in more productive and expeditious use of industrial facilities throughout Michigan.

Response: The use of tax incentives to encourage economic development often is criticized. While P.A. 198 has proven to be very effective, broadening it at this time could lead to a negative public perception.

on whether 0, 3 or 6 mills of the State Education Tax were abated.

Fiscal Analyst: David Zin

Opposing Argument

The bills actually could exacerbate the problem of vacant industrial property. The legislation could encourage property owners to keep industrial facilities unused for an extended period in order to meet the three-year vacancy requirement to qualify as an "existing facility" eligible for an industrial facility tax exemption.

Response: Vacancy for at least three years would be only one way for industrial property to qualify as an existing facility. Property that became vacant because the most recent occupant was subject to a bankruptcy proceeding also would qualify. In addition, the bill includes a sunset of December 30, 2013, for local units to approve an application and for the Tax Commission to grant an industrial facilities exemption, which would discourage property owners from abusing the system by intentionally leaving a facility vacant.

Opposing Argument

Local economic development officials in Michigan counties that border other states apparently are concerned that the legislation could encourage building owners to push their tenants out, possibly to out-of-State locations, in order for their facilities to be vacated and qualify for a tax abatement as an existing facility for the next tenant.

Response: Previous versions of Senate Bill 500 (S-1) would have made a facility eligible for the tax abatement if the industrial property became vacant because the most recent occupant relocated outside of Michigan. That provision was removed before the bill was approved by the Senate.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would reduce State and local tax revenue by an unknown amount that would depend on the number of properties affected and the specific characteristics of those properties. Local property taxes on affected properties would be reduced by approximately 50% while the impact on State Education Tax revenue would depend

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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.