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BILL ANALYSIS



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House Bill 5415 (Substitute H-1 as reported with amendment)

Sponsor: Representative Gene DeRossett

House Committee: Commerce

Senate Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 11-16-04

RATIONALE

Under the plant rehabilitation and industrial development Act (also known as P.A. 198), a local unit of government may establish a plant rehabilitation or industrial development district if certain criteria are met. Once a district is established, the owner of a facility that will be built or restored in the district may apply to the local unit for an industrial facilities exemption certificate. A certificate exempts the facility from the ad valorem property tax and makes it subject to a specific tax, which is approximately 50% of the property tax for a new facility. While the Act prescribes the procedures to establish a district, it does not address the possibility of terminating a district.

In some cases, a local unit will create a district to attract a particular company, which then decides to locate elsewhere. In other situations, a company will operate in district for some time and then close or move. Since the district continues to exist, other types of firms might want to locate there in order to receive the tax abatement. Although the local unit has the authority to deny an exemption certificate, a facility owner may appeal to the State Tax Commission. It is the practice of the Tax Commission to grant a certificate if the facility owner meets the statutory criteria.

To address this situation, it has been suggested that local units should have the authority to dissolve districts in which no exemption certificates are in effect.

CONTENT

The bill would amend the plant rehabilitation and industrial

development Act to allow a local unit of government to terminate a plant rehabilitation district or industrial development district if there were no industrial facilities exemption certificates in effect in the district.

Under the Act, the legislative body of a local unit of government (a city, village, or township) may, by resolution, establish a district if it finds that property comprising at least 50% of the State equalized valuation of the industrial property within the district is obsolete. The local unit may act on its own initiative or upon a written request filed by the owner or owners of 75% of the State equalized value of the industrial property located within a proposed district. Before adopting the resolution, the legislative body must give written notice to the owners of all real property within the proposed district and hold a public hearing at which those owners and other residents or taxpayers of the local governmental unit have a right to appear and be heard.

Under the bill, a local unit of government could terminate a district by resolution of its legislative body if no industrial facilities exemption certificates were in effect on the date of the resolution. Before acting on a proposed resolution, the local governmental unit would have to give at least 14 days' notice by certified mail to the owners of all real property within the district, as determined by the tax records in the office of the assessor or the treasurer of the local tax collecting unit where the property was located. The local unit also would have to hold a public hearing on the district's

termination, at which those owners and other residents or taxpayers of the local governmental unit, or others, would have a right to appear and be heard.

MCL 207.554

BACKGROUND

The Department of Treasury's "Questions and Answers Regarding the Administration of Industrial Facilities Exemptions" contains the following language:

"Is there a procedure for dissolving an industrial development district or a plant rehabilitation district?"

The Act provides the procedures for establishing districts but make no provision for dissolving districts. The State Tax Commission has been advised by its legal counsel that it has no basis to respond to the question of how to dissolve a district because neither the law nor the Tax Commission rules provide any direction in this matter. While the PTD [Property Tax Division] might speculate that the correct way to dissolve an IDD [industrial development district] would be by notice to owners within the district and public notice to all others concerned (in the same way a district is created), this is still speculation and is not supported by law or by court rulings."

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

Because local units of government cannot dissolve a plant rehabilitation or industrial development district, they may find themselves in a position of having to grant tax abatements that were not intended when the district was first established. If a particular company does not locate in district that was created for it, or if a facility in a district moves out or shuts down, the local unit is still left with the district. While the district might have been created for specific type of enterprise, such as a high technology firm, the companies that want to take advantage of the district may be of another type, such as industrial or service-oriented firms, that do not meet the needs

or desires of the community or that the local unit does not consider stable.

In this situation, there is little the local unit can do to deny a tax exemption certificate. If a local unit does so and the facility owner appeals to the Tax Commission, the Commission will overturn the local unit's decision if the applicant qualifies in every way under the Act. To deal with this, some local units apparently are establishing districts that consist only of a specific parcel, instead of creating industrial parks, or are granting only 12-month exemption certificates for facilities that otherwise would be denied an abatement.

In the past, some local units assumed that they could dissolve districts and adopted resolutions to do so. According to the Tax Commission, however, local units have no statutory authority to eliminate districts. By addressing this omission in the law, the bill would give local units the flexibility to create and dissolve districts as needed, and would protect tax revenue. Local units no longer would be forced to grant tax abatements to firms that do not meet their communities' needs.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no effect on current State or local revenue or expenditures. However, the bill could prevent future reductions in State and local unit revenue and certain future increases in School Aid Fund expenditures. Exemption certificates generally are granted whenever a taxpayer qualifies for a certificate and seeks to obtain one. If a local unit does not approve a certificate for a qualified taxpayer, the disapproval is generally appealed and it is typical for the taxpayer ultimately to receive a certificate valid for at least some period of time as long as the taxpayer meets the qualifications to receive a certificate. As a result, the only way a local unit can effectively prevent exemption certificates is to eliminate the district.

Exemption certificates reduce local unit revenue and can reduce State education tax revenue. To the extent that local school district revenue is reduced by a certificate, expenditures from the School Aid Fund are increased in order to maintain a school's

guaranteed per-pupil funding level. By allowing local units to terminate districts that do not have an effective certificate in operation, the bill would enable local units to eliminate the possibility that future certificates will be sought and received if the local unit does not wish to grant certificates.

The fiscal impact is preliminary and will be revised as new information becomes available.

Fiscal Analyst: David Zin

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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.