

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

November/December 2005



### **PA 198 of 1974: Overview & Recent Amendments** **By J.P. Finet, Legislative Analyst**

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#### **Background**

During the late 1960s, Michigan began seeing a decline in investment in new manufacturing plants and industrial facilities. In 1974, when the State's unemployment rate topped 10.0%, some contended that the decline in Michigan's manufacturing sector was due to the lack of tax incentives for companies to modernize or restore their obsolete facilities, instead of relocating to other states that could offer the firms tax breaks. Proponents of tax abatements claimed that Michigan's high property tax rate, when compared with the rates in other industrial states, meant that businesses were not improving their Michigan facilities because they did not want to pay the increased property taxes that would result. In addition, Michigan's manufacturers began facing increased competition from foreign manufacturers that were starting to enter the American market in the 1970s.

The issue came to a head in the early 1970s when the Chrysler Corporation threatened to discontinue the rehabilitation of its Mack Avenue stamping plant in Detroit. To keep the Chrysler plant and other operations in Michigan, Public Act 198 of 1974 (commonly referred to as PA 198) was enacted. The Act is designed to encourage businesses to rehabilitate obsolete plants and help keep manufacturing jobs in the State by providing for plant rehabilitation and industrial development districts, in which new or replacement facilities are exempt from property taxes and instead subject to a lower industrial facilities tax. According to the Michigan Economic Development Corporation, since PA 198 was enacted, it has accounted for 16,500 projects representing 1.3 million jobs retained, 500,000 jobs created, and \$81 billion invested.

In recent years, Michigan has lost a large number of manufacturing jobs and PA 198 again is being used as a mechanism to retain manufacturers and create jobs. Since the beginning of the 2003-04 legislative session, the Act has been amended seven times—usually to accommodate particular facilities or address specific situations. Additionally, two proposed changes were vetoed by the Governor during that time. The following is an overview of PA 198, recent amendments, vetoed legislation, and proposed changes before the Legislature.

#### **Overview of PA 198**

Under the Act, a local unit of government (a city, village, or township), by resolution of its legislative body, may establish a plant rehabilitation district, an industrial development district, or both, consisting of one or more parcels or tracts of land or a portion of a parcel or tract of land. The legislative body may establish a district on its own initiative or upon a written request filed by the owner or owners of 75.0% of the State equalized valuation (SEV) of the industrial property located within the district. In its resolution, the legislative body must find that property comprising at least 50.0% of the industrial property in the district is obsolete.

After a district has been established, the owner or lessee of a new facility, replacement facility, or speculative building may apply to the clerk of the local unit for an industrial facilities



abatement certificate. To be eligible for a certificate, the industrial property must be used for certain activities, such as the manufacturing and processing of goods or materials, high-technology activity, and agricultural processing. A facility or that portion of a facility for which an industrial facilities exemption certificate is in effect, but not the land on which it is located or the facility's inventory, is exempt from ad valorem real and personal property taxes.

An industrial facilities tax is levied upon the owner of a speculative building, new facility, or replacement facility to which an industrial facilities exemption certificate is issued (except for a facility located in a renaissance zone). The amount of the tax is determined according to formulas set forth in the Act. In general, for a new facility or speculative building, the tax is 50.0% of what the property tax otherwise would be, plus the State education tax. For a replacement facility, the industrial facilities tax is the amount that property taxes would be based upon the value of the facility before renovation. The proceeds of the tax are disbursed among the State, cities, townships, villages, school districts, counties, and authorities, at the same time and in the same proportions as required by law for the disbursement of property taxes.

Unless revoked earlier, an industrial facilities exemption certificate remains in effect for a period determined by the local government, which may not be more than 12 years after the facility has been completed. If the certificate is issued for a period of less than 12 years, the owner or lessee of a facility may apply for an extension as long as the total duration of the exemption does not exceed 12 years.

With exceptions for specific projects, a request for the establishment of a plant rehabilitation or industrial development district may be filed only in connection with a proposed replacement facility or new facility, the construction, acquisition, alteration, or installation of or for which has not commenced at the time the request is filed. Additionally, the legislative body of a local unit of government may not establish a district if it finds that the request was filed after the commencement of construction, alteration, or installation of, or of an acquisition related to, the proposed replacement facility or new facility.

Within 60 days after the clerk of the local governmental unit receives an application for an industrial facilities exemption certificate, the legislative body of the local unit must approve or disapprove the application. If approved, the clerk must forward the application to the State Tax Commission in time for the facility to receive the certificate effective for the following year. The Commission has 60 days after receiving an approved application (or an appeal of a disapproved application) to determine whether the facility complies with the Act. If the Commission makes this determination, it must issue a certificate effective the immediately succeeding December 31.

### **Recent Amendments**

The following is a description of amendments to Public Act 198 that have been enacted since the beginning of 2003.

Public Act 5 of 2003 amended PA 198 to allow local units of government to issue an industrial facilities exemption certificate to a business that is engaged in the creation or



synthesis of biodiesel fuel (a value-added agricultural processed fuel that can be made from virtually any oil or animal fat). In addition, a certificate is available until December 31, 2007, for electric generating plants not owned by a local unit of government, including plants fueled by biomass. Public Act 5 was enacted to provide an incentive for businesses to produce and use biodiesel fuel or to use bioenergy in the production of electricity.

Public Act 323 of 2004 created a five-year exemption from the industrial facility tax for a speculative building, new facility, or replacement facility owned or operated by a “qualified start-up business” (as defined in the Single Business Tax Act). Upon application for an exemption by a qualified start-up business, the governing body of a local tax collecting unit may adopt a resolution to exempt a facility from the tax. Public Act 323 was part of a package of legislation offering small research and development firms tax incentives similar to those offered to businesses that locate in renaissance zones, in order to spur job creation and economic growth.

Public Act 437 of 2004 allows a local unit of government to terminate a plant rehabilitation district or industrial development district if there are no industrial facilities exemption certificates in effect in the district. This amendment resolved a potential issue facing a local government that established a plant rehabilitation district to attract a specific company that subsequently chose not to locate in the district. There was concern that other types of companies (which the local unit was not trying to attract) could take advantage of the district. While the local unit could have denied a tax exemption certificate, the State Tax Commission would have overturned the decision upon appeal if the business qualified under PA 198. Public Act 437 gives local units the flexibility to dissolve districts as needed, and protect tax revenue.

Public Act 442 of 2004 specifies that the industrial facility tax becomes a lien on real property on the date the tax is levied, except as otherwise provided; and to delete a requirement that a certificate of nonpayment of the tax be filed in order for the tax to become a lien on real property. The Act also allows the treasurer of a county, township, city, or village to designate tax day (December 31 of the preceding year) as the date on which industrial facilities taxes become a lien on the real or personal property assessed. The treasurer may do so by filing an affidavit with the register of deeds for the county where the property is located attesting that one or more of the events described in the Act have occurred (for example, the owner has filed a bankruptcy petition, a secured lender has brought an action to foreclose on the property assessed, or the property is subject to receivership under State or Federal law).

The Act was part of a package of legislation that addressed a situation in Bruce Township. In 2000, the day after a company filed for bankruptcy, it paid the township its summer property taxes, which the township then distributed to various governmental units according to State law. The township forwarded the \$17,000 industrial facilities tax levy to the State. The bankruptcy trustee later asked the township to return the tax payment. The legislation required the State to reimburse the township for the money it paid the bankruptcy trustee. Public Act 442 in effect turned the company’s tax obligation into a lien on the date it was assessed, December 31, 1999, rather than on the date upon which a certificate of nonpayment was filed, as PA 198 previously had required.



Public Act 118 of 2005 amended the definition of “industrial property” in PA 198 to include the operation of a logistical optimization center among the activities that qualify a facility for the tax abatement. Under the Act, a logistical optimization center is a sorting and distribution center, containing at least 925,000 square feet, that supports an assembly center and its manufacturing process for the purpose of optimizing transportation, just-in-time inventory management, and material handling, and that is within two miles of a private passenger motor vehicle assembly center, which must meet specific criteria. The sorting and distribution center had to apply for an industrial facilities exemption certificate after June 30, 2005, and before January 1, 2006.

In early 2005, an investment company purchased a former General Motors (GM) engine plant in Delta Township to lease it to Ryder Supply Chain Solutions, which will provide logistics support to GM's other Lansing-area factories. When GM operated the facility, it received a tax abatement under PA 198, but Ryder was not eligible for the same abatement because it would be operating the facility as a logistical optimization center and not a manufacturing plant. Public Act 118 allows Ryder to receive the abatement originally granted to GM.

Public Act 251 of 2005 provides that if a local government passed a resolution approving an industrial facilities exemption certificate for a new facility on October 28, 1996, for a certificate that expired in December 2003, and the local governmental unit passed a resolution extending the certificate after December 2003 and before March 1, 2006, the State Tax Commission must issue for that property an industrial facilities exemption certificate that begins on December 30, 2005, and ends on December 30, 2010, notwithstanding other provisions in PA 198, as long as the property continues to qualify under the Act.

Public Act 251 allows Tri-Bar Manufacturing, located in Whitmore Lake, to move its manufacturing operations to a Fenton facility and receive the industrial facilities exemption that the previous occupant enjoyed. In 1996, the facility's previous occupant received a certificate that expired in 2003. (Although PA 198 allows an exemption certificate to be extended, if it was issued for less than the maximum 12-year duration, the facility owner must apply for an extension before the certificate expires.) The new certificate required by Public Act 251, when combined with the previous occupant's seven-year certificate, will reach the 12-year maximum allowed under PA 198.

Public Act 267 of 2005 requires the State Tax Commission to issue an industrial facilities exemption certificate for the period of December 30, 2002, to December 30, 2009, if a local governmental unit passed a resolution approving the certificate for a new facility on October 14, 2003, for a certificate that expired in December 2002. The Act also amended the definition of “industrial property” in PA 198 to include land, buildings, and other property whose primary purpose and use are the operation of “qualified commercial activity”, which is commercial property that meets specific criteria. Among other things, at least 90.0% of the property, excluding the surrounding green space, must be used for warehousing, distribution, and logistics to provide food for institutional, restaurant, hospital, or hotel customers, and the property must be in a village within 15 miles of a Michigan border.



The legislation originally was introduced to benefit Coffee Express, located in Plymouth Township. In October 2003, the township had passed a resolution approving the extension of an exemption for a new facility for a certificate that had expired in December 2002. An amendment to the legislation extended an abatement to a commercial warehouse facility in Constantine, near the Indiana border.

### **Vetoed Amendments to PA 198**

The following bills were vetoed by the Governor during the past two legislative sessions.

Senate Bill 869 of 2003-04 would have created a five-year exemption from the industrial facility tax for a speculative building, new facility, or replacement facility owned or operated by a “qualified start-up business”. The bill was part of a package of legislation that would have created exemptions from other taxes for start-up businesses. The exemptions generally would not have begun until two years after a business initially qualified for a proposed single business tax credit for start-up businesses.

In vetoing these measures, Governor Granholm stated that the benefits of the tax exemptions would have been disconnected by seven years from the conditions making a business eligible for them, and suggested that tax incentives be more focused and accurately targeted. (As indicated above, a subsequent package of legislation, including Public Act 323 of 2004, was enacted to provide tax breaks for start-up businesses.)

Senate Bill 175 of 2005-06 would have permitted local units of government to extend property tax abatements to property used for “qualified commercial activity”, i.e., commercial property that was used for warehousing, distribution, or logistic purposes or a communication service center, and that occupied a building or structure larger than 100,000 square feet.

The bill was introduced at the request of communities located along Michigan’s southern border that claimed they had been unable to attract warehousing operations because they could not offer them the same property tax abatements being offered by communities in Ohio and Indiana. Reportedly, because St. Clair County could not offer a property tax abatement under PA 198, a company chose locate its warehousing operation in northern Indiana, where it received a 50.0% property tax abatement.

In her veto message, Governor Granholm stated that the provisions of the bill went well beyond addressing the competitive disadvantages faced by Michigan’s border communities when it came to attracting commercial warehousing and distribution centers. (As noted above, Public Act 267 of 2005 allows an abatement for a commercial warehouse within 15 miles of the border.)

### **Proposed Amendments**

The following are proposed amendments to PA 198 that are currently before the Legislature.

Senate Bill 579 would require that a facility located in an industrial development district owned by a person who applied for an industrial facilities exemption certificate in July 2001

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for construction that was commenced in February 2001 in a district that was established in September 2001, be taxed under PA 198 as if the facility had been granted the certificate in October 2001.

Apparently, in February 2001, Pro-Weld began renovating a Port Huron facility after being misinformed by the Economic Development Alliance of St. Clair County that the facility was located within the city's industrial development district. The company applied for an industrial facilities exemption certificate in July 2001, and the district was expanded to include the facility in September 2001. PA 198, however, requires a district to be established before the request for a certificate is filed. The bill has been reported from the Senate Committee on Economic Development, Small Business and Regulatory Reform.

Senate Bill 581 would permit local units of government to extend property tax abatements for the operation of a logistical optimization center. The bill's language is similar to that of Public Act 118 of 2005 (described above). The bill has not been reported from the Economic Development, Small Business and Regulatory Reform Committee.