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MUNICIPAL GOVERNMENT ECONOMIC DEVELOPMENT

INCENTIVE PROGRAMS IN MICHIGAN

In recent years several state laws have been adopted that enable municipalities to attempt to encourage economic development and stimulate commercial and industrial expansion in Michigan. Counties, cities, villages, and townships may establish economic development corporations (P.A. 338 of 1974); cities, villages, and townships may establish downtown development authorities (P.A. 197 of 1975), plant rehabilitation and industrial development districts (P.A. 198 of 1974), and commercial redevelopment districts (P.A. 255 of 1978); and cities may establish tax increment finance authorities (P.A. 450 of 1980). The use of any or all of these economic development programs is left to the discretion of the governing body of the local unit.

Each of these programs has the same basic purpose – to provide an incentive to locate or expand business facilities in Michigan. The financial incentives used to achieve this expansion, however, represent two separate and distinct approaches in the pursuit of private sector economic growth. The expenditure of public funds and below-market financial arrangements represent one approach, while the provision of tax incentives represents the other. This **Council Comments** provides a brief description of each of the five economic development programs and **Council Comments** No. 959 will provide a brief analysis of the tax abatement programs. **Council Comments** Nos. 958 and 959 summarize

Report No. 280, available upon request from the Research Council.

PUBLIC FUNDING OF PRIVATE DEVELOPMENT

The expenditure of taxpayer money by local units of government to influence business location is not a recent phenomenon. Historically, municipalities in Michigan have encouraged economic development by financing public improvements, such as road construction and water and sewer line installation, with public funds. In recent years, however, the scope of public sector involvement in economic development has grown from general encouragement to specific assistance as well. Economic development corporations, downtown development authorities, and tax increment authorities may provide both general encouragement and specific assistance.

Economic Development Corporation Act

The governing body of a municipality (county, city, township, or village) is authorized under P.A. 338 of 1974 to create an economic development corporation (EDC) for the municipality. The purpose of economic development corporations is to strengthen and revitalize the state and local economy by undertaking various projects that stimulate economic development within a municipality. A project may include the

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acquisitions construction, improvement, maintenance, or repair of land, buildings, machinery, furnishings, or equipment suitable for use by an industrial or commercial enterprise. In order to finance all or part of a project, the EDC may borrow money and issue industrial revenue bonds. The revenue generated from the sale or lease of a project or the repayment of a loan is used to repay the principal and interest on the industrial revenue bond issue.

Downtown Development Authority Act

The legislative body of a municipality (city, township, or village) is authorized under P.A. 197 of 1975 to create a downtown development authority (DDA). The purpose of a DDA is to prevent deterioration and promote economic growth within a business district by developing, adopting, and implementing development plans. To implement a development plan, the authority may construct, rehabilitate, equip, improve, maintain, or operate any building within the downtown district for public or private use. Funds to finance activities of the authority may be derived from several sources including taxes, revenues generated from the use of assets, proceeds from revenue bonds, municipal funds including state and federal grants, special assessment levies, and tax increment financing receipts.

Tax Increment Finance Authority Act

The governing body of a city is authorized under P.A. 450 of 1980 to create a tax increment finance authority (TIFA), specify the boundaries of the authority district, and designate a board of directors for the authority. The municipality may establish only one authority; however, the boundaries of the authority may be changed at any time by the governing body after a public hearing. The purpose of tax increment finance authorities is to halt a decline in property values and attempt to increase property tax valu-

ation by promoting economic growth in the TIFA district.

The TIFA prepares plans that are designed to stimulate economic growth and revitalize a “development area” or development areas within the boundaries of the TIFA. The law permits the municipality, through the TIFA, to acquire a portion of the property tax levy of all the taxing jurisdictions within the boundaries of the TIFA (including the local school district, the intermediate school district, the community college, and the county). The authority may adopt separate tax increment financing plans for one or more areas within the authority district. Development plans prepared by a TIFA, or a DDA, including plans that provide for tax increment financing, must be approved by the governing body of the municipality.

Questions exist, however, concerning the legality of tax increment financing used by both downtown development authorities and tax increment finance authorities. At issue is the legal authority of the legislature to permit property tax revenue to be used for purposes other than the purposes authorized by the voters or authorized for a specific purpose by statute. The Michigan Supreme Court has ruled that approval of extra-voted millage earmarks the funds raised by the increased millage for those purposes specified on the ballot, and they cannot be used for other purposes. The Attorney General has opined that property taxes levied under statutory authority “confines the use of such tax revenues to the purposes expressed in the act, and they may not be diverted to other municipal uses or purposes.” It appears that the legislation authorizing tax increment financing conflicts with court decisions and attorney general opinions that require property taxes authorized for specific purposes be used only for those purposes. To date, no Michigan court has ruled on this question.

TAX ABATEMENTS AND PRIVATE DEVELOPMENT

Article IX, Section 3, of the Michigan Constitution provides for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The Constitution permits the legislature to provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation. In 1974, the legislature authorized an industrial facilities tax (P.A. 198) to be levied on certain real and personal industrial property and in 1978, a commercial facilities tax (P.A. 255) to be levied on certain real commercial property in lieu of the general ad valorem property tax. The specific tax represents a reduction in tax liability of at least 50/00 and is supposed to encourage commercial and industrial development that might not have occurred without the tax reduction.

Plant Rehabilitation and Industrial Development District Act

The legislative body of a local governmental unit (city, township, or village) is authorized under P.A. 198 of 1974 to issue an industrial facilities exemption certificate to a replacement facility (including a restored facility), a new facility or a speculative building. A facility issued an exemption certificate is exempt from ad valorem taxation but is subject to the industrial facilities tax. Industrial property eligible for an exemption certificate includes land improvements, buildings, structures, and other real property and machinery, equipment, furniture, and fixtures used in the manufacturing and processing of goods and materials. The duration of the exemption is left to the discretion of the local legislative body but may not extend beyond 12 years after the completion of the facility.

The manner in which the industrial facilities tax is calculated and the amount of the tax are dependent on the type of facility qualifying for the exemption. For a new facility or speculative

building, the total SEV of the facility (excluding land) each year is multiplied by one-half of the total mills levied by all taxing jurisdictions in the district. The net effect is that the industrial facilities tax is 50% of what taxes would be if the facility were subject to general ad valorem property taxation. For a replacement or restored facility, the SEV of the obsolete facility (excluding land) in the year preceding the issuance of the industrial facilities exemption certificate is multiplied by the total mills levied by all taxing jurisdictions in the district. The industrial facilities tax, in effect, exempts from taxation the increased value of the replacement or restored facility for a period of up to twelve years. Industrial facilities tax receipts are distributed among the taxing jurisdictions in the same manner as general property taxes. If a school district is "in-formula" (i.e. receives state school aid), the school district share of the tax is deposited in the state school aid fund. Upon expiration of the certificate, the abated facility is placed on the ad valorem property tax roll.

Commercial Redevelopment Act

The legislative body of a local governmental unit (city, township, or village) is authorized under P.A. 255 of 1978 to issue a commercial facilities exemption certificate to a replacement facility, restored facility, or new facility located within specific areas of the jurisdiction. A facility issued an exemption certificate is exempt from ad valorem property taxation and is subject to a commercial facilities tax. Commercial property eligible for an exemption certificate includes land improvements classified as real property and either completed or in the process of construction, the primary purpose and use of which is the operation of a commercial business enterprise. The duration of the exemption is left to the discretion of the local legislative body but may not exceed 12 years after the completion of the facility. A 1984 amend-

ment permits a legislative body to review and extend an exemption that was issued for less than 12 years. Upon expiration of the certificate, the abated facility is placed on the ad valorem property tax roll.

The manner in which the commercial facilities tax is calculated and amount of the tax are dependent on the type of facility qualifying for the exemption. For a new or replacement facility, the total SEV of the facility (excluding land and personal property) each year is multiplied by one-half of the total mills levied by all taxing jurisdictions in the district. For a restored facility, the SEV of the obsolete facility (excluding land and personal property) in the year preceding the issuance of the commercial facilities exemption certificate is multiplied by the total mills levied by all taxing Jurisdictions in the district. Commercial facilities tax receipts are dis-

tributed among the taxing Jurisdictions in the same manner as general property taxes. If a school district is "in-formula," the school district share is deposited in the state school aid fund. Upon expiration of the certificate, the abated facility is placed on the ad valorem property tax roll.

The commercial redevelopment act includes a provision stating that new exemptions may not be granted after December 31, 1985. The Attorney General recently opined that expiration (sunset) provisions in a legislative act are unconstitutional unless an expiration notice is included in the title of the act. The title of P.A. 255 of 1978 does not include an expiration notice; consequently, it is not clear whether new commercial exemptions can be issued in 1986 and beyond.

COMBINING FINANCIAL INCENTIVES AND TAX ABATEMENTS

Each of these five economic development programs represents a separate and distinct tool available to municipalities to promote and subsidize private sector growth in the state. Mu-

nicipalities may utilize any or all of these programs simultaneously in attempting to encourage economic development and stimulate commercial and industrial expansion in Michigan.