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**SFA**



**BILL ANALYSIS**

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House Bill 4156 (Substitute H-1 as reported without amendment)

Sponsor: Representative Gary Woronchak

House Committee: Commerce

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 10-23-01

### **RATIONALE**

Under the plant rehabilitation and industrial development Act (commonly referred to as P.A. 198), a local unit of government may establish plant rehabilitation districts and industrial development districts. Owners of certain types of facilities within those districts may apply for and receive an industrial facilities exemption certificate. A facility or portion of a facility for which a certificate is in effect is exempt from ad valorem real and personal property taxes and is subject, instead, to the industrial facility tax imposed under the Act. Although taxes under the General Property Tax Act and industrial facility taxes under P.A. 198 are levied at different rates, both are collected in the same manner by local tax collecting units such as cities and townships. Unlike the General Property Tax Act, however, P.A. 198 does not provide for a property tax administration fee.

Under the General Property Tax Act, if the governing body of a local property tax collecting unit approves, by resolution or ordinance, the imposition of a property tax administration fee, the local property tax collecting unit must add a fee of not more than 1% of the total tax bill per parcel. A property tax administration fee is "a fee to offset costs incurred by a collecting unit in assessing property values, in collecting the property tax levies, and in the review and appeal process" (MCL 211.44).

Reportedly, it has been a longstanding practice for local tax collecting units that impose the 1% administration fee on the collection of property taxes, also to impose the same fee on the collection of industrial facility taxes levied under P.A. 198. In January 2000, however, the Michigan Tax Tribunal ruled in

*Guardian Industries Corp. v Township of Ash* that the administration fee should not be levied upon payers of the P.A. 198 tax. Some people believe that P.A. 198 should allow the collection of a 1% fee from owners of property that is subject to the industrial facility tax, so that the local tax collecting units may continue the practice of collecting that fee to offset associated costs as they do under the General Property Tax Act. (Please see **BACKGROUND** for a discussion of *Guardian Industries Corp. v Township of Ash*.)

### **CONTENT**

The bill would amend the plant rehabilitation and industrial development Act to levy an administrative fee upon every owner of a speculative building, new facility, or replacement facility to which an industrial facilities exemption certificate is issued under the Act.

The Act imposes on those owners a specific tax known as the industrial facility tax, in lieu of property taxes under the General Property Tax Act. The bill would levy an administrative fee calculated in the same manner and at the same rate that the local tax collecting unit imposed on ad valorem taxes collected under the General Property Tax Act. As with the industrial facility tax imposed under P.A. 198, the fee levied under the bill would have to be paid annually and at the same times, in the same installments, and to the same officer or officers as taxes and administrative fees imposed under the General Property Tax Act.

MCL 207.561

## **BACKGROUND**

Guardian Industries is located in Ash Township in Monroe County. The company's property was granted an industrial facilities exemption under P.A. 198 in December 1989. A clerical error on the company's tax bill for 1994 through 1997 resulted in Guardian Industries' paying 100% of the ad valorem tax rate for the property, rather than the 50% rate it should have paid under its industrial facilities exemption. The parties stipulated to the recalculation of the tax and interest paid on the refund to Guardian Industries. The only dispute in the matter before the Tax Tribunal was the property tax administration fee.

Guardian Industries argued that the property tax administration fee should not apply because authorization for the fee is under the General Property Tax Act but the company was assessed taxes under P.A. 198. It contended that the fee is exclusively for the collection of ad valorem taxes under the General Property Tax Act, for which it was exempt, and that the fee "cannot be extended to...[the] industrial facilities tax by implication or analogy".

Ash Township responded that the administration fee was properly applied to the industrial facilities tax because P.A. 198 does not exempt certificate holders from taxes entirely, but merely subjects them to a different type of tax. It contended that P.A. 198 "only exempts entities from the tax rate under the general property tax act; it does not and was not meant to exempt entities from property tax administrative fees". The township also alleged that the fee was necessary to collect the industrial facility tax.

The Tax Tribunal held that the property in question was not covered under the General Property Tax Act, but rather under P.A. 198, which "creates a specific tax for the property, provides for the levy and collection of the tax and provides penalties...[but] does not address an administrative fee". In addition, the section of the General Property Tax Act that authorizes the 1% fee "is silent on the administrative fee for specific taxes". As Guardian Industries claimed, "[I]n numerous tax disputes, the courts have always insisted that in order for the taxing authority to prevail, the tax statute in question must clearly and expressly impose the tax on the

taxpayer. Whenever the statutes failed to do so, the courts resolved the matter in favor of the taxpayer."

The Tribunal found that the administrative fee should not be levied upon the specific tax imposed under P.A. 198, and ordered that "any and all administrative fees charged to...[Guardian Industries] on the industrial facilities tax be refunded".

## **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**

Charging a 1% administration fee for collecting industrial facility taxes under P.A. 198 apparently has become routine in communities that collect a fee along with general property taxes. Since the Act specifies that the industrial facility tax is payable at the same time, in the same installments, and to the same officer or officers as taxes imposed under the General Property Tax Act, tax collecting units evidently believed that the administration fee imposed for the collection of property taxes also applied to the collection of taxes under P.A. 198. In 2000, however, the Michigan Tax Tribunal ruled that the fee could not be assessed against a payer of the industrial facility tax because P.A. 198 does not contain authorization for the fee.

Local taxing units have come to rely on the collection of the administration fee to support the costs associated with collecting property taxes. Separately identifying which tax amounts are subject to the 1% fee and which are not would be inefficient and costly, and suspending the fee could have a significant financial impact on some local taxing units. Reportedly, suspending collection of the fee in Dearborn, where the P.A. 198 abatement is used quite extensively, would cost that city roughly \$40,000. The bill would preserve local revenue by allowing local units that impose an administration fee upon property tax collections to continue their practice of adding that fee to industrial facility taxes as well. Also, by amending P.A. 198 to grant local units the specific statutory power needed to continue to collect the fee on the industrial facility tax, the bill would overcome the

objections of the Tax Tribunal in *Guardian Industries Corp. v Township of Ash*.

Legislative Analyst: P. Affholter

**FISCAL IMPACT**

State Impact: The bill would have no fiscal impact on the State.

Local Impact: The bill would increase revenues received by local units that have passed ordinances allowing the imposition of an administrative fee for the collection of property taxes. The administrative fee is limited by MCL 211.44(3) to 1% of the tax imposed. An unknown number of local units have passed ordinances allowing the imposition of administrative fees, although it is likely that most, if not all, local units have such ordinances. Tax revenues under P.A. 198 are expected to total \$123.0 million in fiscal year 2000-01. If all local units were to assess the administrative fee at its maximum level, local unit revenues under the bill would increase by \$1.2 million per year.

Fiscal Analyst: D. 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.