

SENATE BILL No. 1386

August 9, 2006, Introduced by Senator BASHAM and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to amend 1974 PA 198, entitled

"An act to provide for the establishment of plant rehabilitation districts and industrial development districts in local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax upon the owners of certain facilities; to impose and provide for the disposition of an administrative fee; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; to prescribe the powers and duties of the state tax commission and certain officers of local governmental units; and to provide penalties,"

by amending section 9 (MCL 207.559), as amended by 2006 PA 22.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) The legislative body of the local governmental
2 unit, in its resolution approving an application, shall set forth a
3 finding and determination that the granting of the industrial
4 facilities exemption certificate, considered together with the

1 aggregate amount of industrial facilities exemption certificates
2 previously granted and currently in force, shall not have the
3 effect of substantially impeding the operation of the local
4 governmental unit or impairing the financial soundness of a taxing
5 unit that levies an ad valorem property tax in the local
6 governmental unit in which the facility is located or to be
7 located. If the state equalized valuation of property proposed to
8 be exempt pursuant to an application under consideration,
9 considered together with the aggregate state equalized valuation of
10 property exempt under certificates previously granted and currently
11 in force, exceeds 5% of the state equalized valuation of the local
12 governmental unit, the commission, with the approval of the state
13 treasurer, shall make a separate finding and shall include a
14 statement in the order approving the industrial facilities
15 exemption certificate that exceeding that amount shall not have the
16 effect of substantially impeding the operation of the local
17 governmental unit or impairing the financial soundness of an
18 affected taxing unit.

19 (2) Except for an application for a speculative building,
20 which is governed by subsection (4), the legislative body of the
21 local governmental unit shall not approve an application and the
22 commission shall not grant an industrial facilities exemption
23 certificate unless the applicant complies with all of the following
24 requirements:

25 (a) The commencement of the restoration, replacement, or
26 construction of the facility occurred not earlier than 12 months
27 before the filing of the application for the industrial facilities

1 exemption certificate. If the application is not filed within the
2 12-month period, the application may be filed within the succeeding
3 12-month period and the industrial facilities exemption certificate
4 shall in this case expire 1 year earlier than it would have expired
5 if the application had been timely filed. This subdivision does not
6 apply for applications filed with the local governmental unit after
7 December 31, 1983.

8 (b) For applications made after December 31, 1983, the
9 proposed facility shall be located within a plant rehabilitation
10 district or industrial development district that was duly
11 established in a local governmental unit eligible under this act to
12 establish a district and that was established upon a request filed
13 or by the local governmental unit's own initiative taken before the
14 commencement of the restoration, replacement, or construction of
15 the facility.

16 (c) For applications made after December 31, 1983, the
17 commencement of the restoration, replacement, or construction of
18 the facility occurred not earlier than 6 months before the filing
19 of the application for the industrial facilities exemption
20 certificate.

21 (d) The application relates to a construction, restoration, or
22 replacement program that when completed constitutes a new or
23 replacement facility within the meaning of this act and that shall
24 be situated within a plant rehabilitation district or industrial
25 development district duly established in a local governmental unit
26 eligible under this act to establish the district.

27 (e) Completion of the facility is calculated to, and will at

1 the time of issuance of the certificate have the reasonable
2 likelihood to create employment, retain employment, prevent a loss
3 of employment, or produce energy in the community in which the
4 facility is situated.

5 (f) Completion of the facility does not constitute merely the
6 addition of machinery and equipment for the purpose of increasing
7 productive capacity but rather is primarily for the purpose and
8 will primarily have the effect of restoration, replacement, or
9 updating the technology of obsolete industrial property. An
10 increase in productive capacity, even though significant, is not an
11 impediment to the issuance of an industrial facilities exemption
12 certificate if other criteria in this section and act are met. This
13 subdivision does not apply to a new facility.

14 (g) The provisions of subdivision (c) do not apply to a new
15 facility located in an existing industrial development district
16 owned by a person who filed an application for an industrial
17 facilities exemption certificate in April of 1992 if the
18 application was approved by the local governing body and was denied
19 by the state tax commission in April of 1993.

20 (h) The provisions of subdivisions (b) and (c) and section
21 4(3) do not apply to 1 or more of the following:

22 (i) A facility located in an industrial development district
23 owned by a person who filed an application for an industrial
24 facilities exemption certificate in October 1995 for construction
25 that was commenced in July 1992 in a district that was established
26 by the legislative body of the local governmental unit in July
27 1994. An industrial facilities exemption certificate described in

1 this subparagraph shall expire as provided in section 16(3).

2 (ii) A facility located in an industrial development district
3 that was established in January 1994 and was owned by a person who
4 filed an application for an industrial facilities exemption
5 certificate in February 1994 if the personal property and real
6 property portions of the application were approved by the
7 legislative body of the local governmental unit and the personal
8 property portion of the application was approved by the state tax
9 commission in December 1994 and the real property portion of the
10 application was denied by the state tax commission in December
11 1994. An industrial facilities exemption certificate described in
12 this subparagraph shall expire as provided in section 16(3).

13 (iii) A facility located in an industrial development district
14 that was established in December 1995 and was owned by a person who
15 filed an application for an industrial facilities exemptions
16 certificate in November or December 1995 for construction that was
17 commenced in September 1995.

18 (iv) A facility located in an industrial development district
19 owned by a person who filed an application for an industrial
20 facilities exemption certificate in July 2001 for construction that
21 was commenced in February 2001 in a district that was established
22 by the legislative body of the local governmental unit in September
23 2001. An industrial facilities exemption certificate described in
24 this subparagraph shall expire as provided in section 16. The
25 facility described in this subparagraph shall be taxed under this
26 act as if it was granted an industrial facilities exemption
27 certificate in October 2001, and a corrected tax bill shall be

1 issued by the local tax collecting unit if the local tax collecting
2 unit has possession of the tax roll or by the county treasurer if
3 the county has possession of the tax roll. If granting the
4 industrial facilities exemption certificate under this subparagraph
5 results in an overpayment of the tax, a rebate, including any
6 interest and penalties paid, shall be made to the taxpayer by the
7 local tax collecting unit if the local tax collecting unit has
8 possession of the tax roll or by the county treasurer if the county
9 has possession of the tax roll within 30 days of the date the
10 exemption is granted. The rebate shall be without interest.

11 (i) The provisions of subdivision (c) do not apply to any of
12 the following:

13 (i) A new facility located in an existing industrial
14 development district owned by a person who filed an application for
15 an industrial facilities exemption certificate in October 1993 if
16 the application was approved by the legislative body of the local
17 governmental unit and the real property portion of the application
18 was denied by the state tax commission in December 1993.

19 (ii) A new facility located in an existing industrial
20 development district owned by a person who filed an application for
21 an industrial facilities exemption certificate in September 1993 if
22 the personal property portion of the application was approved by
23 the legislative body of the local governmental unit and the real
24 property portion of the application was denied by the legislative
25 body of the local governmental unit in October 1993 and
26 subsequently approved by the legislative body of the local
27 governmental unit in September 1994.

1 (iii) A facility located in an existing industrial development
2 district owned by a person who filed an application for an
3 industrial facilities exemption certificate in August 1993 if the
4 application was approved by the local governmental unit in
5 September 1993 and the application was denied by the state tax
6 commission in December 1993.

7 (iv) A facility located in an existing industrial development
8 district occupied by a person who filed an application for an
9 industrial facilities exemption certificate in June of 1995 if the
10 application was approved by the legislative body of the local
11 governmental unit in October of 1995 for construction that was
12 commenced in November or December of 1994.

13 (v) A facility located in an existing industrial development
14 district owned by a person who filed an application for an
15 industrial facilities exemption certificate in June of 1995 if the
16 application was approved by the legislative body of the local
17 governmental unit in July of 1995 and the personal property portion
18 of the application was approved by the state tax commission in
19 November of 1995.

20 (j) If the facility is locating in a plant rehabilitation
21 district or an industrial development district from another
22 location in this state, the owner of the facility is not delinquent
23 in any of the taxes described in section 10(1)(a) of the Michigan
24 renaissance zone act, 1996 PA 376, MCL 125.2690, or substantially
25 delinquent in any of the taxes described in and as provided under
26 section 10(1)(b) of the Michigan renaissance zone act, 1996 PA 376,
27 MCL 125.2690.

1 (3) If the replacement facility when completed will not be
2 located on the same premises or contiguous premises as the obsolete
3 industrial property, then the applicant shall make provision for
4 the obsolete industrial property by demolition, sale, or transfer
5 to another person with the effect that the obsolete industrial
6 property shall within a reasonable time again be subject to
7 assessment and taxation under the general property tax act, 1893 PA
8 206, MCL 211.1 to 211.157, or be used in a manner consistent with
9 the general purposes of this act, subject to approval of the
10 commission.

11 (4) BEGINNING JANUARY 1, 2007, THE OWNER OR LESSEE OF A
12 FACILITY WHO FAILS TO COMPLY WITH SECTION 3 OF THE MICHIGAN
13 CORPORATE RESPONSIBILITY ACT OR FAILS TO DISCLOSE A CIVIL OR
14 CRIMINAL OFFENSE AS REQUIRED BY SECTION 3 OF THE MICHIGAN CORPORATE
15 RESPONSIBILITY ACT IS NOT ELIGIBLE FOR AN INDUSTRIAL FACILITIES
16 EXEMPTION CERTIFICATE UNDER THIS ACT.

17 (5) BEGINNING WITH INDUSTRIAL FACILITIES EXEMPTION
18 CERTIFICATES THAT TAKE EFFECT ON OR AFTER JANUARY 1, 2007, IF THE
19 OWNER OF THE FACILITY TO WHOM THE CERTIFICATE IS ISSUED FAILS TO
20 COMPLY WITH SECTION 3 OF THE MICHIGAN CORPORATE RESPONSIBILITY ACT
21 OR FAILS TO DISCLOSE A CIVIL OR CRIMINAL OFFENSE AS REQUIRED BY
22 SECTION 3 OF THE MICHIGAN CORPORATE RESPONSIBILITY ACT ON OR AFTER
23 JANUARY 1, 2007, THEN THAT PERSON IS RESPONSIBLE FOR THE PAYMENT OF
24 A PENALTY DESCRIBED IN THIS SUBSECTION. THE PENALTY IS EQUAL TO THE
25 DIFFERENCE BETWEEN THE INDUSTRIAL FACILITY TAX AND THE GENERAL AD
26 VALOREM TAXES THAT WOULD HAVE BEEN LEVIED IF THE CERTIFICATE HAD
27 NOT BEEN GRANTED FOR EACH YEAR THE CERTIFICATE WAS IN EFFECT.

1 (6) ~~—(4)—~~ The legislative body of the local governmental unit
2 shall not approve an application and the commission shall not grant
3 an industrial facilities exemption certificate that applies to a
4 speculative building unless the speculative building is or is to be
5 located in a plant rehabilitation district or industrial
6 development district duly established by a local governmental unit
7 eligible under this act to establish a district; the speculative
8 building was constructed less than 9 years before the filing of the
9 application for the industrial facilities exemption certificate;
10 the speculative building has not been occupied since completion of
11 construction; and the speculative building otherwise qualifies
12 under subsection (2)(e) for an industrial facilities exemption
13 certificate. An industrial facilities exemption certificate granted
14 under this subsection shall expire as provided in section 16(3).

15 (7) ~~—(5)—~~ Not later than September 1, 1989, the commission
16 shall provide to all local assessing units the name, address, and
17 telephone number of the person on the commission staff responsible
18 for providing procedural information concerning this act. After
19 October 1, 1989, a local unit of government shall notify each
20 prospective applicant of this information in writing.

21 (8) ~~—(6)—~~ Notwithstanding any other provision of this act, if
22 on December 29, 1986 a local governmental unit passed a resolution
23 approving an exemption certificate for 10 years for real and
24 personal property but the commission did not receive the
25 application until 1992 and the application was not made complete
26 until 1995, then the commission shall issue, for that property, an
27 industrial facilities exemption certificate that begins December

1 30, 1987 and ends December 30, 1997. The facility described in this
2 subsection shall be taxed under this act as if it was granted an
3 industrial facilities exemption certificate on December 30, 1987.

4 (9) ~~—(7)—~~ Notwithstanding any other provision of this act, if
5 a local governmental unit passed a resolution approving an
6 industrial facilities exemption certificate for a new facility on
7 July 8, 1991 but rescinded that resolution and passed a resolution
8 approving an industrial facilities exemption certificate for that
9 same facility as a replacement facility on October 21, 1996, the
10 commission shall issue for that property an industrial facilities
11 exemption certificate that begins December 30, 1991 and ends
12 December 2003. The replacement facility described in this
13 subsection shall be taxed under this act as if it was granted an
14 industrial facilities exemption certificate on December 30, 1991.

15 (10) ~~—(8)—~~ Property owned or operated by a casino is not
16 industrial property or otherwise eligible for an abatement or
17 reduction of ad valorem property taxes under this act. As used in
18 this subsection, "casino" means a casino or a parking lot, hotel,
19 motel, convention and trade center, or retail store owned or
20 operated by a casino, an affiliate, or an affiliated company,
21 regulated by this state pursuant to the Michigan gaming control and
22 revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226.

23 (11) ~~—(9)—~~ Notwithstanding section 16a and any other provision
24 of this act, if a local governmental unit passed a resolution
25 approving an industrial facilities exemption certificate for a new
26 facility on October 28, 1996 for a certificate that expired in
27 December 2003 and the local governmental unit passes a resolution

1 approving the extension of the certificate after December 2003 and
2 before March 1, 2006, the commission shall issue for that property
3 an industrial facilities exemption certificate that begins on
4 December 30, 2005 and ends December 30, 2010 as long as the
5 property continues to qualify under this act.