

Legislative Analysis



POLICE AND FIRE SPECIAL ASSESSMENT: IMPOSE ON OTHER THAN AD VALOREM BASIS

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House Bill 4147 (Substitute H-1)
Sponsor: Rep. Joseph Graves
Committee: Tax Policy

Complete to 4-10-13

A SUMMARY OF HOUSE BILL 4147 AS REPORTED FROM COMMITTEE

The bill would permit special assessments for police and fire protection imposed by townships, villages, and qualifying cities to be levied on an equal-amount-per-parcel basis, or on the taxable value of the land and premises, or on another basis determined by the township board (or other appropriate legislative body), provided the amount of the assessment is reasonably proportionate to the benefit derived from the assessment.

Currently the statute says these assessments can be levied only on taxable value (although reportedly some local units do use a per-parcel fee). The bill would amend Public Act 33 of 1951 (MCL 41.801).

Under current law, the legislative body of a local unit (or the legislative bodies of adjoining eligible local units acting jointly) may assess up to 10 mills of the assessed valuation of the area for fire protection and up to 10 mills for police protection. Further, the local units may defray the amounts by special assessment on the lands and premises in the townships to be benefited, and may issue bonds in anticipation of the collection of these special assessments. If the legislative body creates a special assessment district, they must determine the boundaries by resolution, as well as determine the amount of the special assessment levy, and then direct that the assessment levy be spread on *the taxable value* of all of the lands and premises in the district that are to benefit by the police and fire protection.

House Bill 4147 would permit the special assessment to be levied on an equal-amount-per-parcel basis, on taxable value, or another basis. As is now the case, the bill also requires that after December 31, 1998, if a special assessment is levied on an *ad valorem* basis, it must be levied on the taxable value of the property assessed.

Currently, local units must hold a public hearing to hear objections to the distribution of the special assessment levy, and must also hold an annual hearing on the estimated costs and expenses of police and fire protection, and on the distribution of the levy. House Bill 4147 would retain these provisions.

[Section 10 of the act specifies that the act applies to "townships and adjoining townships and incorporated villages and qualified cities." It says, "If reference is made . . . to townships, [then] that reference shall apply to townships and incorporated villages and qualified cities [and] if reference is made . . . to township boards, [then] that reference

shall apply to township boards and the legislative bodies of incorporated villages and qualified cities."

A qualified city, under the act, is either (1) a city with a population of less than 15,000; or (2) a city with a population between 15,000 and 70,000 located in a county with a population of more than 200,000 and less than 235,000, if approved by voters. [This was intended to apply to the city of Saginaw in Saginaw County.]

FISCAL IMPACT:

As written, the bill does not appear to have a significant local fiscal impact, although the distribution of the tax burden could change depending on if the tax base is on a per-parcel basis or ad valorem basis. There would be no state fiscal impact.

BACKGROUND AND DISCUSSION:

Issue Background

Public Act 33 of 1951 allows townships, villages, and some cities to levy a special assessment to pay for police and fire protection. That act was amended in 1998 (by PA 545) to require that, beginning in 1999, if a special assessment district is created, the levy be based on the taxable value of the lands and premises especially benefited. This 1998 act was part of a package of bills that aimed at making various ad valorem special assessments be based on taxable value rather than state equalized value. The idea was to treat these ad valorem special assessments like property taxes (which they closely resemble); property taxes were then already based on taxable value. Taxable value, essentially, takes into account the cap on how much property assessments can increase from year to year.

Prior to the 1998 amendment, the provision in Public Act 33 had said that if a special assessment district were created, then the assessment levy would be spread "on all the lands and premises in the district which are to be especially benefited by the police and fire protection, according to benefits received . . ." (Emphasis added) The act at that time made no mention of the nature of the levy; in other words, it did not seem to require that assessments be made on an ad valorem basis, although the 1998 amendment, in making the change, appears to assume that that is how the levy was to be spread.

Representatives of local units have said that prior to the 1998 amendment the police and fire special assessments under PA 33 of 1951 were allowed to be made on a basis other than the value of property and suggest that the mandated switch to ad valorem levies was inadvertent.

Some local units have been using a per-parcel levy and some reportedly use a combination of ad valorem levies and per-parcel levies. For example, Atlas Township in Genesee County is reported to have instituted a special assessment levy of \$50 for each improved lot and \$25 for each unimproved lot for police protection. Taxpayers have disputed the legality of this practice.

The issue addressed by this bill is whether local units should be able to establish police and fire special assessments on a basis other than the value of property (ad valorem).

Arguments

The advocates for the bill believe the issue is a matter of local control; that is, that it should be up to the local units how to evaluate the special benefit of the public safety protection being provided and how to spread the cost to property owners. Local units differ from one another and local officials should determine what works for them. Further, some say that a per-parcel fee is fairer since the value of property is not directly related to the benefit of public safety protection and they question why the owner of a home worth ten times as much should pay ten times as much for police protection provided by special assessment. (This could be particularly vexing in cases where public safety services are more commonly needed in areas of lower property values.)

Opponents of the bill believe a per-parcel assessment is unfair -- it does not take into account ability to pay and thus is regressive. Ad valorem levies make those with more valuable property pay more; per-parcel levies, say critics, mean that those with homes or properties of lower value must pay more than their fair share. Most property taxes are levied as ad valorem taxes for this reason. Plus, some worry about the language that allows the levies to be spread on "another basis" as determined by the local unit. This seems rather open-ended. Further, these special assessment levies are now controlled by state statute (even if it is apparently being ignored in some instances) and so the issue is clearly not purely a matter of local control but a matter of state tax policy.

Other Considerations

It should be noted that the system of taxing or assessing properties based on taxable value is not the same as assessing based on market value. Assessing based on taxable value provides an advantage for those who have owned their property the longest. Similar properties side-by-side can pay quite different amounts if one is occupied by an owner of 30 years and another by an owner of 5 years. Taxable value is the term that was created to take into account the impact of the cap on the annual increase in property values (inflation or five percent, whichever is less) that has been in place since 1994. Over time, this cap creates a gap between state equalized value (based on market value) and taxable value.

While not directly related to this bill, it should also be noted that some finance experts have for many years expressed concern about the use of unit-wide ad valorem special assessments to fund basic municipal services because they appear to be property taxes in disguise.

POSITIONS:

The Michigan Township Association indicated support for the bill. (3-6-13)

Representatives of Atlas Township indicated support for the bill. (3-6-13)

Representatives of the Village of Goodrich (Atlas Township) indicated opposition to the bill. (3-13-13)

The Department of Treasury is neutral. (3-13-13)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.