



**House
Legislative
Analysis
Section**

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THE APPARENT PROBLEM:

Early in February of this year, a Wayne County Circuit Court judge ruled that the City Utility Users Tax Act (Public Act 198 of 1970), under which the City of Detroit imposes a five percent tax on the cost to customers of buying natural gas, steam, electricity, and intrastate telephone services, had expired as of June 30, 1988. The act does, in fact, carry a "sunset" date of June 30, 1988, but city officials say they had relied on an opinion by the state's attorney general that the act continued to be in effect because the sunset was defective and severable from the rest of the act. This was just one of numerous sunsets or expiration dates found unconstitutional by the attorney general on the grounds that the bills containing them had not specifically mentioned the sunsets or expirations in their titles. (The act had contained an expiration date of December 31, 1972, when first enacted, and had been amended several times to extend the expiration date, most recently in 1984.) The court decision, which is being appealed and which had other issues as its principal focus, threatens to cost the city of Detroit about \$60 million each year in revenue earmarked for police services, as well as perhaps \$100 million in refunds for taxes collected since June 30, 1988. With the city already facing the prospect of a budget deficit, city officials say, the invalidation of this 20-year old tax is a staggering blow. The city has appealed to the legislature for a remedy.

THE CONTENT OF THE BILL:

The bill would, in essence, reenact the City Utility Users Tax, which can be imposed by ordinance by a city with a population of one million or more (Detroit) at a rate up to five percent on the cost of intrastate telephone services, electrical energy and steam, and gas, when they are provided by a public utility or a resale customer. The new act contains no expiration date, and would be applied retroactively beginning July 1, 1988. The authority of a city to impose, collect, and enforce a utility users tax prior to and up to the date the bill is signed into law would be validated and ratified. The bill would require a city, in order to collect the tax, to adopt an ordinance that incorporates by reference the ordinance set forth in the bill, but that requirement would be considered met if a city had previously adopted an ordinance containing substantially the same provisions, and a tax collected under that ordinance would be "revived."

The bill contains several statements of intent. It specifically says that "the legislature by enactment of this act intends to validate, ratify, and revive effective from July 1, 1988 a city utility users tax," and further specifies that the "act is remedial and curative and is intended to revive and assure an uninterrupted continuation of the authority to collect a city utility users tax." The bill states that it intends "to eliminate the confusion surrounding the legal status" of Public Act 198 of 1970 that has resulted from conflict between an attorney general's opinion on the act's validity and a subsequent circuit court decision, which has been

CITY UTILITY USERS TAX

House Bill 5495 with committee amendment
First Analysis (2-21-90)

Sponsor: Rep. Morris W. Hood
Committee: Taxation

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appealed, and that it intends to resolve legislatively the issues raised by the appeal. The bill notes (in section eight): "Before that circuit court decision, the legislature had been advised by the attorney general's office in May 1987 that legislative action was not necessary to authorize the collection of the city utility users tax after July 1, 1988."

The bill also contains a legislative finding that the utility tax was authorized by law when section 31 of Article IX of the state constitution was ratified. (That section, part of the so-called Headlee Amendment, prohibits local units of government from levying a tax not previously authorized without a vote of the people.)

Under the City Utility Users Tax Act, the governing body of the city sets the rate of tax in increments of one-quarter of one percent up to a maximum of five percent. The first \$45 million of revenue generated by the tax must be used exclusively to retain or hire police officers. Any amount collected above that figure must be dedicated and used exclusively to hire and retain additional police officers over the level of officers employed on November 1, 1984. If the revenue is not used that way, the tax rate must be reduced in decrements of one-quarter of one percent for each full five percent of revenue collected over \$45 million.

FISCAL IMPLICATIONS:

According to the staff of the House Taxation Committee, Detroit has collected about \$90 million in utility users taxes since July 1, 1988, and estimates the annual collections from the tax at \$60 million. The revenue is earmarked in law for police protection, and the act requires that revenues above \$45 million be used to keep the force above staffing levels existing in November 1984, said to be 3,537 officers and sergeants. City officials say those levels have been exceeded by between 900 and 1,200 since that requirement was imposed in 1984. (2-15-90)

ARGUMENTS:

For:

It is essential that the City of Detroit's right to an uninterrupted collection of the city utility users tax be validated. Without this vital source of funding for basic public protection services, the city could be forced to lay off perhaps 1,000 police or make other drastic cuts in public services. This comes at a time when the city already faces dramatic budget difficulties. What the city cannot afford at this time is the loss of a key source of revenue and a reduction in the police protection for its people. The city has relied on this tax for nearly 20 years to fund police operations. It now faces the loss of this source of revenue because of a misinterpretation of the legislature's intent, and it is the legislature that can best resolve the issue. The city relied on an opinion by the attorney general that it need not act to extend the tax's expiration date because the expiration date was unconstitutional. The act, the attorney general said, would remain in effect. The legislature knew the sunset date had been invalidated and

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knew the city was continuing to collect the tax and took no action to reimpose an expiration date on the tax. This suggests that the legislature intended that the tax remain in effect. This bill would express the intent of the legislature that there be no interruption in the collection of the tax and that the tax be reimposed retroactively. The loss to the city would be great (close to \$60 million per year for police protection and more than that in refunds of taxes already collected) if this tax is invalidated, yet the gain to taxpayers would not be significant. The residents of the city would clearly prefer to pay this tax than lose police protection or some other basic, essential service.

Against:

A number of objections have been raised to the bill, including the following:

- The public policy question ought to be, is this a good tax, the best way to raise revenue the city needs? Some people argue that it is not because it is a regressive tax on basic (and monopoly) services without any of the kind of exemptions typically attached to similar taxes. Besides, Detroit's citizens and businesses are already overtaxed, and in the long run it will not benefit the city to continue to raise taxes, thereby providing an incentive for residents and businesses to leave the city. The legislature (and the city) should be seeking other ways of providing services (privatization, regionalization, etc.) rather than continuing current policies. At the very least, the people of the city should have the opportunity to vote on the imposition of the tax.
- The bill currently contains no expiration date at all; it would make the tax permanent. Ever since the act's enactment in 1970, and with every subsequent amendment, the act has contained an expiration date, perhaps in recognition of the fact that this is considered a distasteful tax even by its supporters.
- While the tax has traditionally been tied to police protection, the loss of the tax does not necessarily mean that the police force should be reduced when this revenue is lost. Other city services of a lower priority could be reduced or eliminated instead.
- It is unfair (and imprudent) to make the bill apply retroactively. A court has said the tax expired and should not have been collected after June 30, 1988. The city had the opportunity to seek a new expiration date in the legislature but chose not to, chose to rely on an attorney general's opinion that it must have known was subject to challenge in court. At least, the appeals should continue on this issue and higher courts left to decide the issue. Further, the retroactivity will lead to new legal challenges which could jeopardize the future collection of the tax. If the tax is to be reimposed, it should be prospective, perhaps subject to a vote of the people, and then would be safe from challenge.

Response: While the utility tax may not be ideal, and while it may be true that Detroit's people endure very high taxes, there is really little or no immediate alternative to the restoration or revival of this 20-year old tax. Proponents of the bill believe there are strong legal arguments to support the retroactivity of the act and to defend the act against challenges based on the Headlee Amendment. Further, there is nothing in the bill to prevent the legislature from re-examining the act at some time in the future.

POSITIONS:

The City of Detroit supports the bill. (2-20-90)