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BILL ANALYSIS

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Senate Bill 32 (as reported with amendments)

Senate Bill 451 (Substitute S-2 as reported)

Sponsor: Senator Gilbert J. DiNello (S.B. 32)

Senator John J. H. Schwartz, M.D. (S.B. 451)

Committee: Finance

Date Completed: 11-12-87

RATIONALE

Currently, there are 17 cities in Michigan that levy an income tax on residents. These cities also levy an income tax on nonresidents who work within the boundaries of the cities. If a city wishes to levy an income tax, its governing body must adopt an ordinance which incorporates the provisions of the uniform city income tax ordinance as written in the City Income Tax Act. The ordinance allows a city of under 1 million population to levy a 1% tax on corporations and residents and .5% on nonresidents; a city with over 1 million population (i.e., Detroit) may levy 2% on corporations, 3% on residents, and 1.5% on nonresidents. When a city proposes to establish an income tax or raise the rate of an existing income tax, and a referendum has been called, only the city's residents are allowed to vote on the question. In 1981, for instance, when Detroit residents voted to raise their income tax, they also voted to increase the nonresident tax rate, even though nonresidents did not vote on the increase. Some people feel this is "taxation without representation", and that when a city proposes to establish or raise an income tax all persons who would be taxed should be allowed to vote.

In addition, officials in Battle Creek would like to be allowed to put to a vote a proposal to increase the rate of the city's income tax. Currently, Battle Creek imposes a 1% rate on residents and corporations and a .5% rate on nonresidents. City officials claim that because the city nearly doubled in size after an annexation in 1983, there is a critical need to raise revenues to address the needs of the city's infrastructure.

CONTENT

Senate Bill 32 would amend the Michigan Election Law to allow a nonresident to vote in a referendum concerning a city income tax, and to specify the qualifications that a nonresident would have to fulfill to vote in a referendum. Senate Bill 451 would amend the City Income Tax Act to require a referendum if a city wished to impose or increase an income tax, and to allow nonresidents to vote in the referendum; the bill would also allow the City of Battle Creek to increase its income tax rate with voter approval. (The bills would not affect those cities that currently have income taxes, unless they wished to increase the tax rate.) The bills are tie-barred.

Senate Bill 32

The bill would amend the Michigan Election Law to provide that a nonresident could vote in a referendum imposing or increasing the rate of a city income tax on nonresidents if the person were a registered elector (in his or her

community) and were employed in the city. Voting by nonresidents would be conducted by absentee ballot. A nonresident who applied for an absentee ballot would have to provide a city clerk with reasonable evidence of employment that showed the person's employer's address. Reasonable evidence of employment would include, but not be limited to, a copy of the person's State, city, or Federal income tax forms or W-2 form from the preceding tax year, or a copy of the person's paycheck or paycheck withholding information issued within the previous 30 days. A city could include in its absentee ballot application a statement to be signed by the applicant certifying that he or she met the requirements of a qualified elector. As part of the application, a city would have to require that a nonresident be a registered elector of the local unit of government in which he or she resides. Applications for absentee ballots could be accepted until 15 days before the date of the referendum.

A city holding a referendum on nonresident city income tax would have to publish a first notice of the referendum in a newspaper of general circulation between 45 and 60 days before the date of the referendum; an additional notice would have to be published between 20 and 30 days before the date of the referendum.

Senate Bill 451

The bill would amend the City Income Tax Act to provide that if the governing body of a city adopted an ordinance imposing an income tax, or increasing the rate of an existing income tax, the ordinance could not take effect unless approved in a referendum. A referendum that imposed, or increased the rate of, an income tax on residents of a city would have to be approved by a majority of the qualified electors of the city voting on the question, while a referendum imposing or increasing the tax on nonresidents would have to be approved by a majority of a city's resident voters and qualified nonresidents voting on the question and counted together. A referendum to impose or increase an income tax on nonresidents could not be held unless it included the imposition or increase of an income tax on residents.

The bill also would allow a city with a population of over 50,000, that had annexed an area containing over 20 square miles in the previous six years (Battle Creek), to increase the city income tax rate, with voter approval, to not more than 1.5% on residents and corporations and .75% on nonresidents. (Currently, Battle Creek has a 1% rate on residents and corporations and a .5% rate on nonresidents.) The tax would have to be approved before

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July 1, 1988, by the qualified resident and nonresident electors in order to take effect.

MCL 168.10 et al (Senate Bill 32)
141.503 et al (Senate Bill 451)

FISCAL IMPACT

Senate Bill 32 would have no fiscal impact on the State. There could be an indeterminate increase in administrative costs for local units of government if they chose to adopt or increase a local income tax.

Senate Bill 451 would allow the city income tax rate in Battle Creek to be increased subject to voter approval. If the city chose to increase the tax rate to the maximum rate allowed by Senate Bill 451, the additional city income tax revenue realized on an annual basis would be approximately \$4,150,000.

ARGUMENTS

Supporting Argument

The bills would correct an unjust situation that is at odds with our democratic process. To allow the residents of a city to increase the taxes of nonresidents, without the nonresidents' having any say in the matter, is totally unfair and invites the claim of taxation without representation. By being able unilaterally to force nonresidents to pay increasing income tax rates, city residents can supplement their city's revenues without having to convince nonresidents of the need for the increase. This leaves nonresidents powerless to act while the size of their pay checks decreases — a form of government-sanctioned thievery. The bills would correct this injustice by giving nonresidents the opportunity to exercise their right to vote on proposed tax increases.

Supporting Argument

The City of Battle Creek nearly doubled its size in a 1983 annexation. A study by the city of the city's needs over the coming decade reveals that a substantial amount of revenue will be needed to deal with the city's infrastructure, in addition to current problems with roads and drains that threaten to worsen if not addressed. The bills would give the city a chance to go to the voters to ask for a portion of the needed revenue, and thus handle the problems without help from the State or Federal government.

Response: While it may appear advantageous to nonresident income tax payers to be allowed to vote on the proposed tax rate increase in Battle Creek, it must be remembered that the question would only involve an increase in the tax rate. Nonresidents would have no opportunity to vote on whether or not the income tax should be lowered, or imposed at all.

Opposing Argument

The bills actually represent a step backwards from true democracy in that they would allow people to vote both in the area where they live and in the area where they work, and this is contrary to the sound principle of "one person, one vote". The charge that the nonresident tax situation is abhorrent to democracy is unfounded: there are numerous examples of instances in which people are taxed without having a chance to vote on those taxes. Persons who own property in more than one area are only allowed to vote on property tax questions affecting that area where they have established residency. Michigan citizens who earn money in other states must pay taxes on those earnings even though they have no vote, just as residents of other states who earn money here cannot vote on Michigan tax rates.

Response: It must be remembered that Article I, Section 2 of the State Constitution says that: "The legislature shall

define residence for voting purposes." The concept of "one person, one vote" should apply to candidates for public office and to property taxes, but it should not apply to income tax matters. Persons who reside in one area but own property in another area own that property as a luxury, but a job is a necessity and to increase the taxes which persons must pay if they wish to keep their job is unfair. What's more, absentee property owners have some options they can explore if their taxes go up, such as tax appeals, or selling their property. Nonresidents who have their income taxes increased have no one to appeal to and can only grit their teeth and pay.

Opposing Argument

Nonresident taxes are levied because people who spend eight to 12 hours a day five days a week working in a city use many city-funded services. If a city is experiencing revenue shortages and the provision of essential services is threatened, why shouldn't everyone who uses those services be required to pay for them? And why should a nonresident who pays only half the rate of a resident be allowed to vote with full force? Allowing nonresidents to vote on an issue for which they may feel little sympathy, even though the question may be vital to the city's residents, could make it impossible for cities to establish or raise income taxes in the future.

Response: How much of a city's services, in dollars, does a nonresident really use? To imply that nonresidents who work in a city eight hours a day make extensive use of city-funded services and should therefore pay for them is a tenuous argument upon which to justify taking a percentage or an increasingly larger percentage of their income. While it must be conceded that certain services (police and fire protection for instance) are there if needed, they are seldom used by nonresidents. In addition, many other services (such as water and sewer) are funded through property taxes which have been levied on the building or place of employment and paid for by the nonresident's employer. Further, stating that everyone who uses city services should pay for them ignores the fact that a city's residents have a voice in how this income tax revenue will be spent but nonresidents have none.

Finally, while only city residents would vote on the resident rate, both residents and nonresidents would vote on the nonresident rate. (Presumably, the questions could be separated, since nonresidents would be voting on absentee ballots.)

Opposing Argument

The bills raise several questions. First, should anyone who pays a nonresident city income tax be allowed to vote? There are many people who work part-time or only a few hours a week and pay very little in city income taxes compared to full-time workers, yet they would be allowed to vote. Second, what about laid-off workers? Would they be allowed to vote, even though they may never work in the city again? Third, if the question of nonresident income tax is so important that nonresidents should be allowed to vote, what about other equally important city issues that may also affect nonresidents? How do we determine what issues facing a city become so important that they deserve the equal attention of both residents and nonresidents?

Response: The bills would single out the income tax as the issue that deserves nonresident input because it is by far the most important city issue affecting nonresidents: an income tax has a direct effect on a person's income. When people's income is taxed, they should be allowed to vote on it. It is fairly obvious that nonresidents would have no business voting on other city issues that would not directly affect them. In addition, whether or not nonresident workers are part-time or full-time should have no bearing on their right to vote because the income tax

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is based upon a percentage of persons' income and any amount taken should qualify them to vote.

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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.