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BILL ANALYSIS

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House Bill 4369 (Substitute H-3 as passed by the House)

Sponsor: Representative Fran Amos

House Committee: Commerce

Senate Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 10-26-05

### **CONTENT**

The bill would create the "Commercial Rehabilitation Act" to do the following:

- Allow a city, village, or township, by resolution, to establish a commercial rehabilitation district consisting of a "qualified facility", unless the county containing the district disapproved it.
- Allow the owner of a qualified facility to apply for a commercial rehabilitation exemption certificate with the local governmental unit.
- Require an exemption to be approved by the local governmental unit and the State Tax Commission.
- Provide a property tax exemption for a qualified facility for which an exemption certificate was in effect, and provide for the levy of a commercial rehabilitation tax on the facility owner.
- Provide for a certificate to remain in effect for a period of time determined by the local governmental unit, not to exceed 10 years, and allow extensions if the period were less than 10 years.
- Require the legislative body of a local governmental unit to make a finding that an exemption would not substantially impede the operation of the unit or impair the financial soundness of an affected taxing unit if the exemption, when added to certain previously granted exemptions, exceeded 5% of the governmental unit's taxable value.
- Allow the legislative body of a local unit to revoke a commercial rehabilitation exemption for failure

to complete rehabilitation within the authorized time period or to proceed in good faith with the operation of the facility.

- Permit the transfer of an exemption certificate to a new owner of the qualified facility if the local unit approved the transfer.
- Require local units granting exemptions and the Department of Treasury to make annual status reports.
- Prohibit new exemptions from being granted after December 31, 2015.

#### Establishment of a District

A qualified local governmental unit (city, village, or township), by resolution of its legislative body, could establish one or more qualified rehabilitation districts consisting of one or more parcels or tracts of land or a portion of a parcel or tract of land, if at the time the resolution was adopted, the parcel or tract or portion of a parcel or tract within the district were a qualified facility.

"Qualified facility" would mean a building or group of contiguous buildings of commercial property consisting of 1 million or more square feet of space that was 40% or more vacant for 12 or more consecutive months immediately preceding the date of application for the certificate and that was 15 years old or older. A qualified facility would not include property that was to be used as a professional sports stadium or casino (which would include a parking lot, hotel, motel, or retail store owned or operated by a casino, an affiliate, or an

affiliated company, regulated by the State pursuant to the Michigan Gaming Control and Revenue Act).

“Commercial property” would mean land improvements classified by law for general ad valorem tax purposes as real property including real property assessable as personal property under Sections 8(d) and 14(6) of the General Property Tax Act, the primary purpose and use of which were the operation of a commercial business enterprise. (Section 8(d) pertains to the assessment of buildings and improvements located on leased property. Section 14(6) concerns the assessment of a building situated on real property of the United States or this State, or on the property of a person who is not the owner of the building, if the value of the property is not assessed to the building owner.) Commercial property would include facilities related to a commercial business enterprise under the same ownership at that location, including office, engineering, research and development, warehousing, parts distribution, retail sales, and other commercial activities. Commercial property also would include a building or group of contiguous buildings previously used for industrial purposes that would be converted to the operation of a commercial business enterprise. Commercial property would not include land or the property of a public utility.

A district would have to be at least 75 acres in size.

The legislative body of a qualified local governmental unit could establish a commercial rehabilitation district on its own initiative or upon a written request filed by the owner or owners of property comprising at least 50% of all taxable value of the property located within a proposed commercial rehabilitation district. The written request would have to be filed with the clerk of the local unit.

Before adopting a resolution establishing a commercial rehabilitation district, the legislative body would have to give written notice by certified mail to the county in which the proposed district was to be located and the owners of all real property within the proposed district, and would have to afford an opportunity for a hearing on the establishment of the district at which any of

those owners and any other resident or taxpayer of the local unit could appear and be heard. The legislative body would have to give public notice of the hearing not less than 10 days or more than 30 days before the date of the hearing.

In the resolution, the legislative body would have to set forth a finding and determination that the district met the requirements for a district and would have to provide a copy of the resolution by certified mail to the county in which the district was located. Within 28 days after receiving a copy of the resolution, the county could reject the establishment of the district by either of the following methods:

- If the county had an elected county executive, by written notification to the local unit.
- If the county did not have an elected county executive, by a resolution of the county board of commissioners provided to the local unit.

#### Application for an Exemption

If a commercial rehabilitation district were established, the owner of a qualified facility could file an application for a commercial rehabilitation exemption certificate with the clerk of the qualified local governmental unit that established the district. The application would have to be filed in the manner and form prescribed by the State Tax Commission. The application would have to contain or be accompanied by a general description of the qualified facility, a general description of the proposed use of the facility, the general nature and extent of the rehabilitation to be undertaken, a descriptive list of the fixed building equipment that would be a part of the facility, a time schedule for undertaking and completing the rehabilitation, a statement of the economic advantages expected from the exemption, including the number of jobs to be retained or created as a result of rehabilitating the facility, including expected construction employment, and information necessary for the qualified local government to determine whether the applicant qualified for a certificate.

Upon receiving the application, the clerk of the local unit would have to notify in writing the assessor of the local tax collecting unit in which the qualified facility was located,

and the legislative body of each taxing unit that levied ad valorem property taxes in the local unit in which the facility was located. Before acting upon the application, the legislative body of the qualified local governmental unit would have to hold a public hearing on the application and give public notice to the applicant, the assessor, a representative of the affected taxing units, and the general public. The hearing on each application would have to be held separately from the hearing on the establishment of the commercial rehabilitation district.

#### Application Approval

The legislative body of a qualified local governmental unit, within 60 days after the clerk received an application for a commercial rehabilitation exemption certificate, by resolution would have to approve or disapprove the application as provided in the bill. The clerk would have to retain the original of the application and resolution. If approved, the clerk would have to forward a copy of the application and resolution to the State Tax Commission. If disapproved, the reasons would have to be set forth in writing in the resolution, and the clerk would have to send, by certified mail, a copy of the resolution to the applicant and to the assessor. A resolution would not be effective unless approved by the Commission.

Within 60 days after receiving a copy of the application and the resolution, the Commission would have to approve or disapprove the resolution.

After the legislative body of the local unit and the Commission approved the application, the Commission would have to issue to the applicant a commercial rehabilitation exemption certificate in the form the Commission determined, which would have to contain all of the following:

- A legal description of the real property on which the qualified facility was located.
- A statement that, unless revoked as provided in the proposed Act, the certificate would remain in force for the period stated in the certificate.
- A statement of the taxable value of the qualified facility, separately stated for real and personal property, for the tax year immediately preceding the effective date of the certificate after deducting the

taxable value of the land and personal property other than personal property assessed under Sections 8(d) and 14(6) of the General Property Tax Act.

- A statement of the period of time authorized by the legislative body of the local unit within which the rehabilitation would have to be completed.
- If the authorized period of time were less than 10 years, the factors, criteria, and objectives, as determined by the resolution of the local unit, necessary for extending the period of time, if any.

The effective date of the certificate would be the December 31 immediately following its date of issuance.

The Commission would have to file with the clerk of the qualified local governmental unit a copy of the commercial rehabilitation exemption certificate, and maintain a record of all certificates filed. The Commission also would have to send, by certified mail, a copy of the certificate to the applicant and the assessor of the local tax collecting unit in which the facility was located.

If the taxable value of the property proposed to be exempt, considered together with the aggregate taxable value of property exempt under certificates previously granted and currently in force under the proposed Act or under the plant rehabilitation and industrial development Act (Public Act 198 of 1974) exceeded 5% of the taxable value of the qualified local governmental unit, the legislative body of the local unit would have to make a separate finding and include a statement in its resolution approving the application that exceeding that amount would not have the effect of substantially impeding the operation of the local unit or impairing the financial soundness of an affected taxing unit.

#### Property Tax Exemption

A qualified facility for which a commercial rehabilitation exemption certificate was in effect, but not the land on which the rehabilitated facility was located, or personal property other than personal property assessed under Sections 8(d) and 14(6) of the General Property Tax Act, for the period on and after the effective date of the certificate and continuing so long as the certificate was in force, would be exempt

from ad valorem property taxes collected under the General Property Tax Act.

Unless earlier revoked, a certificate would remain in force and effect for a period to be determined by the legislative body of the qualified local governmental unit. The certificate could be issued for a period of at least one year, but not to exceed 10 years. If the period were less than 10 years, the certificate could be subject to review by the legislative body of the qualified local governmental unit and the certificate could be extended.

The review would have to be based upon factors, criteria, and objectives that would have to be placed in writing, determined and approved at the time the certificate was approved by resolution of the legislative body of the local unit and sent, by certified mail, to the applicant, the assessor of the local tax collecting unit in which the qualified facility was located, and the Commission.

The total amount of time determined for the certificate including any extensions could not exceed 10 years after the completion of the qualified facility. The certificate would have to commence with its effective date and end on the December 31 immediately following the last day of the number of years determined. The date of issuance of a certificate of occupancy, if required by the appropriate authority, would have to be the date of completion of the qualified facility.

A new exemption could not be granted under the Act after December 31, 2015, but an exemption then in effect would have to continue until the expiration of the exemption certificate.

#### Compliance Requirements

The legislative body of a qualified local governmental unit could not approve an application for a commercial rehabilitation certificate unless the applicant complied with all of the following requirements:

- The commencement of the rehabilitation of the qualified facility did not occur earlier than six months before the applicant applied for the certificate.
- The application related to a rehabilitation program that when completed constituted a qualified facility within the meaning of the proposed Act and that would be

situated within a commercial rehabilitation district established in a qualified local governmental unit eligible under the Act.

- Completion of the qualified facility was calculated to, and would at the time of issuance of the certificate have the reasonable likelihood to, increase commercial activity, create employment, retain employment, prevent a loss of employment, revitalize urban areas, or increase the number of residents in the community in which the facility was situated.
- The applicant stated, in writing, that the rehabilitation of the facility would not be undertaken without the applicant's receipt of the exemption certificate.
- The applicant was not delinquent in the payment of any taxes related to the qualified facility.

#### Assessments

The assessor of each qualified local governmental unit in which there was a qualified facility with respect to which one or more commercial rehabilitation exemption certificates had been issued and were in force would have to determine annually as of December 31 the value and taxable value, both for real and personal property, of each qualified facility separately, having the benefit of a certificate and upon receipt of notice of the filing of an application for the issuance of a certificate, would have to determine and furnish to the local legislative body the value and the taxable value of the property to which the application pertained and other information as could be necessary to permit the local legislative body to make the determinations required for approval of a certificate.

#### Commercial Rehabilitation Tax

There would be levied upon every owner of a qualified facility to which a commercial rehabilitation exemption certificate was issued a specific tax to be known as the commercial rehabilitation tax. The amount of the tax, in each year, would be determined by adding the results of both of the following calculations:

- Multiplying the total mills levied as ad valorem taxes for that year by all taxing units within which the qualified facility was located by the taxable value of the

real and personal property of the facility on December 31 immediately preceding the effective date of the certificate after deducting the taxable valuation of the land and of personal property other than personal property assessed under Sections 8(d) and 14(6) of the General Property Tax Act for the tax year immediately preceding the effective date of the certificate.

- Multiplying the mills levied for school operating purposes for that year under the Revised School Code and State Education Tax Act by the taxable value of the real and personal property of the qualified facility after deducting the taxable value of land and personal property other than personal property assessed under Sections 8(d) and 14(6) of the General Property Tax Act and the taxable value used to calculate the tax under the preceding provision.

The commercial rehabilitation tax would be an annual tax, payable at the same times, in the same installments, and to the same officer or officers as taxes imposed under the General Property Tax Act are payable. Except as otherwise provided, the officer or officers would have to disburse the commercial rehabilitation tax payments to and among the State, cities, school districts, counties, and authorities, at the same times and in the same proportion as required by law for the disbursement of taxes collected under the General Property Tax Act.

For intermediate school districts (ISDs) receiving State aid under Sections 56, 62, and 81 of the State School Aid Act, of the amount of commercial rehabilitation tax that otherwise would be disbursed to an ISD, all or a portion, to be determined on the basis of the tax rates being used to compute the amount of State aid, would have to be paid to the State Treasury to the credit of the State School Aid Fund. (Sections 56, 62, and 81 of the State School Aid Act provide for payments to ISDs for special education, vocational-technical education programs, and State aid.)

The amount of commercial rehabilitation tax determined by multiplying the total mills levied as ad valorem taxes for that year by the taxable value of the real and personal property of the facility that otherwise would be disbursed to a local school district for school operating purposes, and all of the

amount determined by multiplying the mills levied for school operating purposes for a year under the Revised School Code and State Education Tax Act by the taxable value of the real and personal property of a qualified facility, after deductions, would have to be paid instead to the State Treasury and credited to the State School Aid Fund.

The officer or officers would have to send a copy of the amount of disbursement made to each unit to the State Tax Commission on a form provided by the Commission.

A qualified facility located in a renaissance zone under the Michigan Renaissance Zone Act would be exempt from the commercial rehabilitation tax to the extent and for the duration provided pursuant to the Michigan Renaissance Zone Act, except for that portion of the commercial rehabilitation tax attributable to a special assessment or a tax described in Section 7ff(2) of the General Property Tax Act. The commercial rehabilitation tax would have to be disbursed proportionately to the taxing unit or units that levied the special assessment or the tax described in Section 7ff(2). (Under that section, property in a renaissance zone is not exempt from a special assessment levied by the local tax collecting unit where the property is located; property tax levied for the payment of voter-approved obligations or obligations pledging a local unit's unlimited taxing power; ISD regional enhancement millage; or a school district sinking fund tax.)

The amount of the tax applicable to real property, until paid, would be a lien upon the real property to which the certificate was applicable. Proceedings upon the lien as provided by law for the foreclosure in the circuit court of mortgage liens upon real property could commence only upon the filing by the appropriate collecting officer of a certificate of nonpayment of the commercial rehabilitation tax applicable to real property, together with an affidavit of proof of service of the certificate of nonpayment upon the owner of the qualified facility by certified mail, with the register of deeds of the county in which the facility was situated.

### Revocation of Certificate

The legislative body of a qualified local governmental unit could, by resolution, revoke the commercial rehabilitation exemption certificate of a facility if it found that the rehabilitation of the facility had not been completed within the time authorized by the legislative body in the exemption certificate or a duly authorized extension of that time, or that the holder of the certificate had not proceeded in good faith with the operation of the facility in a manner consistent with the purposes of the proposed Act and in the absence of circumstances that were beyond the control of the certificate holder.

### Transfer of Certificate

A commercial rehabilitation exemption certificate could be transferred and assigned by the holder of the certificate to a new owner of the qualified facility if the qualified local governmental unit approved the transfer after application by the new owner.

### Reporting Requirements

By October 15 each year, each qualified local governmental unit granting a commercial rehabilitation exemption would have to report to the Commission on the status of each exemption. The report would have to include the current value of the property to which the exemption pertained, the value on which the commercial rehabilitation tax was based, and a current estimate of the number of jobs retained or created by the exemption.

The Department of Treasury annually would have to prepare and submit to the committees of the House of Representatives and the Senate responsible for tax policy and economic development issues a report on the use of commercial rehabilitation districts, based on the information filed with the Commission. After the proposed Act had been in effect for three years, the Department would have to prepare and submit to the committees an economic analysis of the costs and benefits of the Act in the three qualified local governmental units in which it had been most heavily used.

Legislative Analyst: J.P. Finet

### **FISCAL IMPACT**

The bill would potentially delay an increase in revenue to State and local governmental units, depending on whether the value of affected properties would increase absent the bill. To the extent that the value would rise, the bill would delay any revenue increase from the higher value by freezing the taxable value of the property for the duration of the certificate. The actual amount delayed would depend upon how many properties qualified for a certificate and the number of years for which a certificate was in effect, as well as the magnitude of any increases in taxable value affecting those properties that would occur absent the bill.

This estimate is preliminary and will be revised as new information becomes available.

Fiscal Analyst: David 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.