Legislative Analysis

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LOCAL COMMUNITY STABILIZATION AUTHORITY ACT AMENDMENTS

House Bill 5086 as enacted
Public Act 247 of 2018
Sponsor: Rep. David C. Maturen
House Committee: Tax Policy
Senate Committee: Finance

House Bill 5908 as enacted
Public Act 248 of 2018
Sponsor: Rep. Rob VerHeulen
House Committee: Appropriations
Senate Committee: Appropriations

Complete to 7-12-19

BRIEF SUMMARY:

House Bills 5086 and 5908 amend the Local Community Stabilization Authority (LCSA) Act. Taken together, the bills do all of the following:

- Redefine terms within the act and introduce and define the term "qualified school debt millage rate."
- Change deadlines related to: reports made by local assessors and county equalization directors, calculations made by the Department of Treasury, and payments made by the LCSA.
- Change the year in which a calculation for Tier 2 payments will begin and change the amount of funds used for this distribution.
- Introduce provisions for calculating and paying any overpayment or underpayment a municipality received under the act.
- Require various municipalities to allocate payments received under the act in the same manner and for the same purpose as the millages the payments replaced.
- Require the Department of Treasury to make the distribution calculations and the commercial and industrial personal property taxable values available online, and allow municipalities to report errors in these calculations and data.
- Provide an earmark of $13.6 million from the LCSA fund for fire protection grants.

BACKGROUND INFORMATION:

The LCSA was created in 2014 as part of changes to Michigan's taxation of commercial and industrial personal property.[1] The act authorizes the LCSA to levy a share of the state 6% use tax and reimburse municipalities for losses of personal property tax (PPT) revenue from the legislative tax changes.

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[1] See the House Fiscal Agency analysis of the original ballot proposal here:
http://www.legislature.mi.gov/documents/2013-2014/billanalysis/House/pdf/2013-HLA-0821-7957BF98.pdf

Distribution Before Enactment of HBs 5086 and 5908

The act determines the amount of use tax the LCSA levies. From the amount it levies, the LCSA makes the following required reimbursements, equal to 100% of the loss related to the statutory PPT tax changes—often referred to as Tier 1 payments:

- A school district's or ISD's debt loss.
- A school district's levy for sinking fund and recreation mills.
- An ISD's levy for vocational and special education.
- A school district's or ISD's operating loss not reimbursed by the School Aid Fund.
- A city's, village's, township's, authority's or county's levy for essential services (ambulance, fire, police, jail, and pensions for those that provide the essential services).
- A tax increment finance authority's loss.
- A municipality's small taxpayer exemption loss.

After the LCSA makes Tier 1 payments, until calendar year 2019, it must distribute the remaining balance to ***municipalities*** in an amount determined by the municipality's ***qualified loss*** in proportion to the ***total qualified loss***. These allocations are often referred to in two parts: 1) Tier 2—the portion equal to a municipality's qualified loss and 2) Tier 3—the portion that exceeds a municipality's qualified loss.

> ***Municipality*** includes counties, cities, villages, townships, authorities, school districts, intermediate school districts, community college districts, libraries, and other local taxing units.
>
> ***Qualified loss*** is a municipality's personal property exemption loss, multiplied by the appropriate millage rates, that is not already reimbursed.
>
> ***Total qualified loss*** is the total amount of qualified losses of all municipalities.

Beginning in calendar year 2019, after the Tier 1 payments have been made, 5% of the remaining balance must be distributed to municipalities based on their share of eligible personal property loss as determined using a modified acquisition cost definition of eligible personal property. Each subsequent year, the share of the remaining balance distributed based on the modified acquisition cost will be increased by an additional 5 percentage points until it reaches 100%. Over time this distribution would replace both the current Tier 2 and Tier 3 payments.

DETAILED SUMMARY:

House Bill 5086 makes the following changes to definitions in the LCSA Act:

- Redefines the term "increased captured value" to provide that, for calculations made for a tax increment finance authority (TIFA), in order for an anticipated increase in captured value related to the expiration of a tax exemption or the addition of personal property as part of a specific project to qualify as increased captured value, the TIFA must have documentation showing that before 2013 the TIFA was relying on the increase to pay one or more qualified obligations; and delete a reference to this addition of personal property elsewhere in the definition.
- Defines "local authority" as any authority, excluding an authority created under the act or TIFA.

- Includes "local authorities" and "tax increment finance authorities" in the definition of "municipality."
- Redefines the term "personal property exemption loss" for municipalities that are not school districts, intermediate school districts (ISDs), or TIFAs.
    - Previously, the "personal property exemption loss" was defined as 2013 taxable value (TV) of commercial and industrial personal property *minus* the current year TV of commercial and industrial personal property *minus* the "small taxpayer exemption loss."
    - The definition changes the calculation so that the "small taxpayer exemption loss" is subtracted only if it is greater than 0. This provision begins for years after 2017.
    - Additionally, the definition states that for calendar years 2016 and 2017, the 2013 TVs are the values reported under section 13(3) by the county equalization director in 2016 and 2017, except as provided in section 14. Beginning for calendar year 2018, the 2013 TVs are the values reported under section 13(3) by the county equalization director in calendar year 2015. [Section 13(3) requires county equalization directors to report to the Department of Treasury the current year TV of commercial and industrial personal property for each municipality in the county.] The bill makes a similar provision for a municipality that **is** a school district, ISD, or TIFA.
    - For all municipalities, the calculation of "personal property exemption loss" must be adjusted to exclude the TVs of commercial and industrial personal property for which millages are exempt under the Michigan Renaissance Zone Act.
- Redefines the term "qualified loss" to provide that it cannot be less than 0.
- Deletes the term "school debt loss," replaces it with "qualified school debt millage rate," and defines that as:
    - For calendar years before 2018, the millage rate specifically levied by the local school district or ISD in the current year for the payment of principal and interest of obligations approved or incurred before January 1, 2013.
    - For calendar years 2018 and 2019, either the millage rate described in (A) below, if a school district or ISD, in the current year and any prior year after 2017 has elected to use that millage rate and reported that rate to the department, OR (B), if the local school district or ISD has not used or reported the rate in (A):

        (A) The millage rate specifically levied by the school district or ISD in the current year for payment of principal and interest of obligations approved or incurred before January 1, 2015;

        (B) the *lesser* of the following: (1) The highest total of all debt millage rates levied by a school district or ISD in a single year for the period 2012 through 2014; or (2) The total of all debt millage rates levied by the school district or ISD in the year immediately preceding the current calendar year.
    - For calendar years after 2019, either (A) above, if a school district or ISD has elected to use that rate in calendar years 2018 and 2019, or the total of all debt millage rates in (B) if the school district or ISD has not used the rate in (A) or done certain reporting.

- Redefines the term "small taxpayer exemption loss" to stipulate that, similarly to "personal property exemption loss," the TVs for certain years are the values reported by the county equalization director in certain years. Specifically, for the 2015, 2016, and 2018 calendar years and subsequent calendar years, the 2013 and 2014 TVs of commercial and industrial personal property are the values reported under section 13(3) by the county equalization director in calendar year 2015.
  - As with "personal property exemption loss," the calculation of "small taxpayer exemption loss" must be adjusted to exclude the TV of commercial and industrial personal property for which millages are exempt under the Renaissance Zone Act.

Date Changes
The bill makes the following changes to deadlines in the act:

Action	Current Deadline	Deadline (and other changes) under HB 5086
City or township assessor to report to county equalization director the current year TV of commercial and industrial personal property	June 5	May 15
County equalization director to report to department the current year TV of commercial and industrial personal property for each municipality in the county	June 20	May 31 (for calendar year 2018 and after, the "current year TV" is that value on May 10; date is June 7 for a municipality that levies a millage in more than one county)
Municipality to report to department the millage rate levied or to be levied for payment of debt	August 15	For school districts and ISDs: may report its millage rate by August 1 (described above), and must report operating mills levied on industrial personal property. For all others: not later than August 15, 2017
City or township assessor to report to county equalization director the increased value from expired tax exemptions	June 5	May 31 (and requires assessor to notify department directly)
Department to calculate various municipalities' personal property exemption loss and small taxpayer exemption loss, and make various other adjustments and calculations	November 7, 2017; and each September 7 thereafter	November 7 2017;l and each October 7 thereafter

LCSA to make payment to county for county allocated millage	November 20, 2017; and each September 20 thereafter	November 7, 2017; and each October 20 thereafter

For many of the above reports and deadlines, the bill requires that certain taxable value reports for past years be submitted by specific past deadlines.

For calendar year 2018 and subsequent years, a local school district and ISD must reduce its debt millage rate to reflect the payment to be received under the LCSA 100% qualified school debt millage rate reimbursement provision.

Department of Treasury Calculations

The department is required to make various calculations under the act. Under the bill, for the calendar year 2018 and beyond, the department must do all of the following for a municipality that is *not* a local school district or TIFA:

- Calculate each municipality's total millage levied in 2012, 2013, and 2014.
- Calculate each municipality's eligible millage cap as the highest total millage levied in 2012, 2013, or 2014.
- Calculate each municipality's total millage levied in the year immediately preceding the current year.
- Calculate each individual millage rate for each municipality as follows:
    - If the eligible millage cap exceeds the total millage levied in the year immediately preceding the current year, then use each individual millage levied in the year immediately preceding the current year.
    - If the total millage levied in the year immediately preceding the current year exceeds the eligible millage cap, then prorate each individual millage levied in the year immediately preceding the current year downward to equal the eligible millage cap.

For an ISD, the above calculations exclude debt millage. Finally, a millage used to make the calculations must be levied against both real and personal property.

The department must do all of the following for a local school district:

- Calculate each individual millage rate levied by each school district in 2012, 2013, and 2014.
- Calculate each school district's eligible millage cap as the highest rate levied in 2012, 2013, or 2014 for each individual millage.
- Calculate each individual millage rate for each school district as the lesser of the millage cap calculated and the millage rate levied in the year immediately preceding the current year for that individual millage.

These calculations exclude debt millage and operating mills levied under the School Code on industrial personal property.

By August 1 and each August 1 thereafter, for a millage that is not general operating and that is dedicated in part, but not solely, for the cost of essential services, a county, township, village,

city, or local authority must report the portion of the rate calculated for that millage that is dedicated for the cost of essential services. If the local unit fails to report this information, the department must determine that the millage is dedicated solely for the cost of essential services.

Under the act's calculations, certain amounts are adjusted to reflect the final order of a court or body of competent jurisdiction related to any prior year calculation. Under the bill, this applies to the calendar 2017 calculations only.

Distribution of LCSA Revenue

LCSA revenue is distributed according to an order of priority in statute. These are commonly referred to as tiers. (See **Background**, above.)

Under the law prior to enactment of HB 5086, Tier 2 payments were set to begin in 2019. These payments use the remaining balance of the LCSA fund and distribute the revenue according to a phase-in modified cost acquisition basis. At some point, this will distribute all revenue remaining after Tier 1 payments.

Under the bill, Tier 2 payments will begin in calendar year 2021. Additionally, the amount to be distributed according to Tier 2 constitutes an amount equal to 15% of the total qualified loss for the current calendar year. Beginning in calendar year 2022, and each year thereafter, the percentage amount will be increased by an additional 5% each year, not to exceed 100%. Until that percentage reaches 100%, total qualified loss will be distributed according to a mix of the 15% formula and a municipality's proportion of total qualified loss.

After these distributions, beginning for calendar year 2018, the department will adjust the amounts calculated under the 15% formula and a municipality's proportion of total qualified loss for a municipality by the amount of any overpayment to that municipality for that calendar year, and the authority must distribute to a municipality the amount of any underpayment for calendar years after 2016.

After all these distributions, the authority must distribute the remaining balance of the LCSA share fund for the calendar year to each municipality that is not a school district, ISD, or TIFA in an amount determined by multiplying the remaining balance by a fraction: the numerator being the sum of that municipality's amount received under Tier 2 and any underpayment, and the denominator being the sum of the total amount distributed under Tier 2 and any underpayments.

Provisions for Overpayment and Underpayment

The bill prescribes certain calculations and payment dates for distributions resulting from overpayments, including a provision in which the municipality would have to pay the LSCA for an overpayment. The bill provides for specific deadlines and calendar years by which payment recalculations must be made. The bill also contains a provision for a municipality that received an underpayment of $500,000 or more for calendar year 2017 due to a reporting error or a calculation error made by the department.

Use of Funds

For payments received beginning October 20, 2018, a municipality must do all the following:

- Allocate payments received, up to the 100% reimbursement, based on the portion of a municipality's payment attributable to each millage levied by the municipality. This does not apply to the general operating millage.
- For a road millage levied by a county, the governing bodies of the cities and villages in the county and the board of county road commissioners must agree to a formula that allocates a portion of the payments received to each city and village based on the city and village share of the losses and acquisition cost used to calculate the payment to the county and each city's and village's portion of that share.
- Payments to a municipality that participates in an intergovernmental conditional transfer or any other interlocal agreement that provides for a millage-based sharing of revenue must be allocated between the parties based on the proportionate share of the payment as it is attributable to the area subject to the agreement.

Under the act, if a municipality receives a payment for a debt millage, it is required to use the payment to pay debt. If it does not use the payment to pay debt, the amount not used for debt must be deducted from future payments. The bill adds that if the payment is not used for debt because all debts have been repaid, the municipality may use the payment in any manner and it will not be deducted from a subsequent payment.

Calculations and Data Available Online

Under the bill, the Department of Treasury must make the distribution calculations and the commercial and industrial personal property taxable values available online.

For calendar year 2018 and subsequent years, each municipality may review the current year calculations to determine if any reporting or calculation errors were made. A municipality may notify the department of any errors identified by providing substantiating documentation to support and adjustment to the payment amount by March 31 of the year following the calendar year for which the payments are calculated or by August 1 for certain calculation errors. The department must review the documentation and verification of the errors and calculate an underpayment or overpayment. The department must determine whether the substantiating documentation is sufficient.

A municipality may undertake the same process if it finds an error in the annual commercial and industrial personal property taxable value data posted online.

The bill provides deadlines for municipalities to report errors in taxable values from prior years and for county equalization directors to notify the department of any corrected values.

MCL 123.1345 et al.

House Bill 5908 amends the LCSA Act to provide an earmark of $13.6 million from the LCSA Fund for Fire Protection Grants.

House Bill 5908 does not change Tier 1 payments. It does, however, change references in the calculations to conform to those proposed in House Bill 5086, above.

HB 5908 then reflects the changes, proposed in House Bill 5086, to the distribution of funds that remain after the Tier 1 and Tier 2 payments, but with one additional distribution.

After Tier 1 and Tier 2 distributions, beginning for calendar year 2018, the department must adjust the amounts calculated under the 15% formula and a municipality's proportion of total qualified loss for a municipality by the amount of any overpayment to that municipality for that calendar year and the authority must distribute to a municipality the amount of any underpayment for calendar years after 2016.

House Bill 5908 then inserts one additional distribution at this point:

> A total of $13.6 to municipalities with state facilities under 1977 PA 289 (commonly referred to as Fire Protection Grants).

The Department of Licensing and Regulatory Affairs (LARA) must certify to the Department of Treasury the amount to be paid to each municipality. The payment for fire protection grants must be made by November 30 of each year.

MCL 123.1357 and 123.1358

The bills took effect June 28, 2018.

FISCAL IMPACT:

Because the amount of use tax the LCSA can levy in any given year is contained in statute, the bills would have no state fiscal impact, although allocating $13.6 million for fire protection grants, revising the definition such that the small parcel exemption may not be negative, and altering the phase-in of the distribution based on modified acquisition costs would likely alter the distribution of the available funding to the eligible municipalities. However, the data necessary to determine any differences are not available.

For FY 2017-18, the LCSA was authorized to collect $410.8 million in use tax revenue, an increase of $29.9 million. The authorized amount increases to $438.0 million for FY 2018-19 and $465.9 million for FY 2019-20. When the exemption against exempt manufacturing personal property is fully phased in, the LCSA will be authorized to collect about $575.0 million.

The bills would have no fiscal impact on the Department of Treasury or local units of government.

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