

Legislative Analysis



PROPERTY TAX EXEMPTION FOR FRATERNAL, VETERANS, AND MASONIC ORGANIZATIONS

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House Bill 5541 (Substitute H-3)
Sponsor: Rep. Robert Gosselin

House Bill 5761 (Substitute H-1)
Sponsor: Rep. Rick Jones
Committee: Tax Policy

First Analysis (5-23-06)

BRIEF SUMMARY: Generally, the bills would exempt property owned by fraternal organizations, veterans organizations, and Masonic associations from property taxes.

FISCAL IMPACT: The fiscal impact of the bills cannot be determined due to data constraints. However, the loss of revenue could be significant for any given local unit.

THE APPARENT PROBLEM:

There are numerous local chapters of veterans and fraternal organizations in the state, including the American Legion, Veterans of Foreign Wars, Knights of Columbus, Benevolent and Protective Order of Elks, Moose and Eagles lodges, and the Masons. While these organizations engage in a variety of community service activities, including raising funds for many charitable causes, they are generally subject to real and personal property taxes. Some believe that if these organizations were exempt from taxation, they could use the money saved for additional charitable activities.

THE CONTENT OF THE BILL:

House Bill 5541

The bill would amend the General Property Tax Act (MCL 211.7o) to exempt real and personal property owned by a fraternal or veterans organization and used by that organization substantially for nonprofit charitable purposes from taxation under the act. The bill specifies that property used for commercial or for-profit purposes would be presumed not to be used for nonprofit charitable purposes.

Section 7o of the act currently exempts a charitable home of a fraternal organization or secret society from taxation. The bill would expand this to charitable homes owned by veterans organizations.

The bill defines "fraternal or veterans organization" to mean an organization within the state, except a college fraternity or sorority, that meets all of the following requirements: (1) is not organized for pecuniary interest; (2) is a branch, lodge, or chapter of a national

or state fraternal or veterans organization; and (3) exists for the common purpose, brotherhood, or other interests of its members.

[Note: Generally speaking, veterans organizations are already exempt from property taxes, as provided in Section 7p of the act.]

House Bill 5761

The bill would amend Public Act 1 of 1895 (MCL 457.224a), concerning the incorporation of Masonic associations, to exempt real and personal property owned by a Masonic association and used substantially for nonprofit charitable purposes from taxation under the General Property Tax Act. The bill further specifies that property used for commercial or for-profit purposes would be presumed not to be used for nonprofit charitable purposes.

BACKGROUND INFORMATION:

Fraternal Organizations

State Tax Commission Bulletin No. 9 of 1980 states that real and personal property owned and occupied by secret or fraternal organizations, such as the Knights of Columbus, Elks, Moose, and Eagles, are assessable in the same manner as all other taxable property.

In addition, the Michigan Tax Tribunal has issued several rulings in recent years holding that fraternal organizations are not exempt from taxation under the General Property Tax Act, their charitable activities notwithstanding.¹ The rulings generally note that an organization's federal income tax status as a nonprofit corporation – often organized under Section 501(c)(8) or 501(c)(10) of the federal Internal Revenue Code – is not a determining factor in whether the organization is considered a "charitable institution" exempt from taxation under the General Property Tax Act, as provided in Section 7o.

The tribunal's rulings note that the Michigan Supreme Court, in *Engineering Society of Detroit v. Detroit*, 308 Mich 539 (1944), established a four-part test to determine whether an organization qualifies for the charitable exemption:

- The real estate is owned and occupied by the exemption claimant;
- The exemption claimant must be a library, benevolent, charitable, educational, or scientific institution;
- The claimant must be incorporated under Michigan law; [No longer applicable.]²
- The exemption exists only when the building and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

¹ See *Fraternal Order of Eagles Aerie 2535 Inc. v. Big Rapids Township*, MTT Docket No. 284100 (3/17/03); *Fraternal Order of Eagles Owosso, Michigan Aerie 851 v. City of Owosso*, MTT Docket No. 277272 (9/30/03); and *Kasey Building Association v. Township of Davision*, MTT Docket No. 274470 (5/20/03.)

² The third qualifying requirement was declared unconstitutional in *McCormick Foundation v. Wawatam Township*, 186 Mich App 511 (1990).

The tribunal has stated, on more than one occasion, "[n]ot every Michigan Nonprofit corporation qualifies for the 211.7o(1) exemption from the collection of property taxes. The corporation must be incorporated in a manner that its purpose is as a charitable institution and then its ownership and occupancy of real property must be solely for the purpose for which it was incorporated." Further, it stated, "[t]he fact that an organization incorporated as a fraternal organization makes some, whether de minimis...or substantial contributions to charities does not make a fraternal organization a nonprofit charitable institution within the meaning of MCL 211.7o(1)."

Veterans Memorial Home or Post Exemption

Section 7p of the General Property Tax Act currently exempts property of veterans organizations, stated as follows: "Real estate or personal property owned and occupied as memorial homes or posts is exempt from taxation under this act. As used in this section, memorial homes includes real estate and buildings owned and occupied solely by any veterans association, organization, or institution of the armed forces of the United States which is incorporated under the laws of this state and used solely for the purposes for which they were incorporated, but does not include buildings or portions of buildings which are not restricted to members and guests and are used for commercial operations permitting the patronage of the general public, including but not limited to dancehalls, bars with class C liquor licenses, bowling alleys, pool or billiard rooms, television rooms, and game rooms. Incidental or casual rental or leasing for nonveteran purposes is no bar to the exemption. It is the legislative intent that the making available of the exempt facilities for public assemblage or social affairs shall not be adequate cause to deny this exemption in whole or in part."

The provision was added to the General Property Tax Act with the enactment of Public Act 142 of 1980, apparently in response to a Michigan Tax Tribunal decision that disallowed a property tax exemption for the memorial home of the Grand Rapids American Legion. The tribunal decision seemed to remove an exemption for property (other than an actual residence) owned by veterans organizations that had been in place for several decades. In 1956, the Attorney General opined that the real estate and buildings occupied by veterans organizations used for post activities and memorial purposes, and otherwise used solely for the purposes for which they are incorporated, are exempt from taxation. The opinion further notes that if the building is used for a commercial operation, such as a dance hall, bar, bowling alley, etc, the building, or a portion, would not be exempt.³

ARGUMENTS:

For:

Fraternal organizations engage in numerous charitable activities in their communities. Reportedly, some local lodges are already exempt from property taxes; however, most lodges are not. The imposition of taxes on property used for charitable purposes burdens local organizations, leaving fewer dollars available for charitable purposes. Exempting

³ See OAG No. 2562; November 26, 1956.

this property, then, provides some tax relief and frees up additional resources for community service projects and other charitable causes.

Response:

The bill would also exempt property of veterans organizations, although those organizations are currently exempt under Section 7p of the act. References to these organizations should be dropped.

Against:

The bill invites confusion by not specifying what "substantially" means or otherwise describing how exempt property is to be used. Many of these organizations rent out their facilities for banquets and receptions, and operate bingo halls, bars, facilities. Still others own and operate bowling alleys and golf courses. It's not clear whether this property and other property for the exclusive use of members would be – or should be – exempt from taxation. (If a golf course regularly hosts fundraisers, is it substantially used for a charitable purpose?)

Moreover, while fraternal organizations engage a variety of community service projects and should be commended for it, ultimately they are not charitable organizations, as they are not chiefly organized for truly charitable purpose. Exempting these organizations from property taxes would be inappropriate.

POSITIONS:

The Michigan Elks Association supports House Bill 5541 (5-17-06)

The Michigan Moose Association supports House Bill 5541. (4-19-06)

The Michigan Masonic Foundation supports House Bill 5761. (4-19-06)

The Department of Treasury opposes the bills. (5-19-06)

The Michigan Association of Counties opposes the bills. (5-19-06)

The Michigan Townships Association opposes the bills (5-19-06)

The Michigan Municipal League opposes the bills. (5-19-06)

The Michigan Assessors Association opposes the bills. (5-19-06)

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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.